CARIBBEAN FINANCIAL
ACTION TASK FORCE

Mutual Evaluation Report

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

Guatemala

November 4, 2010

Guatemala is a member of the Caribbean Financial Action Task Force (CFATF). This evaluation was carried out by the CFATF and approved by its Ministerial Council as part of the third round of mutual evaluations on [date]

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1. Preface- Information and Methodology used for the evaluation

1. The evaluation of the anti-money laundering (AML) and financing of terrorism (FT) regime of Guatemala was based on the 2003 Forty Recommendations on Money Laundering and the 2001 Nine Special Recommendations on Financing of Terrorism of the Financial Action Task Force (FATF), and it was carried out with the use of the 2004[1] AML/CFT Methodology. The evaluation was based on the laws, regulations and other material furnished by Guatemala, and the information obtained by the evaluation team during and after the on-site visit to Guatemala from June 8 to 19th of 2009. The team met with officials and representatives of all the relevant government agencies and the private sector. A list of the bodies with which meetings were held appears at Annex 2 of the Evaluation Report.

2. The evaluation was carried out by the following group of evaluators composed of one staff member of the Secretariat and experts from the member and cooperating countries of the CFATF: Ernesto López, Deputy Executive Director of CFATF and coordinator of the evaluation team; Abdel Almengor, Deputy Director of the Financial Analysis Unit of Panama (legal expert); Sara Molina, Analyst of the Financial Analysis Unit of Honduras (financial expert); Heynar Martínez, Coordinator of Money Laundering Prevention in the Superintendency of Banks and Other Financial Institutions of Nicaragua (financial expert); and Mauricio Pastora, Regional Specialist of the Financial Crimes Enforcement Network –FINCEN, of the United States of America, evaluator of law enforcement agencies. The team wishes to express its gratitude to the Guatemalan Government.

3. The experts scrutinised the institutional framework, the AML/CFT Acts, guidelines and other relevant requirements, as well as the regulatory and other systems in place to prevent money laundering (ML) and financing of terrorism (FT) through financial institutions and Designated Non-financial Businesses and Professions (DNFBPs). They also studied the capability, implementation and effectiveness of all these systems

4. This report provides a summary of the AML/CFT measures in force in Guatemala at the date of the on-site visit or immediately afterwards. It describes and analyses these measures, includes the levels of compliance of Guatemala with the FATF 40+9 Recommendations (Table 1) and formulates recommendations on how to overcome the identified deficiencies (Table 2).

[1] In accordance with version updated on February 2008

2. Executive Summary

1. This report provides a summary of the AML/CFT measures in force in Guatemala at the date of the on-site visit (June 8 to 19, 2009) and immediately afterwards. It describes and analyses these measures, indicates the levels of compliance of Guatemala with the FATF 40+9 Recommendations and formulates recommendations on how to overcome the identified deficiencies.

1. Key Findings

2. The AML / CFT system in Guatemala has been legally and institutionally strengthened in recent years, especially the prevention in the financial system, and has achieved some significant convictions, but still has serious difficulties to investigate complex crimes of ML, and to combat organized crime or the laundering derived from corruption. Law enforcement authorities, especially the National Civil Police, don't have sufficient human and technical capacities to support the Public Prosecutor's Office (also called Public Ministry or Fiscalía) in its investigations. This is compounded by weak coordination among law enforcement agencies, an area that is expected to improve with an Inter-Agency Committee recently established for this purpose.

3. The crime of ML is consistent with international standards and there is evidence of its practical application. However, given the high rates of crime in the country, there are still very few convictions with severe penalties or resulting from complex cases of LD through the financial system. Most convictions are for illegal transportation of cash or "mules ".

4. In terms of FT, this is criminalized according to the parameters of the International Convention for the Suppression of the Financing of Terrorism, except that it lacks an explicit mention of the act of funding a terrorist organization or an individual terrorist. To punish this conduct would require a broad interpretation of the criminal law that has not been tested in court. FT risk is low, according to studies contracted by the authorities, although the absence of FT cases and investigations in Guatemala, and the inability of the judicial system to investigate other complex crimes, do not allow to have an accurate assessment of the effectiveness with which Guatemala could combat terrorist financing.

5. All financial activities described in the glossary of the FATF methodology, except for insurance brokers and agents are obligated institutions in Guatemala and are subject to the AML Act, the law CFT, and their respective regulations. There are also secondary provisions such as circulars and "guides", all of them mandatory and enforceable. Overall, this body of law provides sufficiently strong legal basis for the AML / CFT preventive system. So far, the most recent and complete set of regulations applies only to those financial services that represent the largest volume and number of operations and are therefore, are considered riskier. It is necessary to broaden the scope of these regulations to include the other financial institutions.

6. The Special Audit Office (or Intendencia de Verificación Especial, IVE) of the Superintendency of Banks (SIB) is both the financial intelligence unit and the regulatory and supervisory authority for all businesses obliged for AML / CFT purposes. Its financial, technical and human capacity is significantly higher than that of other Guatemalan authorities with responsibilities in the fight against ML / FT, it has achieved an important degree of development in financial intelligence and it recently strengthened its supervisory capacity. Still, its 49 staff are insufficient for the large number of responsibilities that it has to fulfill.

2. Legal Systems and Related Institutional Measures

7. The crime of “laundering of money and other assets” is dealt with in the Guatemalan Penal Code according to the parameters and rules of the Palermo Convention against Transnational Organized Crime and theVienna Convention, respectively. ML offenses can be pursued in relation to the proceeds from any crime, including financing of terrorism, and the concept of property is broad enough to encompass all types of "ownership" that proceeds directly or indirectly from a crime, as required by the FATF. From 2005 to 2008 there has been a dramatic increase in seizures of cash. ML is criminalized as an autonomous offense and the conviction for ML does not require a prior conviction for the predicate offense; there have been convictions that demonstrate this interpretation.

8. It is apparent from judicial decisions, that the understanding, interpretation, scope and application of the mental element (*means rea*) inserted in the offense is appropriate and yields good results when issuing sentences for ML. The wording of the offense allows the judge to apply it to the fullest extent, and to infer the mental element from the objective circumstances.

9. The financing of terrorism is criminalized in Guatemala on the basis of the International Convention for the Suppression of the Financing of Terrorism. However, the Law to Prevent and Suppress Terrorism Financing (CFT Act), adopted by Decree No. 58-2005 of the Congress and regulated by Government Decision No. 86-2006 of the President, does not make explicit reference to the financing of terrorist individuals or organizations.

10. A wide range of legal precautionary measures and international cooperation mechanisms are available and are used in Guatemala. It has also been demonstrated in practice the ability to quickly seize any assets derived from crime and prosecutors may directly issue a freezing order within hours, even based on the UN Security Council lists of terrorist. A more immediate mechanism should be developed, though, such as creating a general obligation for financial institutions to suspend these transactions and freeze the funds without having to wait for a case-specific order.

11. The IVE is the financial intelligence unit of Guatemala. It has operational autonomy and the necessary legal powers and access to information to perform its duties. It has an important role in detecting and investigating ML offense as well as in the area of inter-agency coordination. Some of the main shortcomings that reduce its effectiveness are: 1) lack of ready access to police information, 2) the delay of other institutions in responding to the requirements of the IVE, 3) the excessive time and resources spent on dealing with information requests from the Public Ministry, and 4) its scarce production of publications informing statistics, typologies, trends, and other strategic analysis activities.

12. The Public Ministry is the agency that leads the criminal investigation procedures and it subsequently files accusations before a competent judge. It has an office specializing in ML, and several other units specialized in corruption, drug trafficking, economic crime, property crime, Trafficking and Organized Crime, which can also hear and investigate ML when it arises as a connected offense in their investigations. Only the Prosecutorial Unit specializing in ML may obtain confidential information from reporting institutions without a warrant, and it does it only through the IVE. Other units of the Public Ministry, when they need such confidential information, request it through the ML Unit, which relays it to the IVE. This has led to a overload of reporting requirements from Public Prosecutors to the IVE, consuming much of IVE’s resources that could be focused on its main functions of analysis and financial intelligence.

13. Between early 2005 and May 2009 16 convictions for money laundering were issued, a number that is low considering the high rates of crime in the country. Convictions imposing severe penalties, or complex investigations of ML through the financial system, are still few. Most convictions are related to cases of illegal transportation of cash or "mules." Greater specialization of judges in these areas is needed, as well an increase of the legal and human capacities of the Public Ministry, and most

importantly, the capacity of the Police and other entities that support the criminal investigation. Prevention controls should be strengthened, especially at land borders and sea ports, and it is necessary to take measures for greater coordination at the national level.

3. Preventive Measures – Financial Institutions

14. The preventive AML / CFT regime covers almost all categories of financial institutions required by the FATF, except for insurance intermediaries. The quality of implementation, however, is higher in the banking sector.

15. The preventive regime is comprised of the AML Act of 2001, the CFT Act of 2005, the respective regulations of these two laws, and in circulars, *oficios* and "guidelines" issued by the IVE. The latter provisions meet the requirements to be considered "other enforceable means" as defined in the evaluation methodology. The most recent circulars of the IVE incorporate most of the FATF standards and introduced the concept of ML/FT risk management for the first time. They create the obligation to enhance CDD controls where the risk is greater, detail the measures to be taken with regards to PEPs and the controls applicable to branches and correspondent accounts. These new regulations have not yet been extended to all entities, as the authorities have decided to cover initially the financial institutions that involve greater risks and represent the largest transaction volume in the system (especially banks, finance companies and offshore entities).

16. The laws, regulations and other provisions on customer knowledge, ongoing due diligence, transaction monitoring, suspicious transaction reporting, internal controls and record keeping are fairly complete, but need to be clarified and supplemented in several areas identified in the report. Among these are the need for greater detail and clarity of the obligation to identify the real beneficiary (beneficial owner), especially when it comes to legal persons.

17. Also, there are practical difficulties that limit the effectiveness of the CDD by the banks, including the unreliability of the national identification document, the high level of informality in the economy and the culture among the local population not to provide full information to the banks for fear of having to pay more taxes. We also found that the prevalence of companies with bearer shares and the lack of comprehensive and updated information in the Company Registry make it difficult to identify the real beneficiary of financial services.

18. The Risk Management Guide issued by the IVE in April 2009, which is the guideline that directly addresses the issue of innovative products and services and the issue of distribution channels (including non face to face transactions), has not been fully implemented and it applies only to banks, financial institutions and offshores. The other obliged institutions have not received clear and specific instructions on this matter.

19. In Guatemala, regulated entities must monitor transactions and relationships for the purpose of identifying and analyzing those that are unusual, in accordance with certain parameters and signals in the law and the instructions issued by the IVE, as well as their own AML/CFT manuals. A written record of this is available to the competent authorities. The obligation to pay special attention to business relationships and transactions involving countries that do not adequately apply the FATF Recommendations is not expressly imposed on all institutions. In the case of banks, financial and off-shore entities, the ML/FT Risk Management Guide Risk requires them to assess the risks stemming from the geographical factor, but the language used in this Guide should be more clear and imperative.

20. The obligation to report suspicious transactions is sufficiently broad and clear, both in relation to ML and FT. In practice, the overwhelming majority of RTS (Spanish acronym for suspicious

transactions reports) and CTRs (cash transaction reports) are sent by banks. The number of RTS related to FT is minimal, but the IVE has received two reports in which the reporting institution suspected of possible terrorist financing. In order to improve the quality of the RTS, the IVE developed a verification procedure for the admissibility of RTS since July 2008. This filter has positively resulted in fewer defensive RTS, a slight decrease in the number of RTS and an increased number of RTS that turn out to be useful for the construction of cases disseminated to prosecutors.

21. The IVE performs the AML/CFT supervision of financial institutions and all other obliged entities. It enjoys sufficient legal powers and the authority to impose sanctions. At the time of the visit it had made 9 inspections to banks (50% of existing banks) using a new methodology for risk-based supervision that was designed with assistance from the IMF, and it presented (if only verbally) its findings to the boards of directors of each institution. It was yet to star the practice of notifying in writing the results of its inspections and did not follow up on recommendations made during previous inspections (these issues were included in the new inspection procedures but were not implemented yet). Due to insufficient staff, the IVE cannot supervise all the obliged entities. We also found that the range of fines and other measures should be broader, and there should be more frequent imposition of monetary penalties.

22. The authorization/licensing process applied to all institutions supervised by the SIB prevent criminals from obtaining ownership, control or administrative functions in an institution. Furthermore, all entities, including those that are not under jurisdiction of the SIB, have to register with the IVE. Money or value transfer businesses, and currency exchanges, are obligated entities according to the AML and CFT Acts; they are also subject to registration and supervision of the IVE, which has audited a significant part of those institutions. Although it is not possible to determine whether there are informal remittances not registered in Guatemala, the number is probably small due to the high degree of bancarization of this service in Guatemala.

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

23. APNFDs in Guatemala are the businesses listed in the CFT Act, called “obliged persons under special regime” ("PORES" by their Spanish name) consisting of: a) Activities of real estate or purchase of property; b) Activities of car dealers; c) Activities related to trade in jewelry, precious stones and metals; d) Activities related to trade in art objects and antiques; e) Notaries Public, Accountants and Auditors, and f) Any other activity which, by nature of its operations, could be used to finance terrorism. There are businesses that should also be obliged DNFBPs according to the international standards but are still not regulated under Guatemalan law, as is the case of corporate service providers and casinos.

24. DNFBPs in Guatemala are only regulated entities in the framework of FT prevention and not in that of ML prevention, nor are they required by law to implement know your customer policy, measures regarding politically exposed persons (PEPs), or record keeping; nor are they required to submit STRs on ML or to monitor contractural relations to detect unusual trends and determine ML patterns. Up to the present the DNFBP sector has had no ML/FT prevention programmes including internal policies and controls to monitor risk, training and audits. In addition, since the process of registering and the first contacts with certain of the DNFBP sectors are just beginning, the IVE cannot yet ascertain the degree of implementation and effectiveness of ML/FT prevention policies, or carry out supervision and follow-up in this area. Lawyers, notaries, accountants and auditors have not yet been registered in the IVE for ML/FT prevention purposes. Lawyers and company service providers are not regulated entities in Guatemala.

5. Legal persons and arrangements and Non-profit organizations

25. Guatemala has not developed adequate measures to identify the real beneficiaries or controlling persons of legal persons, nor measures to prevent the misuse of legal persons (and particularly those that issue bearer shares) for activities linked to money laundering or terrorist financing. Despite the efforts that the Registry has made with its limited resources, publicly available information is not sufficiently complete or updated to determine the identity of the beneficial owners or those exerting control of legal persons through ownership of bearer shares, or for corporations more generally.

26. As to trusts, the Commercial Code states that only banks and credit institutions established in Guatemala may act as trust service providers. These are already subject to AML/CFT regulation and supervision by the IVE of the Superintendency of Banks, the same general AML/CFT rules apply to these services, as well as some requirements contained in a mandatory form specifically designed for the start of trust relationships.

27. The authorities have not assessed the potential vulnerabilities of the nonprofit organizations (NPOs) with respect to ML or FT. Guatemalan legislation in general requires registration, licensing and accounting and tax controls for non-profit organizations (NPOs), information on which is available for the competent authorities, and for the general public under the Freedom of Information Act. The NGOs which are subject to greater monitoring are those which are registered as regulated entities with the IVE by virtue of their type of activity: loans, remittances and lotteries; and they are required to retain records of their transactions for a period of five years. There are other NPOs s which in addition are controlled by the General Comptrollership of Accounts of the Republic because they manage public funds to carry out social projects.

6. National and International Cooperation

28. There are no interdisciplinary working groups at the operational level to coordinate the combat against AML/CFT. Nor is there any spontaneous and effective exchange of intelligence between the IVE, the Analysis Unit, and the *Fiscalías* of the Ministerio Público that handle ML/FT cases. Communication between the MP and the IVE is limited to the transmission of denuncias from the IVE to the Anti-Money Laundering *Fiscalía*, responses from the IVE to requests for elaboration of information from the MP, and in some cases to spontaneous dissemination from the IVE to the above mentioned *Fiscalía* of information from the media on ML, except for recent efforts that have lead to hold periodical meetings with the Money Laundering Prosecutor's Unit. The draft Governmental Decree creating the "National Commission for Coordination of Efforts Against Laundering of Money or Other Assets and Financing of Terrorism in Guatemala", is a good start with regard to coordination and cooperation on AML / CFT [*Some months after the visit Guatemala confirmed that the Executive Decree ("Acuerdo Gubernativo") was approved with number 132-2010*].

29. A number of Mutual Legal Assistance Treaties (MLAT) and other multilateral legal instruments signed and ratified by the Republic of Guatemala allow this country to provide a broad international judicial cooperation in criminal investigations and prosecutions for alleged offenses of Money Laundering and Terrorist Financing. The principle of dual criminality is part of the requirements for mutual legal assistance, but it does not constitute a hindrance to the provision of legal assistance, because of the broad terms in which the basic crime of money laundering is conceived, which do not restrict the origin of the funds to a closed list of illegal activities predetermined by the criminal law. This situation is a definite advantage to legal cooperation between Guatemala and all other countries..

7. Resources and Statistics

30. Although the IVE collects adequate statistics for its job as FIU and supervisor, there is no system of collection and analysis of data in other institutions to enable the authorities to prioritize needs, plan an

overall national strategy, or review the efficiency of their AML/CFT system. The Ministerio Público does not have an established statistical system for following up the effectiveness of investigations and convictions for ML/FT. The exact number of DNFBPs is unknown (only one estimate). There are no available figures on cooperation with customs authorities in other countries for detection of money or securities at the frontiers.

31. Guatemala provided only aggregated statistics on mutual legal assistance, for a total of 1,482 requests made by Guatemala and 251 provided by them. It also provided the list of countries involved and indicated that these numbers include any type of assistance, from information requests, to witness interview, etc. It was not possible to discriminate the number of requests related to ML or TF, the response times, the type of assistance or other elements to evaluate the effectiveness of their mutual legal assistance framework.

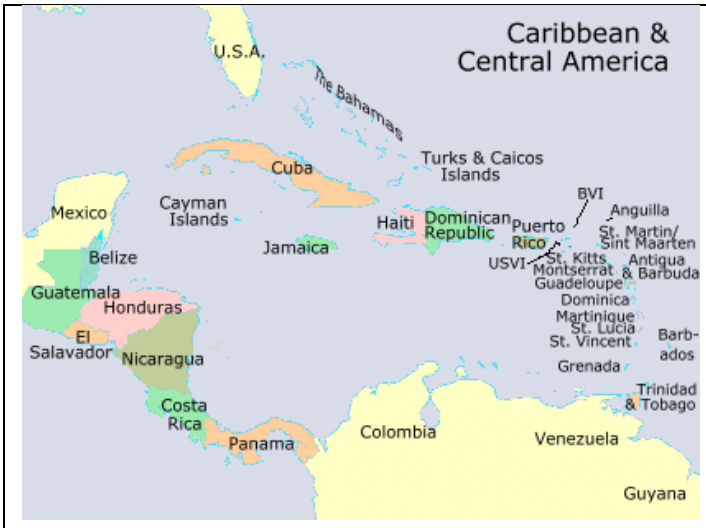
32. 774 and 775 The evaluation team is optimistic about the country's plans to integrate and coordinate the efforts of different authorities. Efforts and resources to combat corruption, modernize the judicial system and combat crime in general must be redoubled in order to build the foundations for an effective AML/CFT system.

1. GENERAL

General information on Guatemala

System of government

1. Guatemala is a democratic, constitutional, independent and unitary (non-federal) Republic. Its three independent arms of government are the Executive, the Legislative and the Judicial. The President is directly elected by universal suffrage for four-year terms, and he/she may not be immediately re-elected. The President is the Head of State and Government, and independently appoints the Cabinet. The Legislative Power is exercised by a unicameral Congress of 158 members directly elected by popular vote every four years. The supreme judicial organ is the Supreme Court of Justice, the members of which are elected by Congress for four-year terms. The Supreme Court appoints judges to the lower courts. There is also a Constitutional Court and a Supreme Electoral Tribunal, both of which are independent. Guatemala is divided into 22 Departments, each with a governor appointed by the President, and a total of 333 municipalities.



2. Guatemala is situated in the northern part of the Central American isthmus. It has access to both the Atlantic and the Pacific Oceans, and shares borders with Mexico, Belize, Honduras and El Salvador. It is the third largest Central American country, with an area of 108,889 square kilometres or 42,042 square miles.

3. The majority of the population is concentrated between 915 and 2,440 metres altitude. In this region the days are warm and the nights cold. The average annual temperature is 20 degrees Celsius. The capital is Guatemala City.

4. Guatemala is the most heavily populated country in Central America, with more than 12 million inhabitants according to the 2002 census. Its population is mainly poor, rural, young and indigenous (61% of the inhabitants live in rural areas, and indigenous ethnic groups represent 41% of the total). Twenty-three languages are spoken in Guatemala, and the official language is Spanish.

Legal system and hierarchy of laws

5. The legal system is based on continental law ("civil law") and the Supreme Court has the power to review the legality and constitutionality of administrative acts performed by the Executive. The criminal justice system is accusatorial, in which a prosecutor conducts the investigation and then prosecutes the case before a judge. Preventive measures requested during the investigative phase must be authorised in advance by a *juez de garantías* or "accountant judge" unless they are ordered by the Prosecutor on grounds or urgency in a situation of imminent "danger of loss" of the property that is the object of the measure, in which case it must be subsequently confirmed by the judge.
6. The hierarchy of the laws and regulations, and the terminology applied, are as follows, in order of importance: 1. the Constitution (the supreme law to which all others are subordinate) 2. Constitutional-level human rights 3. Laws (termed *Decretos del Congreso* – Congressional Decrees)

4. Regulations issued by the Executive (termed *Acuerdos Gobenativos –executive orders)* 5. other decisions issued by the executive or by agencies with regulatory powers such as the Superintendency of Banks: Circulars and Guidelines with mandatory effect.

7. Laws that contravene the Constitution may be struck down by a ruling of the Constitutional court. Regulations that are ultra vires the relevant law may be revoked by the competent Constitutional Tribunal. And administrative orders may be annulled by a judicial decision of the competent court whenever the agency issuing them exceeds the regulatory powers conferred by the relevant laws or regulations.

8. The body of law concerning AML/CFT mainly comprises the following elements:

- The Constitution of the Republic of Guatemala.

- **Laws:** 1) The Law Against Laundering of Money and Other Assets, Congressional Decree No. 67-2001 (hereinafter the "AML Act"); 2) the Law for Prevention and Suppression of the Financing of Terrorism Congressional Decree No. 58-2005 (hereinafter the "CFT Act"); 3) The Criminal Code; 4) the Code of Criminal Procedure; 5) the Law Against Organized Crime, Congressional Decree No. 21-2006; 6) the Judiciary Law. At the same level are the Banking Act and other laws conferring on the Superintendency of Banks (SIB) prudential regulatory powers.

- **Regulations.** 1) Regulations of the Law Against Laundering of Money and Other Assets, executive order No. 118-2002 of the President of the Republic ("AML Regulations"); and 2) Regulations of the Law for Prevention and Suppression of the Financing of Terrorism, *Executive order* No.86-2006 of the President of the President of the Republic ("CFT Regulations") and other Presidential *acuerdos (executive* orders) amending the AML Act.

- **Other coercive measures:** Circulars and Guidelines issued by the Superintendency of Banks (SIB). It should be made clear at this point that some of the criteria marked with asterisks in the methodology as required to be embodied in "laws or regulations", in Guatemala consist only of circulars or forms which, although mandatory, do not have the rank or stability of laws or regulations (specifically, criteria 5.5.2.b and 5.4 a).

9. Some important differences between this system and that usually found in Anglo-Saxon (common law) jurisdictions should be made clear. What happens in Guatemala is the following:

- As in the majority of continental law (civil law)countries, the SIB does not only exercise supervision over the financial system for AML/CFT purposes, but is expressly empowered by Congress to issue regulations for its supervised entities in the framework of action laid down by the respective AML/CFT Acts and regulations. Article 25 of the AML Act stipulates that "*The Superintendency of Banks, through the Intendencia, may issue instructions to regulated institutions, in the form it deems appropriate, concerning new measures they must implement, within the framework of the relevant legislation, to prevent their institution being used for laundering money or other assets". Furthermore, the CFT Act Regulations stipulates: "Article 14 – instructions on administrative measures: The Superintendency of Banks, through the Intendencia de Verificación Especial, may issue instructions to the regulated persons referred to in Articles 15 and 18 of the Act, in the form it deems appropriate, concerning new measures they must implement, including those relating to procedures for designating persons whose assets or property are suspected of links to terrorism, and special measures to be applied in such cases. In virtue of the above, regulated persons shall make such amendments to their compliance manuals as may be necessary. Failure to comply with these instructions shall be sanctioned in accordance with the provisions of Article 19 of the Act."*

- Pursuant to the above, the SIB's AML/CFT regulations have been issued by means of "circulars" signed by the Intendente de Verificación Especial, which usually have as appendix a set of "Guidelines" or a form setting out in detail all the necessary procedures, measures, controls and duties. Despite their name, the provisions of these Guidelines are mandatory, and failure to comply with them entails administrative penalties (fines) which the IVE itself may impose.

10. Despite the obligatory nature of the AML/CFT Guidelines so far issued, these use two distinct types of wording: in some cases it imposes clear and explicit obligations on the banks (for example, they are "required to be able to establish the risk profile…"), and in others it simply sets out the minimum range of subjects that the banks "must take into consideration in formulating, amending or updating their compliance programmes" (ML/FT Risk Management guidelines issued in April 2009, and guidelines for Correspondent Banking and Foreign Branches, issued in 2008). In Chapter 3 of this report there is a description of the cases in which this situation bears on compliance with some of the criteria of the evaluation methodology.

Recent history and socio-economic information

11. From 1960 to 1996 Guatemala underwent a bloody civil war. Following the 1996 Peace Treaty the country has set itself the task of gradually dismantling the clandestine security apparatuses that were created during the war and which generate violence and corruption. Since 1996 the democratic system has solidified and there have been appreciable improvements in indicators such as literacy and infantile mortality. The coffee crisis and the 2001 drought slowed the process and in 2002 extreme poverty increased to 21% in average and as much as 31% in rural areas. Nevertheless, according to the World Bank, "Until the effects of the global financial crisis of 2008 were felt, there had been relatively stable growth in comparison with the rest of the region" (World Bank, Country Profile,).

12. Guatemala is characterized by a high concentration of wealth, with 64% of income going to 20% of the population, and it is the second most unequal country in Latin America. With a GINNI coefficient of 58.3, the country has one of the continent's lowest human development rates on the continent (0.640.) According to ENCOVI[2] 20062, 51% of the population is considered poor. This indicator is better than the 56% registered in 2000, but the level of extreme poverty stayed constant.

Social indicators					
Per capita income (US$) 2007		**Life expectancy (2007)**		**Infant mortality per 1000 births) 2007**	
Guatemala	LA	Guatemala	LA	Guatemala	LA
$ 2,440	$ 5,540	70	73	31	22

Source: World Bank, cited by the authorities in the questionnaire

Extreme poverty	
Guatemala (2006)	LA (2007)
54.8	34.1

13. Guatemala is also noted for having one of the lowest tax burdens in Latin America. According to the authorities, the low tax burden is mainly due to the weakness of the control of evasion and the proliferation of tax exonerations and exemptions.

[2] National Survey on Living Conditions, 2006 prepared by the Instituto Nacional de Estadística

14. The economy is a small and open one (although its openness is in any case lower than that of its Central American counterparts), and liberalisation measures have resulted in increased volume of trade.

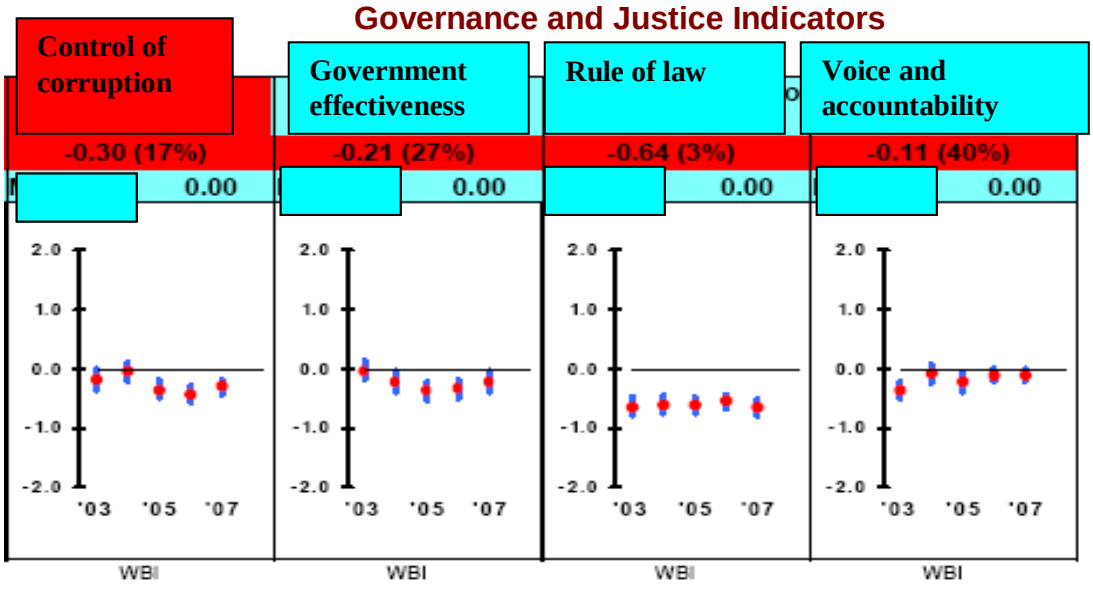
15. Besides economic liberalisation, Guatemala has also achieved a high degree of financial openness, according to calculations carried out by CABI[3] with the Chinn and Itto[4] methodology. The capital market, on the other hand, has not linked up with the international market, and as a result did not incur losses from investment in toxic assets during the recent world crisis, even though the volume of losses that may have been incurred by individual investors is unknown. However, in 2006 one of the principal banks of the country, the Bancafé, had to be taken over and liquidated after it invested and lost very large sums on foreign hedge funds.

Transparency, governance and combating corruption

16. According to a report by Fitch Ratings, "The country's key credit weaknesses include its low tax take, high level of poverty and inequality, as well as weak social land governance indicators…"5

17. The World Bank Institute (WBI) has developed an index to measure the quality of the rule of law enjoyed by a country's citizens. A country with an index of 2.0 is one which the rule of law is fully respected. At the other end of the scale, a country with an index of -2.0 is one in which there is total anarchy. The WBI gives Guatemala an index of -0.64. The institutional weakness of the country is also a high risk factor. It is related to ineffective law enforcement and lack of certainty in punishment.

[3] Central American Business Intelligence. CABI assessed 177 countries throughout the world. The highest rating, 26, was obtained by Guatemala and 37 other countries. The lowest rating was -1.77.
[4] Authors who have studied the methodology for calculating financial openness.
[5] Fitch Ratings, Sovereign Risk Analysis of Guatemala. www.fitchratings.com



General situation of money laundering and financing of terrorism

18. Corruption, the weakness of the justice system and the impact of drug trafficking and other criminal activity combine with poverty to increase vulnerability to money laundering.

19. According to the map of drug trafficking supplied by the authorities, one of the main routes is located in the northern and north-western regions of the country, which coincide with the two areas with the highest level of extreme poverty, constituting a risk factor that the authorities have identified proactively.

20. According to the World Bank, "The government has taken important measures to improve transparency in public institutions at both the national and municipal levels. But efforts to reduce crime and violence, combat corruption and modernize the judicial system need to continue to make the business environment more propitious and improve public confidence".

21. Important legislative measures have been taken. Aside from the laws in force that are intended to prevent money laundering and financing of terrorism, in 1996 tax fraud was criminalized.

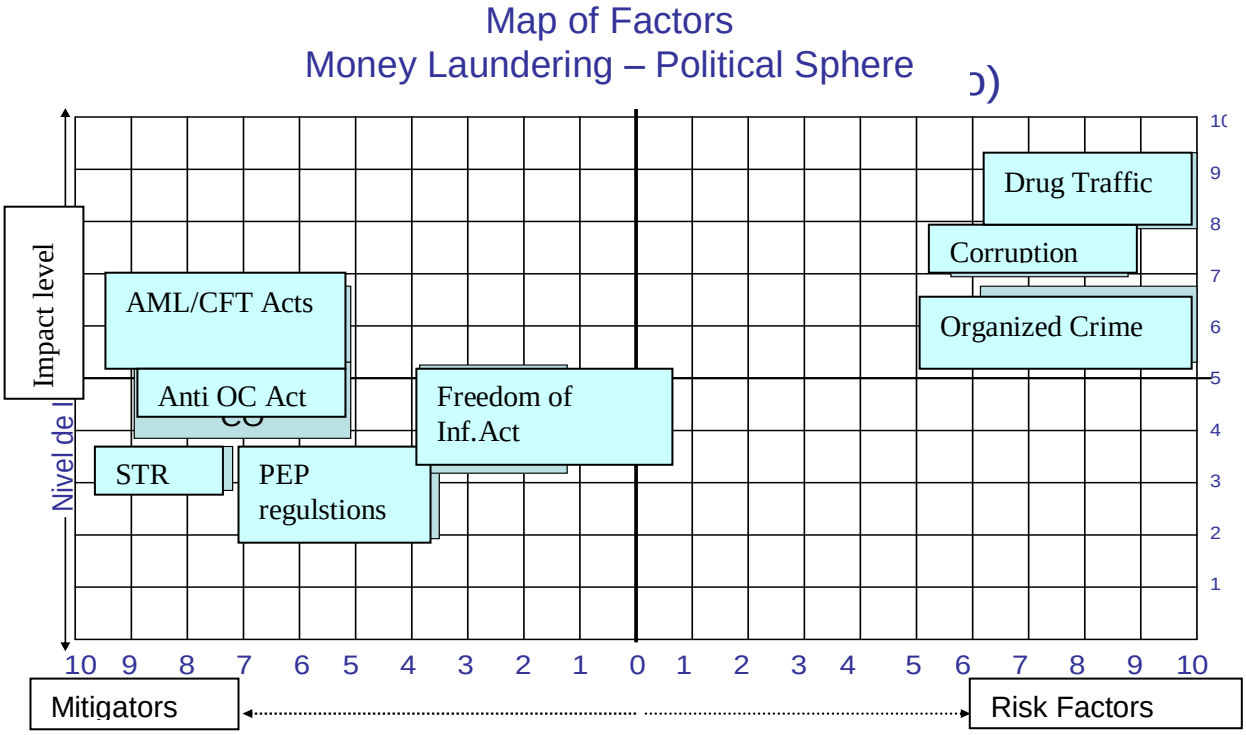
22. The authorities stated that a new System for Monitoring and Reporting Acts of Corruption is in preparation, and that this is a valuable tool to enable both those directly affected and civil society in general to put to the test the institutions responsible for ensuring probity in public acts. The New Freedom of Information Act will also favor transparency in public acts and can serve as a disincentive to acts on the margins of the law. The challenge will be to implement it and for the citizens to make effective use of it.

23. Other initiatives expected to have a positive effect against ML are a draft law to regulate and make transparent the composition of selection commissions for appointments to posts in the Ministerio Público (Department of Public Prosecutions), the Supreme Court, the Procuraduría General de la Nación (Chief Prosecutor's Office) The Contraloría General de Cuentas (CGCN) as well as pending amendments to the Electoral Law and the Political Parities Law.

24. The evaluation mission was informed that despite the fact that the legislation against financing of terrorism in Guatemala has criminalised this act in particular since 2005, up

to the present time no cases of financing of terrorism have been detected in the country. However, the evaluation of Country Risk accomplished for Guatemala the consultants considered very low probability that Gualtemaltecan territory be used in order to finance terrorist taking into account statistical information available in the country, its history, geographic position, social and political and cultural conditions. This could explain absence of FT investigations in the past and in the opinion of the evaluating committee the conclusions of the study are reasonable. This does not prevent that in the future circumstances change and FT risks increases and therefore authorities are aimed in strengthening mechanisms to prevent this phenomenon.

25. The authorities summarised their view of the main causative and mitigating factors of money laundering risk in the following graph.



Overview of the Financial Sector

26. Although the financial system is not deeply rooted in the country, its geographical coverage has broadened, in an attempt to improve the service to customers, and to "bankify" the rural population, which represents 61% of the total. It has service points in all urban areas of the Republic, with its major concentration in the capital. DNFBPs, too, especially those dealing in real estate, are concentrated in the urban areas.

27. The largest banks in the system (by volume of assets) compete with similar financial products and services, and try to differentiate themselves from one another by means of other attributes: service points, personalised service, price, etc.

28. The majority of banks may be considered all-purpose banks, catering to all segments of the market.

29. There is a category of "off-shore" banks in Guatemala, the particular character of which is that the money of the customers (usually Guatemalans with average deposits of US$100,000) is legally considered to be deposited in the foreign country where the bank's head office is based, not in Guatemala. These banks, in addition to capturing deposits, make loans to customers resident in Guatemala. They were created in 2002 for the purpose of mobilising for the country's development the savings that wealthy Guatemalans held abroad to avoid the former foreign exchange controls and the frequent devaluations. At the time of the visit the total loans granted by thee banks in Guatemala was estimated at US$2,500 million.

30. The evaluation team found no limitations on AML/CFT compliance resulting from the special regime of these banks. Off-shore banks are subject to the same AML/CFT regulations as any local bank, and the IVE may have access to any type of information on their customers, both in the course of its duties as FIU and when supervising AML/CFT compliance. The SIB licenses only off-shore banks whole head offices are in countries with which it has memoranda of understanding for information exchange. At the present time there are 7___ off-shore entities, with head offices in Panama, the Bahamas and Puerto Rico.

31. In view of the legal principle that the depositors' money is abroad and under foreign jurisdiction, the Superintendency of Inland Revenue has no access to information on off-shore banks' customers. Likewise, the SIB, when supervising compliance with prudential regulations, can obtain access to information on loans and other active operations of these banks, but not to their passive operations (i.e. deposits). None of these restrictions applies to the IVE or to the Ministerio Pûblico when they are investigating ML or CFT suspicious operations, or to the IVE when verifying AML/CFT compliance.

32. There are about 216 active credit and loan cooperatives, which are under IVE supervision for AML/CFT purpose. These entities must be licensed and registered with the National Institute of Cooperatives (INACOOP). Also, the Government Cooperatives Inspectorate (INGECOOP) is responsible for inspection of all cooperatives in Guatemala, and sometimes includes AML/CFT concerns in its inspections, but it is not an agency specialized in financial intermediation activities. The total assets of the credit and loan cooperatives as of March 2009 is estimated at 5.290.53 million Quetzales.

33. The number and volume of operations of bureaux de change has diminished significantly since the adoption of the Freedom of Foreign Exchange Act in 2001. This Act enables banks to perform the same operations as the bureaux de change, and also allows banking operations to be performed in foreign currency, which reduces the need for customers to perform exchange operations. In March 2009 there was only one bureau de change in operation, with profits of Qo.5 million (approximately US$61,000) a year.

34. Since 2002 41 remittance houses have been registered with the IVE, some of which are no longer in operation. According to the forms submitted to the IVE, in 2009 these businesses mobilized US$93.5 million in transactions of US$2,000 or above. It is not known how many remittance houses there are which have not complied with their obligation to register with the IVE, but it is estimated that the number must be far above the 41 registered, considering the high volume of remittances from workers abroad, estimated at US$2,200 million per year. It should be mentioned that 50% of these remittances are concentrated in one bank, Banrural. As mitigating element IVE has demanded in the Risk Management Guide that banks pay special attention in relation with operations which are executed with remittance companies.

35. The Guatemalan stock market does not carry out sophisticated operations, and its relative size is very small. There are 18 stock broking houses, all of which are supposed to be supervised by the IVE for AML/CFT compliance. The Stock Exchange, as a private enterprise, also exercise supervision over the rules of operation of this market. Four of the 18 brokers do not belong to any financial group and therefore are not under prudential supervision of the SIB, but this does not

exempt the from AML/CFT supervision by the IVE. The number of customers of each of these four independent entities is approximately 40.

36. The market is principally a fixed-income one (almost no shares are traded) in which public debt instruments issued by the central government and the Central Bank, predominate. Only 15 or 16 enterprises have issued bonds, the total value of which does not exceed $150,000. Daily transactions are performed mainly of the Primary Market and Repos and negotiates volume in 2008 was $USD22.589.000, which are transfers of titles between entities that are members of the same financial group, supervised by the SIB.

37. Other financial activities also subject to AML/CFT regulation and supervision, but not to prudential supervision by the SIB if they need a license to operate, are credit card issuing, leasing, factoring, and money transfer.
38. Coverage of AML/CFT regulations: As may be seen from the following table, all the financial activities described in the FATF methodology glossary, except for brokers and insurance agents, are regulated entities in Guatemala and are subject to regulation and supervision by the IVE of the Superintendency of Banks. The banking sector is very much larger than the others.

Financial activities according to FATF Glossary: size and AML/CFT regulation

Financial activity	Type of institution	Number	Assets USD	ALD/CFTRegulated	Licenses/Supervises
1. Deposit taking	1. Banks		25,066,095,727	Yes	SIB (IVE)
	2. Finance companies	14	730,154,113	Yes	SIB (IVE)
	3. Offshore	7	2,713,427,009	Yes	SIB (IVE)
	4. Cooperatives	256	791,836,619	Yes	SIB (IVE)
2. Loans 1/	1. Banks	19	16,806,047,084	Yes	SIB (IVE)
	2. Finance companies	14	730,154,113	Yes	SIB (IVE)
	3. Offshore	7	2,713,427,009	Yes	SIB (IVE)
	4. Pawnbrokers	1	2,710,665	Yes	SIB (IVE)
	5. Cooperatives	256	791,836,619	Yes	INCOOP/ IVE*
	6. Credit cards	9	530,170,129	Yes	SIB (IVE)
	7. Financing institutions	1	13,311,720	Yes	SIB (IVE)
3. Leasing 2/	1. Banks	3	6,506,159,298	Yes	SIB (IVE)
	2. Finance companies	3	104,039,937	Yes	SIB (IVE)
	3. Offshore	2	1,520,927,462	Yes	SIB (IVE)
	4.Leayesng	8	163,675,651	Yes	SIB (IVE)
4. Money or value transfer 3/	1. Banks	20	25,066,095,727	Yes	SIB (IVE)
	2. Offshore	7	2,713,427,009	Yes	SIB (IVE)
	3. Cooperatives	22	625,796,312	Yes	INCOOP/ IVE*
	4. Remittance houses *	12	130,612,031	Yes	SIB (IVE)
5. Issuance or management of payment (e.g. credit or debit cards, cheques, traveller's cheques, letters of credit and bank drafts, e-money)	1. Banks	20	25,066,095,727	Yes	SIB (IVE)
	2. Offshore	7	2,713,427,009	Yes	SIB (IVE)
	3Credit cards	9	530,170,129	Yes	SIB (IVE)
6. Financial guarantees	1. Banks	16	16,457,797,757	Yes	SIB (IVE)

and undertakings4/	2.Finance companies	10	650,455,156	Yes	SIB (IVE)
	3. Offshore	7	2,713,427,009	Yes	SIB (IVE)
	4.Bonding companies	11	73,138,562	Yes	SIB (IVE)
	5. Warehousing	1	1,226,123	Yes	SIB (IVE)
7.Negotiation of	1. Banks	20	25,066,095,727	Yes	SIB (IVE)
a) monetary instruments (cheques, promissory notes, cd, derivatives, others)5/	2.Finance companies	14	730,026,360	Yes	SIB (IVE)
	3. Offshore	7	2,713,427,009	Yes	SIB (IVE)
	4. Stockbrokers	9	10,279,400	Yes	SIB (IVE)
b) foreign currency 6/	1Banks	20	25,066,095,727	Yes	SIB (IVE)
	2. Finance companies	10	669,546,717	Yes	SIB (IVE)
	3. Offshore	2	489,409,064	Yes	SIB (IVE)
	4. Cooperatives	8	261,378,198	Yes	SIB (IVE)
c) Exchange rate instruments, interest rate instruments, and indices7/	1.Banks	13	12,882,716,370	Yes	SIB (IVE)
	2. Finance companies	5	95,579,236	Yes	SIB (IVE)
	3. Stockbrokers	2	7,741,952	Yes	SIB (IVE)
d) Transferrable securities	1. Stockbrokers	21	21,956,606	Yes	SIB (IVE)
e) Negotiation of products and futures8/	1. Banks	4	10,140,297,361	Yes	SIB (IVE)
	2. Stockbrokers	3	63,672,883	Yes	SIB (IVE)
8. Participation in issue of securities and provision of related services9/	1. Banks	12	19,036,573,293	Yes	SIB (IVE)
	2.Finance companies	11	682,996,412	Yes	SIB (IVE)
	3. Offshore	2	431,559,793	Yes	SIB (IVE)
	4. Warehousing	8	12,957,252	Yes	SIB (IVE)
	5Stockbrokers	10	13,900,920	Yes	SIB (IVE)
9. Individual and collective portfolio management 10/	1Banks	14	15,447,307,612	Yes	SIB (IVE)
	2Finance companies	10	558,855,652	Yes	SIB (IVE)
	3. Offshore	1	194,575,868	Yes	SIB (IVE)
	4Stockbrokers	5	10,454,380	Yes	SIB (IVE)
10.Custody and management of cash or securities on behalf of others 11/	1. Banks	17	24,839,322,746	Yes	SIB (IVE)
	2Stockbrokers	12	92,591,024	Yes	SIB (IVE)
11. Other forms of investment, administration or management of funds on behalf of others 12/	1. Banks	14	93,047,245,724	Yes	SIB (IVE)
	2. Stockbrokers	7	9,926,086	Yes	SIB (IVE)
12. Insurance	1. Insurance companies	17	444,921,153	Yes	SIB (IVE)
13. Money and currency exchange	2Bureaux de change	1	1,275,414	Yes	SIB (IVE)

1/Only 19 banks engage in lending to the public, except the Central Bank

2/ Only those entities which in practice undertake financial leasing are included.

3/ Only cooperatives providing this service are included

4, 6, 7, 8, 9, 10, 11, 12/ Only those entities which in practice provide this service are included.

5/ Only those stockbrokers which provide this service are included.

* INACOOP is the Instituto Nacional de Cooperativas (National Institute of Cooperatives)

* 92% of assets of remittance houses belong to 2 entities whose main activity is sale of household appliances and support to micro-enterprise.

Overview of Designated non-Financial Businesses and Professions

39. At the present time Article 18 of Act No. 58-2005 creates a special group of regulated persons covering a) Real estate promotion or dealing b) Motor vehicle dealing c) Dealing in jewelry and precious metals and stones d) Activities connected to trade in art and antiques e) Notaries, public accountants, auditors and accountants, and f) Any other activity which by its nature may be used for the financing of terrorism.

40. These activities, known as PORES (Spanish acronym for "Regulated Persons under special Regime) are not obligated entities in the AML prevention context, and are not required to implement the Know Your customer policy, PEP measures or record retention, as required by the FATF Recommendations.

41. Certain DNFBP activities are included in a special FT Prevention regime embodied in Article 18 of Act No. 58-2005, which requires minimum compliance with CFT requirements. This special regime is a partial contribution to AML prevention in the DNFBP sector.

42. At the present time amendments to Article 18 of Act 67-2001 are being considered for the purpose of including DNFBPs in the overall AML/CFT regime.

43. The following table summarizes available information on DNFBPs. It can be seen that all of them except lawyers and company service providers are wholly or partially ML/FT regulated.

DNFBPs **(as per FATF Glossary)**	**Information on this activity**	**Subject to AML/CFT (yes or no)**	**Licensing/ supervising authority**
Casinos	Casinos are illegal in Guatemala Lotteries, raffles and "similar" are regulated entities in Guatemala, licensed by the Ministerio de Gobernación	YES ,	SIB/IVE
Real estate agents	Registered with IVE, 322 with assets about US$ 96.2 million	YES, CFT only	SIB/IVE
Dealers of metals & stones	Registered with IVE, 76 with assets about US$ 8.0 million	YES, CFT only	SIB/IVE
Notaries	In Guatemala law graduates acquire the title of Attorney and Notary. There are about 13,000.	YES, CFT only	SIB/IVE
Lawyers	In Guatemala law graduates acquire the title of Attorney and Notary. There are about 13,000.	YES, CFT only	SIB/IVE
Independent legal professionals	N/A	N/A	N/A
Accountants	There are about10,000 of these professionals	YES, CFT only	SIB/IVE
Company service	N/A	N/A	N/A

providers			
Trust service providers	Only Banks and Finance Companies may provide these services. See table of financial institutions	YES,	SIB/IVE
Motor vehicle dealers	Registered with IVE, 96 with assets about US$ 185.9 million.	Yes, CFT only	Superintendency of Banks-IVE-
Art and antique dealers & related activities	Registered with IVE, 37 with assets about US$ 1.6 million	Yes, CFT only	SIB/IVE

Overview of commercial laws and mechanisms governing legal persons and arrangements

44. *Sociedades Anónimas*: The use of *sociedades anónimas* and bearer shares is widespread in the commercial legal culture of Guatemala. It is regulated by the Commercial Code, Act 270. However, the out-of-date character of the company's law, the slowness of the procedure for setting up companies, and the nature of the Guatemalan fiscal system (taxes) do not seem propitious to the kind of services offered by professional corporate service providers.

45. From official statistical data in the General Commercial Register of the Republic of Guatemala it was learned that over a period of about ten years (January 1999 - March 2009) 41,965 national commercial companies were registered, of which the greater proportion are believed to be *sociedades anónimas* (no precise information on this could be obtained. In the same period more than 28,156 shares were issued, most of which are assumed to be bearer shares.

46. In the opinion of the law enforcement and judicial authorities, the incidence of use of *sociedades anónimas* and bearer shares for AML/FT operations in Guatemala is negative.

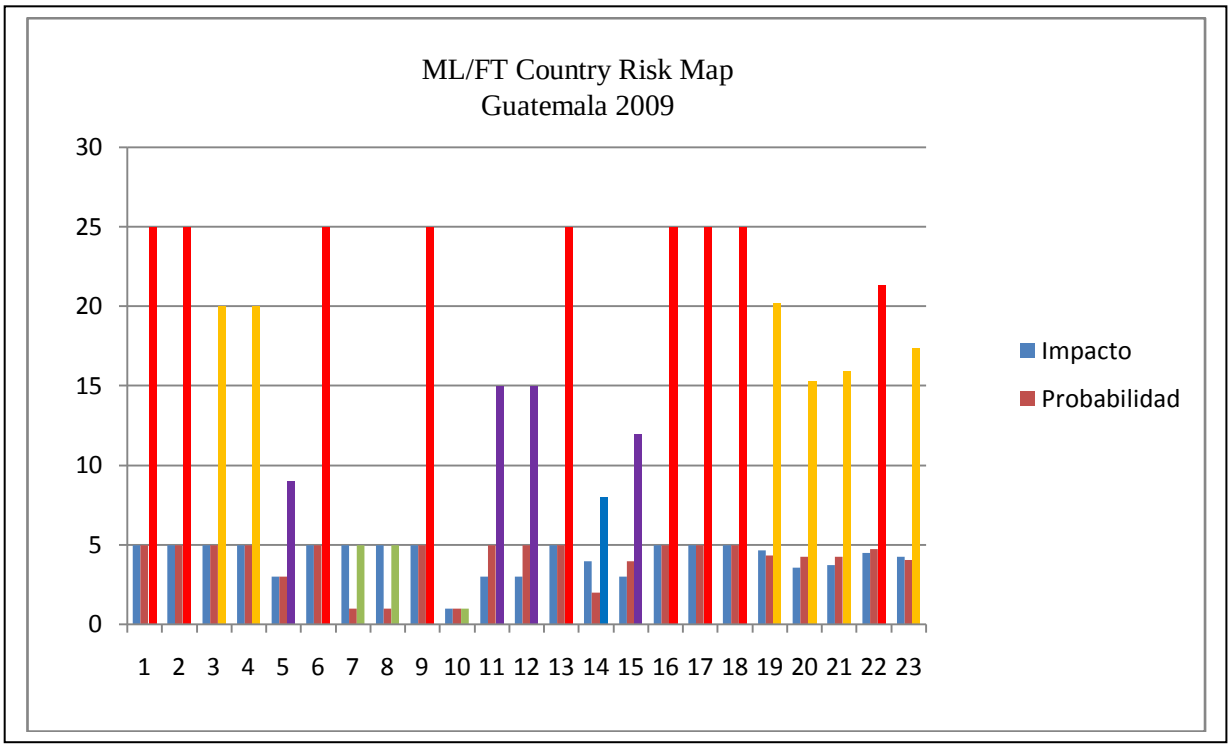
47. *Specific proposals are being formulated for:*
- *A mechanism to reduce the use of these legal instruments*
- *Developing a project for amending the Commercial code, Act No. 2-70, to abolish bearer shares*
- *A draft for amendment to the Commercial Code, prepared by the Superintendency of Banks and submitted to congress, which stipulates the mandatory establishment of a a Register of bearer in shares in sociedades anónimas and an amendment to Article 21 of the Anti-Money Laundering Act which would give regulated institutions the* power to demand that the customer supply the information contained in the said register.

Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT strategies and priorities

48. With a view to formulating successful anti-money laundering and anti-terrorist financing strategies, Guatemala has hired consultants whose central purpose was the formulation of an AML/CFT risk matrix or "map". This task was approached from the political, judicial, economic-financial point of view and, finally, in terms of the underlying criminal activity. The study focussed exclusively on elements in each of these specialized areas with a direct or indirect relationship to the crimes it was intended to prevent.

49. The basis of the study was the FATF *Guide to the Risk-Based Approach*, which identifies 4 areas for assessment and 14 specific risk factors.



No.	Area to be Considered	No.	Area to be Considered
1	Legal Environment	13	Informal and clandestine sectors of the economy
2	Criminal Activity and type of offences	14	Dimension of behaviour of financial services sector
3	Structure Financial, institutions and DNFPB businesses	15	Nature of cash operations payment systems
4	DNFP activities sector	16	Corruption
5	Economic structure of the country	17	Institutional weakness
6	Sector of the legal economy affected	18	Political party financing
7	Structure of financial institutions	19	Drug traffic
8	Agreements on governance	20	ILegal traffic
9	Scope and nature of. DNFPB	21	Robbery
10	Distribution of the Financial Sector	22	Organized crime
11	Type of products and services. Financial institutions	23	Overall average
12	Type of customers served		

50. On the basis of the above a road map was drawn up which, according to the authorities, was rigorously followed. It is important to note that the outcome of this effort, led by the SIB and with the support of the Vice President of the Republic, will depend on being able to create an interagency co-ordination structure, a formal mechanism to ensure maintenance of the impetus of the activities defined in this risk matrix for the various agencies of government. At the time of the visit all that existed a draft Executive Order for the purpose. Nor were adequate statistics being generated to enable goals to be set, follow- up to be done out and results to be measured

b. Institutional framework to combat money laundering and financing of terrorism

51. The role played by the various state entities involved in combating money laundering and terrorist financing is as follows:

- **Ministerio Público:** This is an agency created by the Constitution of Guatemala, at the service of the public administration and the courts, with independent powers, whose principal purpose is to oversee strict compliance with the law. The head of the Ministerio Público**:** is the Fiscal General, who is responsible for public criminal prosecutions. The *Auxiliares Fiscales (*Assistant Prosecutors) under his direction head criminal investigations, collect evidence and bring charges. The Ministerio Público is also the designated authority for mutual legal assistance with other countries**.**

- **Superintendency of Banks:** This is an organ of the Central Bank, organized in accordance with the law, eminently technical, which acts under the general direction of the Monetary Board and is responsible for inspection and supervision of the Bank of Guatemala, banks, finance companies, loan institutions, bonding companies, insurance companies, general deposit warehouses, bureaux de change, financial groups and entities controlling financial groups, and such other entities as other laws may require. The Superintendency of Banks has full powers to acquire rights and contract obligations, and is endowed with the functional independence necessary for the performance of its functions, and for ensuring that the persons subject to its supervision fulfil their legal obligations and abide by the legal provisions concerning liquidity and solvency.

- **Intendencia de Verificación Especial:** This is both the Financial Intelligence Unit of Guatemala and the agency responsible for enduring administrative compliance by regulated entities with AML/CFT rules .It is part of the Superintendency of Banks but it is the only Intendencia whose creation and functions are directly mandated by an Act of the Republic.

- **National Civil Police:** An armed professional body which, in the AML/CFT sphere, supports the criminal investigations directed by the Ministerio Público.

- **General Directorate of Civil Intelligence:** Its main functions are, inter alia, planning, obtaining and collecting information, processing it, organizing it and analyzing it, transforming it into intelligence; to obtain, evaluate, interpret and distribute intelligence to protect the political, economic, social, industrial, commercial, technological and strategic interests of the Republic of Guatemala from organized crime and common criminality, in the area of intelligence in its field of competence; to give advice to the Ministerio de Gobernación in the sphere of civil intelligence, for the taking of decisions or the formulation of policies and plans in support of the prevention, control and suppression organized crime and common criminality.

- **State Strategic Intelligence Secretariat:** Responsible for proposing to the President of the Republic the creation of strategies for eliminating any threat that might generate unease in Guatemala or its inhabitants, and for facilitating the preservation of good governance in the country. It is a civilian body, acting under the direct control of the President of the Republic as supreme representative of national unity.

- **Inspectorate General of Cooperatives:** Its role is, inter alia, to comply with and ensure compliance with the laws, regulations and provisions applicable to cooperative associations and other institutions subject to its control; regularly review the operations of cooperative associations, carry out inspections, surveys and other such verifications as may be necessary, at least yearly and without prior notice; make to the associations under its control whatever suggestions or recommendations it thinks fit; issue the necessary instructions to repair such deficiencies or irregularities as may be encountered; and adopt such measures as it may deem necessary to sanction and correct any infractions committed.

- **Bank of Guatemala**: the Bank of Guatemala is the Central Bank of the Republic. Its basic purpose is to contribute to the creation and maintenance of the conditions most favorable to the orderly development of the national economy, to which end it shall foster monetary, exchange and credit conditions conducive to stability in overall price levels. It has no AML/CFT regulatory or supervisory powers, but rather is itself considered a "regulated entity" obliged to operate AML/CFT controls.

- **Procuraduría General de la Nación:** Responsible for advising State agencies and institutions. The Procurador is the representative of the State and is the head of the Procuraduría. He has no direct role in AML/CFT matters.

- **Contraloría General de Cuentas: :** Responsible for external control of assets and liabilities, rights, income and expenditure and in general all aspects of the financial management of State agencies, autonomous and decentralized institutions, the municipalities and their enterprises, and other institutions comprising the non-financial public sector; of all persons, entities or institutions of any description which receive funds from the State or collect public money; of non-financial enterprises with State shareholding. It also exercises control over contractors for public works, and any national or foreign person entrusted by the State to receive, invest or manage public funds, as regards the management of the same. It is also charged with ensuring probity, transparency and honesty in public administration, as well as the soundness of public expenditure.

- **Ministry of external Relations:** A part of the executive responsible for the formulation of policies and application of the body of laws governing the relations of the State off Guatemala with other States and other legal persons or institutions under international law, for the diplomatic relations of the State,: for Guatemalan citizenship; the demarcation of the national territory; international treaties and conventions; and diplomatic and consular affairs. This Ministry is responsible for transmitting to the IVE communications concerning UN Security Council Resolutions.

- **Ministerio de Gobernación:** Part of the Executive, its responsibility is to formulate policies, comply and ensure compliance with the laws for maintenance of peace and public order. It is responsible for security of persons and their property, for protecting their rights, the enforcement of judicial orders and decisions, immigration and, and for legalizing the appointment of Ministers of State, including that of its own Minister.

- **Superintendency of Internal Revenue:** Its functions are, inter alia: a) to administer the tax system, enforce the tax laws, collection and enforcement of all domestic taxation and all taxes on foreign trade accruing to the State, except for those which by law are collected and managed by the municipalities. B) Administer the customs system of the Republic in accordance with the law and the international treaties and conventions ratifies by Guatemala, and exercise para-fiscal and non-customs control related to the customs regime; c) Establish mechanisms for verification of prices, origin of goods and tariff denominations, to prevent over- or under-invoicing and apply correct and appropriate duties; d) organize and administer the system of demand, collection, enforcement and supervision of taxes within its mandate; e) keep and monitor records; promote and implement administrative, and promote judicial, actions that may be necessary to collect from taxpayers the money due from them, the interest on it and, when necessary, the corresponding charges and fines.

- **Legislative Branch:** the Legislative Power resides in the Congress of the Republic, composed of deputies elected by direct secret universal suffrage, in a system of electoral districts and national list, for a four-year term, and re-electable.

- **Judicial Branch:** this body exercises the judicial power of the State, exclusively through the Supreme Court of Justice and other tribunals established by law, and in these tribunals resides the power to judge and promote enforcement of judgment

c. Risk based approach

52. **Legal:** Guatemalan laws and regulations do not provide for gradation of controls on the basis of ML/FT risk. In this regard, it was learned that the existing provisions do not enable certain requirements to be bypassed for low risk cases and, for example, the same requirements and forms are used for opening an account for an individual customer as for a payroll account.

53. Despite this, Guatemala has made progress in terms of its risk-based approach with the issue in April 2009 (two months before the visit) of the ML/FT Risk Management Guidelines, which contains useful directions to the institutions for identifying and managing risk, and emphasizes that the greater the risk the greater the controls that should be applied.

54. **Regarding the identification of country risk:** the two types of customers that the majority of banks have identified as high risk are money changers and public officials, particularly those at the municipal level who control funds for infrastructure works contracts. For detection of proceeds of organized crime, such as drug trafficking and extortion**,** no high risk customer profile has yet been developed owing to the frequent use of fronts in many and varied commercial activities.

55. Guatemala has carried out an interesting exercise for assessing its different areas of attention, vulnerabilities, threats, strengths and specific opportunities for improvement. In a matrix or table such as the following the authorities summarised the main risks, actions for reducing them and the state of progress as seen by the authorities themselves. This is an example of the information contained in the abovementioned matrix.

Follow Up to Actions to Reduce ML/FT Risk

Area to be Evaluated	Risk Factors to be Considered	Risk Reducing Controls so far implemented	Effect of Risk Factor	Special Vulnerabilities	Additional Country Risk Reduction Actions
Political Environment	Corruption as a precursor phenomenon of ML and FT	Mechanism for monitoring PEPs, System for Monitoring and Reporting of acts of corruption, participation of Civil Society, Freedom of Information Act	Illicit enrichment of public servants and State authorities		There is a Bill before Congress on Illicit Enrichment, and this is being promoted by various agencies

d. Progress achieved since the last mutual evaluation

56. This is the first evaluation of Guatemala using the new FATF methodology approved in 2004. The previous evaluation took place from 19-22 October 2004, as part of the second round of CFATF evaluations. The previous evaluation visit was only three days, in view of the fact that the FATF had recently reviewed the situation in Guatemala, as a result of which it was removed, in June 2004, from the list of Non-Cooperative Countries and Territories, in which it had been included in June 2001.

57. The previous report is not easy to compare with the present one because of the great difference in evaluation criteria between the two, as well as the emphasis given by the new methodology to effective practical application of the FATF standards. Nevertheless, it is possible to summarize as follows the progress shown by Guatemala regarding the main deficiencies and/or recommendations identified in the previous report.

Previous report	**Present situation**
Terrorist financing was not criminalized	Overcome
There were no CDD rules and special controls regarding wire transfers	Overcome
There was no legislation on suspicious transaction reporting for FT	Overcome
Increase proportion of cases sent to Ministerio Público compared to number of STRs received (only 6% of total)	Overcome
Improve feedback to regulated institutions	Partly overcome: important improvements in assessment of quality of STRs, but only recently was a team set up in the IVE to study typologies and strategic analysis .
Incorporation of special investigative techniques in legal framework.	Overcome, but so far only sparsely applied
Improve resources (human, technical, financial) of Police to permit them to act effectively against ML and FT.	Pending The Police still do not play the role they should in the AML/CFT system.
Attention to vulnerability represented by remittance houses, because of their high volume and the large number of informal businesses.	Partly overcome. Activity subject to registration, and significant shift of remittance services to banks.
Vulnerability due to high number of companies with bearer shares	Pending
Increase resources of IVE, particularly with regard to information requests from the Ministerio Público	Overcome

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

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

Description and Analysis

Recommendation 1.

Legal and Institutional Framework

58. (C.1.1) Money Laundering is criminalized and sanctioned in Guatemala on the basis of international standards set out in Article 3 a, b and c of the Vienna Convention and Article 6.1 of the Palermo Convention. The offence appears as such in Article 2 of the "Law against Laundering of Money and other Assets", Act No.67-2001 (hereinafter "AML Act") which stipulates:

"Anyone who, alone or through an intermediary shall be guilty the offence of laundering of money or other assets":

a) Invests, converts, transfers or undertakes any financial transaction with property or money, knowing or being required by virtue of his office, employment or profession to know, that they are the proceeds of the commission of an offence;

b) Acquires, possesses, manages, holds or makes use of property or money knowing or being required by virtue of his office, employment or profession to know, that they are the proceeds of the commission of an offence;

c) Conceals or hinders the determination of the true nature, origin, location, destination, movement or ownership of goods or property or money or titles to such property or money, knowing or being required by virtue of his office, employment or profession to know, that they are the proceeds of the commission of an offence.

59. Guatemala has prosecutors specializing in money laundering and other competent prosecutorial agencies to handle this offence, such as the corruption, drug trafficking and Crimes Against Bank. It was learned that the Ministerio Público has a higher level of specialization than the judiciary in tackling money laundering or interpreting the laws related to it and is able to interpret and apply this law adequately. In addition, as regards the judiciary, there are no specialized courts, and all judges at the national level have jurisdiction over these offences, and for this purpose may exercise their independent judgment as regards interpretation and enforcement of the law. The judiciary initially provided statistics showing that from 2005 up to May 2009 a total of 19 verdicts for money laundering had been handed down, 16 being convictions and 3 acquittals**.**

60. In Guatemala, in the context of an agreement between the United Nations and the government of Guatemala, there is a legally mandated International Commission against Impunity, known as the CICIG, responsible for assisting the Ministerio Público in high impact cases which are thought to be connected to illegal bodies and clandestine security apparatuses. It may also assist the Ministerio Público in the investigation of illicit security activities in which the impartiality of the competent Guatemalan authorities may have been compromised. Within its mandate, the CICIG has the power to investigate money laundering cases which would contribute to the prosecution of PEPs for this offence, in addition to reducing the length of trials and producing more guilty verdicts than is usually the case in Guatemala. In fact one of the difficulties facing the judicial system in Guatemala, for reasons which will be explained in detail in this report, is its limited capacity to take action against public officials involved in ML generated by corruption, although this is a situation which is appears relatively frequently in the STRs submitted by the financial institutions.

Concept of Ownership, Independence of the offence and Self Laundering

61. (C.1.2) The offence of money laundering in Guatemala embraces all kinds of property directly or indirectly proceeding from the proceeds of the offence regardless of their value. Article 2a of the AML Act indicates that the offence of laundering of money and other assets is committed by anyone who alone or through an intermediary "*invests, converts, transfers or carries out any financial transaction <u>with property or money</u>…..[which] <u>are the proceeds of the commission of an offence</u>*". It is important to mention that the regulations for the CFT Act, Act No.86-2006 of 2nd March 2006, extends the definition and scope of the concept of "property", defined in its Article 2 as "*property of any type, tangible or intangible, moveable or immoveable, regardless of how it may have been obtained, and legal documents or instruments, of whatever form, including electronic or digital form, which attest its ownership or other rights over such property*". In

addition the concept of property, as in the majority of Continental Law (civil law) countries, is sufficiently broad to embrace all types of "property" required by the FATF. In fact, the Civil Code defines property as follows: property are the things that can be subject to appropriation, and they can be classified as movables or immovables.

62. As a result, there are no legal limits to access to any type of property. It should be pointed out that according to figures supplied by the judiciary, from 2005 to 2008 there was a steep increase in the confiscation of cash.

63. (C. 1.2.1 and 1.6) A conviction for ML does not require the conviction of any person for the predicate offence, since it is sufficient to demonstrate that the property that is the subject of the prosecution "*are the proceeds of the commission of **an offence**"* (Article 2 AML Act). To prove the occurrence of any offence circumstantial evidence (prueba indiciaria) is admissible, as long as money laundering is independent of any predicate offence. Article 2 of the Anti Money Laundering Act, Act 67-2001 of 11th December 2001, includes the possibility of an offence of money laundering being extended not only to persons who commit the offence of money laundering but also persons who commit both offences, money laundering and the predicate offence, while maintaining at all times the independence of both offences.

64. There is a particular case that should be emphasized in which the courts have already handed down a definitive and final conviction for ML. In this case it was not possible to show the link with a previous offence but a verdict of guilty of money laundering was handed down and the money was confiscated, without any previous conviction for the predicate offence being necessary. Under Article 2 of the AML Act the offence covers not only persons who have committed money laundering but also those who have committed both offences, money laundering and the predicate offence.

65. It was learned that in the judicial system, unlike the Ministerio Público, there are no special ML/FT courts, but all judges at the national level have the power to hear these cases and for this purpose have independence of judgment regarding the interpretation and application of the law. The judiciary supplied figures to show that between 2005 and May 2009 a total of 19 verdicts in money laundering cases were handed down, 16 being convictions and 3 acquittals. It is appreciated that although the extent of the offence is sufficiently wide and that the courts have acknowledged as admissible the evidence presented by the Ministerio Público, all the verdicts have been handed down in cases with similar characteristics ("mules" transporting cash).

66. The evaluation mission learned that there is no good interaction between the Ministerio Público and the police authorities, since the latter are not trained to assist the prosecutors in investigations into ML and related offences. In the light of this shortcoming, the Ministerio Público benefits from the assistance of the Criminal Investigation Department (DICRI), which is part of the structure of the Ministerio Público and which is mainly staffed by university students who are also not adequately equipped or trained at the technical level.

Predicate/Prior Offences

67. (C. 1.3 and 1.4) In Guatemala Article 1 of the AML Act provides for the possibility that money laundering may arise out of any offence, and therefore a list of predicate offences is not needed. The prior offences described in the table of categories of the FATF contained in the Criminal Code, as well as special laws such as the Law against Organized Crime (Act 21-2006), the Migration Act (Act 95-98), the Law against Sexual Violence, Exploitation and Trade in Persons (Act 9-2009), the Anti Narcotics Act (Act 48-92), the Law on Arms and Ammunition (Act 15-2009), the Law against Fraud and Contraband (Act 58-90) and the Forestry Act (Act 101-96).

FATF – Categories of Predicate Offences	**GUATEMALA:**
Participation in an organized criminal	Law against Organized Crime(Art. 3 & 4) and Article

group and extortion	261 of the Criminal Code
Terrorism, including the financing of terrorism	Article 391 of the Criminal Code
Traffic in human beings and traffic in migrants	Article 202 (3 & 4) of the Criminal code
Sexual exploitation, including the sexual exploitation of minors	Articles 188 and 199 of the Criminal Code
Illicit Traffic in narcotics and psychotropic substances	Article 307 et of the Criminal Code
Illicit traffic in arms	Article 404 of the Criminal Code
Illicit traffic in stolen goods and other types of goods	
Bribery and corruption	Articles 439 to 444 of the Criminal Code
Fraud	Articles 263 of the Criminal Code
Counterfeiting of money	Article 313 of the Criminal Code
Counterfeiting and piracy of products	Article 299 of the Criminal Code
Environmental offences	Article 343 of the Criminal Code
Homicide, grievous bodily harm	Article 123 of the Criminal Code Article 144 of the Criminal Code
Kidnapping, illegal detention and hostage taking	Article 201 of the Criminal Code
Robbery or theft	Article 251 of the Criminal Code
Smuggling	
Extortion	Article 261 of the Criminal Code
Counterfeiting	Title VIII of the Criminal Code – Offences against Public Trust and the National Patrimony
Piracy	Article 299 of the Criminal Code
Insider Trading, Market Manipulation	Arts. 274 A B C D E & F, 275, and 369 no.3 of the Criminal Code

68. One great advantage of the criminal law for the prosecution of cases for money laundering is that this conduct is not limited to a list of predicate offences but may originate from the commission of any offence appearing in the criminal legislation. Guatemala has four specialized Fiscalías for money laundering and others competent to take cognizance of this offence, such as the Fiscalias for Corruption, Drug Trafficking and Banking. It was determined that the Ministerio Público has an adequate level of specialization in the use of the money laundering legislation and is able to interpret and enforce this legislation in an adequate manner.

69. (C.1.5) Predicate offences for ML include activities that have taken place in another country, under Article 5 of the Criminal Code. In accordance with this Article, the Criminal Code may also be applied in cases of offences committed by Guatemalans abroad, such as "an offence that, by treaty or convention, must be sanctioned in Guatemala, although it was not committed on Guatemalan territory".

70. The Anti Money Laundering Fiscalia has in the past prosecuted and is at present prosecuting cases of foreigners arrested for the cross-border transport of cash, in which there is evidence that the predicate offences may have been committed in other countries. The Guatemalan courts have convicted foreigners for ML in the circumstances described.

71. Article 63 of the Anti Narcotics Act, Act 48-92, as well as Article 3 of the Anti Money Laundering Act, provide for extradition both active and passive of persons who may have committed these offences and describes procedures for mutual legal assistance.

Co-participation and "accessory" forms of the offence

72. (C.1.7) There are ancillary offences for the crime of money laundering in Guatemalan law, including incitement, instigation and attempt, which are embodied in Article 6 of the AML Act. *"Anyone found guilty of participation in incitement or conspiracy to commit the offence of laundering of money or other assets, as well as any attempt at such commission, shall be liable to the same term of imprisonment indicated in Article 4 for the completed crime, reduced by one-third, and all other accessory penalties."* Article 14 of the Guatemalan Criminal Code penalizes the attempt at the crime when *"….for the purpose of committing an offence, its commission is initiated by external and suitable acts but is not completed for reasons independent of the will of the agent".* Article 17 of the Criminal Code stipulates that conspiracy occurs when *"….two or more persons combine to commit an offence and decide to carry it out"*, and incitement when "*….anyone who has decided to commit an offence, invites other person or persons to carry it out"*. Regarding the ancillary offence of instigation, Article 27.1 of the Criminal Code stipulates *"….anyone who urges or encourages another in his decision to commit an offence"*.

73. Likewise, the first chapter of the Guatemalan Criminal Code embodies the different forms of authorship and criminal participation, specifically in Articles 36 and 37, which set out in detail the types of assistance, help and facilitation for the commission of the offence. Article 2c of AML Act embodies the modality of Concealment as governing factor in the basic crime of ML, imposing a penalty of six to twenty years' incommutable imprisonment, as well as accessory penalties.

74. The AML Act, Article 6 of which imposes a sentence of six to twenty years' incommutable imprisonment for money laundering, in addition to a fine equal to the value of the property concerned, lays down a similar penalty of imprisonment in its Article 4, for those responsible for participation in or incitement or conspiracy to commit ML.

Recommendation 2

Mental element of the offence

75. (C2.1.) Article 2 of the AML Act stipulates that anyone who with knowledge, either in person or through an intermediary, carries out any of the governing factors described there, shall be guilty of this offence.

76. The intentional element, or willfulness, is directly inferable from the law on the basis of factual or objective circumstances, as may be appreciated from the wording of Article 2 of the AML Act, which, as a conditioning factor inserted in the description of the offence, requires that the acts performed, apart from falling under the governing principles of ML, must be performed or committed "*knowingly"*, that is to say with full knowledge that they involve the activity of money laundering. In addition to this conditioning factor of manifest intentionality, the three sub-headings, (a, b and c), of the law in question include the possibility of penalizing such person "*….as by virtue of his office, employment or profession is required to know that they are the proceeds of the commission of an offence"*.

77. In addition, Article 186 of the Guatemalan Code of Criminal Procedure confers on the judge the freedom to assess evidence according to "sound judgment" and evaluate the knowledge, intention or purpose of the author through evidence, according to the objective circumstances of the case.

"Article 186 (Assessment)*…. Evidence so incorporated shall be assessed in conformity with the system of sound and reasoned judgment, and may not be subject to other legal limitations than those expressly indicated in this Code"*

78. From the verdicts of the courts it was observed that the understanding, interpretation, scope and application of the intentional element inserted in the law is adequate and has led to good results in terms of convictions for ML. The wording of the law empowers the judge to apply it in its full scope and infer the element of intentionality from objective circumstances of the situation.

Liability of Legal Persons

79. (C.2.3 and c.2.4) Criminal liability for ML is imputable to legal persons in Guatemala without prejudice to the criminal liability of their officials, but so far this has not been applied in practice. Article 5 of the AML Act stipulates that "*Those legal persons, regardless of the criminal liability of their owners, directors, managers, administrators, officials, employees or legal representatives may be guilty of the offences mentioned in this Act when the acts concerned were carried out by their regular organs, provided that they took place within the normal or apparent scope and purpose of their business".* The penalty provided may be a fine of US$10,000 up to US$625,000 or the equivalent in national currency, depending on the gravity and the circumstances of the offence, and in the case of repeat offences the definitive revocation of the legal personality.

80. Likewise Article 5 also permits legal persons to be penalised by confiscation, loss or destruction of objects that are the proceeds of the commission of the crime or instruments used for its commission, payment of costs and legal expenses, and the publication of the verdict in two newspapers of broad national circulation.

81. 37. Article 33(g) of the AML Act stipulates that one of the functions of the Intendencia de Verificación Especial (IVE), is to impose on regulated persons the administrative fines in money which relate to omissions in compliance with the duties imposed by the law. For this purpose, in *Executive order* No. 43-2002 of the Superintendent of Banks, published in the Official Gazette of 18th July 2002, a scale for the Regime of Sanctions was established, which sets the amount of the fine to be imposed in each case, and this is embodied in objective guidelines for the purpose. Nevertheless, in this *Executive order* the maximum possible fine is limited to $25,000, which significantly reduces its dissuasive effect (see analysis of Recommendation 17 in Section 3.10 of this report).

82. 40. (C2.4) Legal liability of legal persons for ML does not limit the possibility of parallel prosecutions of the same legal person in the criminal, civil or administrative spheres. In proof of this it was noted that Article 5 of the AML Act itself, after describing the criminal penalty applicable to legal persons, stipulates that in cases of legal persons subject to regulation and inspection of the Superintendency of Banks, "*the judge shall notify the abovementioned supervisory body of the respective conviction, so that it may proceed to apply the measures contained in the relevant laws"*. The logical interpretation of this is that the sanctions imposed by the Superintendency would be of an administrative character and would be applied in addition to the criminal penalty previously imposed by the court. For example the court may penalize a bank with a fine of up to $625,000 for being guilty of the offence of ML, and independently of this the Superintendency would be able to apply Article 31 of the AML Act which provides for fines of up to $50,000 if there is proof of non-compliance with AML controls set out in the said Act.

Effectiveness, Proportionality and Dissuasive Force of the penalties

83. (C.2.5) As described in Articles 4 and 5 of the AML Act, the penalty for natural persons is incommutable imprisonment of six to twenty years, in addition to imposition of a fine equal to the value of the property, instruments or proceeds of the offence. °The Act also provides for the confiscation, loss or destruction of objects that are the proceeds of the commission of the crime or of the instruments used for it. The guilty persons are also sentenced to pay the costs and expenses of the trial in addition to the verdict being published in at least two media. If the author of the crime is a foreigner, in addition to the penalty he shall be deported from Guatemalan territory once the sentence has been served.

84. Guatemalan legislation, in Article 6 of the AML Act, embraces the degrees of participation in incitement, and conspiracy, as well as the modality of attempted money laundering, applying to these acts a penalty equal to that imposed upon the guilty persons (Article 4) but reduced by one-third, without prejudice to the possibility of the imposition on these uncompleted attempts at commission of the crime of the other ancillary penalties contemplated in the law.

85. Article 7 of the AML Act increases the penalty by one-third when the crime is committed by public officials in the course of their duties in addition to the accessory penalty of special disbarment from the exercise of his function or public employment for twice the length of time of the term of imprisonment.

86. With regard to legal persons, Article 5 of the Act provides independently for fines for legal persons, regardless of the possible criminal conviction of natural persons, imposing upon them a fine of $10,000 to $625,000, depending on the gravity and circumstances of the offence. For reoffending the law stipulates the permanent revocation of judicial personality. Likewise, the legal person found guilty of ML is liable to the penalty of confiscation, loss or destruction of the proceeds of the crime or the instruments used in its commission, as well as payment of the costs and expenses of the trial and the publication of the verdict in the media. ML legislation in Guatemala dates from 2001, and up to the present time no legal person has been convicted of ML, despite its inclusion in the legislation.

87. On comparing the abovementioned penalties with those applicable to other serious offences in Guatemalan law, it may be concluded that there is proportionality among the penalties set out by the Criminal Code for money laundering and those imposed by the same Code for other serious offences.

Statistics – efficiency in sentencing (R.32)

88. In practice the offence has been adequately prosecuted, as may be seen at the level of the courts, in which up to the present time a total of 16 convictions in 19 money laundering cases has been obtained, and these seem to indicate that there are no legal lacunae or resistance on the part of the judges to punish the commission of ML without the existence of previous conviction for a prior offence, at least when the case comes to court. Nevertheless, opinions expressed during the interviews indicate that the lack of specialized ML/FT training for judges, as well as in everything concerning financial crimes, results in some judges (especially the jueces de garantía) being reluctant to order provisional measures when there is no clear evidence of a prior offence. As a result, the Ministerio Público might also refrain from requesting such measures during the investigative stage, which seems to be reflected in the fact that no seizure has ever been requested in complex money laundering cases.

89. In addition, all judges have the power to take cognizance of ML cases in Guatemala, in addition to a wide range of offences, which, according to some operators in the field of justice, has led to a heterogeneous or diverse interpretation of the scope of ML legislation in academic discussions. Up to this time the problems of interpretation have not had any impact on the verdicts produced, but the risk exists and should be dealt with by means of specialized training for judges.

90. The total number of verdicts in ML cases seems low related to the high incidence of crime in this country. From 2005 to May 2009 a total of 19 verdicts for money laundering have been handed down, 16 of them convictions and 3 acquittals. The large majority of the verdicts are convictions and mostly relate to cases of "mules" transporting cash illegally. In very few cases have severe sentences been imposed as a result of complex cases of ML through the financial system.

91. According to statistics provided by the country after the on site visit, with respect to convictions for crimes of ML and other assets the yearly figures correspond to: in 2005, one conviction, in

2006, 5 convictions; in 2007, 7 convictions, in 2008, 7 convictions, and in 2009, 11 convictions. All these for a total of 31 convictions for ML.

92. While this statistical information reveals a progressive increase in convictions for ML, this figure is still considered as low relative to the high levels of crime and insecurity existing in the country.

93. There are few verdicts in high impact and sensitive cases. Outstanding among these is the conviction of a former Superintendent of Inland Revenue, in a case based on a denuncia from the IVE. This denuncia sprang from the analysis of complex operations with public funds received by the senior government official and his family, investments in fixed-term deposits and mortgage bonds in the name of his son, a business owned by the official, his brother and his sister-in-law. This verdict, the country informed the evaluation team, had a powerful impact not only because of the complexity of the case but also for the following reasons:

a) It was one of the first cases to demonstrate the link between ML and corruption;
b) The large amounts of money and assets laundered;
c) Embezzlement from the treasury;
d) One of the perpetrators was a senior public official, in charge of, and the legal representative of, the tax administration of the country (Superintendent of Inland Revenue):
e) Implication of several individual persons, family members and businesses.

94. The official was sentenced, for money laundering and other crimes, to seventeen years and four months' imprisonment, a fine of Q 280,000 (about US$34,000, $31,000 of which was seized from bank accounts), publication of the verdict in media of wide circulation, and payment of costs and trial expenses. One of his sons was sentenced to 13 years in prison for ML and fined Q24,158,725 (about 3 million dollars).

95. Despite the importance of the above-mentioned case, the number of these convictions is so low and their relevance is so slender that they diminish the dissuasive character of the penalties required by FATF Recommendation 2 and the effectiveness of the criminalization itself. If the probability of being convicted of ML is tiny, then the existence on the books of this crime does not have all corresponding force, regardless of the number of years of imprisonment which it supposedly imposes. The cause of this problem does not seem to lie in inherent defects in the substance of the criminal law or its procedure, because there are none.

96. In the opinion of the team, one of the main causes for the slight real effectiveness in terms of convictions and confiscations lies in institutional weakness and the shortage of technical and human resources among the authorities competent to investigate and try the offences, particularly within the police force. Nor at the present time is there adequate interaction among the security agencies, the Ministerio Público and the Financial Intelligence Unit (IVE), which probably contributes to the fact that the trials and convictions are cases of little impact. An interagency commission should be planned to include in addition the judicial body, for the purpose of minimising this systemic disjunction in the overall approach to the subject.

97. Within the Ministerio Público there is a specialized Financial Analysis Unit which has a very limited but well-trained staff of technicians for analysis of ML cases and other financial crimes and providing support to the prosecutors. Nevertheless, the lack of communication and coordination between this unit of the Ministerio Público and the Guatemalan FIU (IVE) seems to be a cause of duplication of effort.

Recommendations and Comments

98. Strengthen the capability of the police to provide more efficient support to the Ministerio Público in investigations. Consider the creation of a specialized police investigation unit.

99. Consideration shall also be given to increasing the number of specialized Fiscalías (at present 4) which deal with ML cases, in order to streamline the investigations and prosecutions.

100. Provide the judges with programmes of updating on the criminal laws against ML, to avoid incorrect interpretations of its scope, and to train them to handle more complex ML cases than those consisting of cash smuggling. The possibility should be studied of creating specialized courts to hear ML or financial offences.

101. The Governative Agreement of the project which creates a an interagency commission including the security agencies, the Ministerio Público and the IVE, as well as the judiciary, for the purpose of minimizing the systemic disjunction in the holistic tackling of the ML phenomenon must be approved.

102. Attempt to put into operation a link at the technical level between the IVE analysts and those of the Specialized Financial Analysis Unit of the Ministerio Público, to improve and adequately distribute the results of analysis and thus save time and optimize the quality of the reports.

Compliance with Recommendations 1 and 2

	Rating	Summary of Factors underlying the Rating
R.1	**LC**	Effectiveness: low number of convictions for ML in relation with high index of criminal offenses in the country
R.2	**LC**	No legal person has been convicted of ML, although the necessary legislation has existed since 2001 The number of convictions with severe penalties and investigations of complex ML through the financial system (like the existing case in relation to corruption) are still few. The majority of convictions are for illegal transportation of cash ("mules"). This reduces the dissuasive effect of the offense.

Criminalization of Terrorist Financing (SR.II)

Description and Analysis

103. C.II.1) Financing of Terrorism is criminalized and penalized in Guatemala on the basis of international standards laid down in Article 2 (1, 2, 3,4 and 5) of the International Convention for the Repression of the Financing of Terrorism.

104. The abovementioned law and the acts described in Sections 1-5 are recognized in the Act to prevent and repress the financing of terrorism, Act No.58-2005, the regulations of which are contained in Executive order Gubernativo No.86-2006 of the President of the Republic (FT Act) which stipulates:

Article 4 CFT Act: "Anyone who by any method, directly or indirectly, alone or through an intermediary, deliberately offers, provides, collects, transfers, surrenders, acquires, possesses, manages, negotiates or administers money or any other type of property, with the intention that they be used or in the knowledge that they will be used, fully or in part, for terrorism shall be guilty of the crime of financing of terrorism.
Furthermore, anyone who performs any of the acts defined as financing of terrorism in any of the international conventions approved and ratified by Guatemala shall be guilty of this offence.
A person convicted of this offence shall be sentenced to incommutable terms of imprisonment from six to twenty five years, in addition to a fine of ten thousand dollars

(US$10,000) to six hundred and twenty five thousand dollars (US$625,000) or the equivalent in national currency.
In order for the offence of financing of terrorism to be considered to have been committed, it shall not be necessary for acts of terrorism to have taken place, only that the intention to commit such acts is manifested by external material evidence. Nor shall it be necessary for any investigation or criminal proceeding to have been initiated or for any conviction to have been handed down".

105. The Article 4 quoted above enables the act of financing the commission of an act of terrorism to be punished but it does not provide anything with respect to the act of financing a terrorist organization or an individual terrorist. In order to punish it according to the authorities it is necessary to resort to the argument that these forms of conduct are foreseen in the Convention Against Financing of Terrorism which has already been ratified by Guatemala, and that Article 5 of the Criminal Code permits the enforcement of Guatemalan criminal law for any crime "*which by treaty or convention must be sanctioned in Guatemala, even though it may not have been committed on the territory of Guatemala"*. The evaluating team accepted this interpretation as possible but facing a lack of judicial decisions that form it and following the position assumed by CFATF facing an identical fact in the mutual evaluation to Nicaragua it considered essential to make explicit reference in the law to the financing of individual terrorist, individuals and organizations.

106. (C.II.2) In Guatemala all crimes are predicate crimes for ML, as can be seen in the wording of Article 1 of the AML Act, which provides for the possibility of money laundering following the commission of any offence, including the offence of FT, which is criminalized in Article 4 of the FT Act.

107. (C.II.3) In Guatemala the offence of FT does not require the person carrying out the FT to be situated in the country itself or another country different from that where the terrorists or terrorist organization are located or where the terrorist act is planned or takes place. The application of the law against FT in Guatemala requires no more than the existence of the governing factors required in the law ("*deliberately provide, collect, transfer, surrender, acquire, possess, administer, negotiate or manage money or any other type of property….."*) with the intention to and in the knowledge that they will be used or may be used totally or partially for terrorism, regardless of the location of the act or the physical location of the terrorists or the organization.

108. It should be mentioned that the offence of terrorism includes not only acts committed against the State of Guatemala but also against other States.

Article 391, Criminal Code. *"**Terrorism**. Anyone who for the purpose of disturbing the constitutional order, public order in this State or coercing a legal person under national l or international law, performs an act of violence, makes any attempt against human life or integrity, property or infrastructure, or for the same purpose performs acts tending to provoke……"*

109. (C.II.4) The intentional element or malice aforethought is inferred directly in the legislation, from objective circumstances, as can been seen in the text of Article 4 of the FT Law, which, as a conditioning factor inserted in the legislation, requires the conduct in question, to specifically constitute the governing factors of the offence, to be carried out "*deliberately*" and "*with the intention*" that the money or other type of goods shall be used

or "*in the knowledge that*" they will be used…..; that is to say in the presence of full knowledge and malicious intent.

110. *Criminal liability for FT is extended, in addition to natural persons, to legal persons, as established in Article 7 of the FT Act, and this is punished with a fine equivalent to the total of the property or money involved in the offence, and in the case of reoffending, permanent revocation of the juridical personality. The legal person shall also be penalized with confiscation, loss or destruction of the proceeds of the commission of the offence or the instruments used for its commission, as well as to the payment of costs and legal expenses. In the case of legal persons subject to the supervision and inspection of the Superintendency of Banks, the judge shall notify the said supervisory organ of the conviction, in order that it may proceed to apply the measures contained in the relevant legislation. With regard to administrative penalties, Article 31 of the LCLDOA imposes fines on regulated persons for non-performance of the duties imposed* by the law, and which range from US$10,000 to US$50,000.

111. In Guatemala both natural and legal persons are subject to criminal, civil and administrative penalties for FT as described in Articles 4 and 7 of the FT Act. This Act imposes on individual persons a sentence of six to twenty five years' incommutable imprisonment, as well as a fine from US$10,000 to US$625,000 or the equivalent in local currency.

112. With regard to legal persons, Article 7 of the FT Act includes an independent possibility to sanction legal persons regardless of the possibility of criminal responsibility of natural persons.

Recommendations and Comments

113. Incorporate expressly in the Criminal Code the act of financing a terrorist organization or an individual terrorist in order for the punishment for this conduct not to depend on an ample interpretation of article 5.

114. It is recommended that the investigative structures and techniques both of the Ministerio Público and the security agencies be strengthened and modernized, as well as the interaction between these bodies, in order to launch and develop effective investigations into complex crimes such as the financing of terrorism.

115. The use of modern methods of investigation, consisting of undercover operations, controlled delivery, wiretapping and tapping of other communication means, included in the law against organized crime should be implemented for the purpose of detecting and investigating cases of complex offences, among them FT in Guatemala. These modern investigative techniques are embodied in and given legal force in Title III of Act 21 of 2006.

Compliance with Special Recommendation II

	Rating	Summary of the factors underlying the Rating
SR.II	**LC**	Although serious studies accomplished by authorities indicate that FT risk has been pretty low in the past absence of cases and investigations prevents total certainty about effective implementation of this recommendation. The incapacity of the judicial system to prosecute and investigate complex

		offences which make use of the financial system casts doubt on the possibility of imposing penalties of FT Financing of terrorist individuals or organizations not mentioned in the Criminal Code and to punish it, it is necessary to make an ample interpretation of the law which has not been subject to evidence judicially

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

Description and Analysis

116. The authorities have the necessary legal instruments for precautionary measures at their disposal, both provisional and at any stage of the trial, without any need for a prior offence to have been determined. In this regard Article 11 of the ALM Act states: *"The judge or tribunal seized of the prosecution may at any time, without prior notification or hearing, order any cautionary act or measure permitted by law for the purpose of securing the availability of the property, products or instruments proceeding from or related to the crime of money laundering, upon the request of the Ministerio Público"*. It is also stipulated that the procedure for putting this into effect must be decided by the judge immediately. Nevertheless, in practice problems of delay and leakage of confidential information have been detected in the application of these procedures. Therefore the prosecutors prefer to make use of Article 12 of the AML Act, which enables them to invoke "*danger of delay*" and empowers them to order seizures, embargoes or freezing of property, documents and bank accounts without prior judicial authorization. This decision must be confirmed subsequently by the Court. This procedure has shown itself to be more effective and rapid in practice, since in only one out of an approximate total of 40 such procedures, was the decision not subsequently confirmed.

Property subject to confiscation

117. (C.3.1 and 3.1.1) Article 8 of the ALM Act embodies the concept of confiscation [definitive] in favor of the State, by virtue of a decision of a competent judge, "*of the property, instruments or products used or derived from the commission of the offence of ML"*.

118. Confiscation is admissible also when the goods are not owned by the accused or are not in his control, "*provided they do not belong to an innocent third party"* (first paragraph, Article 8, ALM Act).

119. As may be seen from Article 8 of the ALM Act quoted above, the inclusion of the expression "arising from" allows to infer an authorization for the confiscation of property not only directly arising from the crime but also <u>indirectly</u> proceeding from the crime, for example shares in businesses, interests accrued on bank accounts in which the money initially laundered was deposited. In all these cases it is possible to reasonably argument that the property arrive from the commission of ML. However to avoid possible interpretation doubts it would be recommendable that it would not be explicitly provided in the law.

120. Nor was any provision discovered allowing the confiscation of property of corresponding value when the property directly derived from the offence is no longer available.

121. This provision of the ALM Act also does not provide for the confiscation of property and instruments associated with the predicate offence of the ML. Nevertheless, the Criminal Code, Article 60, does stipulate that this is an accessory penalty which involves objects derived from crime or misdemeanor, as well as the instruments with which it may have been committed unless they are the property or a bona fide third party.

122. With regard to the offence of FT, in Guatemala confiscation is covered in Article 9 of the FT Act, which stipulates that regardless of the main penalties fixed for this crime, the money or property derived from or produced by this offence shall be subject to confiscation. The return of property to bona fide third parties is governed by the provisions of the AML Act.

123. Likewise, Article 10 of the FT Act embodies for this crime the concept of Civil Confiscation regardless of any criminal action, through which the Procuraduría General de la Nación may request a judge of the civil branch to order the Civil Confiscation of the monies or property when these have been used or are going to be used in the commission of the offence of FT.

124. The evaluation mission observed that a weakness in the Guatemalan system was the fact that the total of confiscations under final court decisions for cases of ML and FT becomes part of the funds of the judicial branch exclusively, without any possibility of the other authorities involved in combating ML/FT, including the Ministerio Público, deriving any benefit from them.

Provisional Measure

125. (C.3.2 and c.3.3) Article 11 of the AML Act embodies the concepts of provisional and precautionary measures, called *Providencias Cautelares*. The competent judge has the power, at the request of the Ministerio Público, to order at any moment, without previous notification or hearing, *"any cautionary measure or measure of guarantee established in the Act"* in order to ensure the preservation and availability of the property, products or instruments derived from or related to the offence of ML. To determine precisely what the authorised measures are we refer to other laws, such as the Code of Criminal Procedure, Article 198 of which in stipulates as follows: *"Surrender of objects and sequestration: objects and documents related to the offence or which may be of importance for the investigation and which are subject to confiscation shall be deposited and conserved by the best possible means. Whoever has them in his power shall be required to deposit them and surrender them to the requesting authority. If they are not voluntarily surrendered an order for sequestration shall be issued"*.

126. Article 200 of the Code of Criminal Procedure stipulates that: "*A sequestration order shall be issued by the judge before whom the action is pending or by the President in the case of a Collegiate Tribunal. In case of danger or delay the Ministerio Público may also issue a sequestration order, but must request judicial confirmation immediately, consigning the objects or documents to the competent tribunal. The objects or documents shall be returned if the tribunal does not issue a sequestration order*". In Guatemala the Ministerio Público has, in addition, the power to invoke: *"Danger of Delay"* for the purpose of a direct and immediate order of seizure, embargo or immobilization of property, documents and bank accounts, subject to later confirmation by the Court, on the

basis of Article 12 of the AML Act. *In practice this procedure has produced positive results.*

127. Everything relating to cautionary procedures and orders governed by the AML Act extends to cases of financing of terrorism, by express provision in Article 12 of the CFT Act.

128. In Guatemala there is no unit for the management of provisionally confiscated property, to enable adequate distribution and use of it by the AML/CFT preventive or repressive bodies. The disposal of the goods affected by provisional measures is taken independently by the criminal judge in each case, who can authorize the temporary use of the property by competent ML authorities (Article 15 of the AML Act). In addition, the evaluation mission was informed that there is no bank account for deposit of money seized for these crimes but that it is rather stored in a vault in premises under the management and custody of the judiciary, for the purpose of preserving the integrity of evidence. The team considered that this practice constitutes an unnecessary security risk, in addition to generating no kind of bank interest. Alternative measures might be explored for making better use of these funds without the investigation being adversely affected.

129. The request for provisional measures referred to above must be dealt with and decided by the competent judge without delay. Nevertheless, the evaluation mission learned that, because of the large volume of cases, as well as the risk of leakage of information that could compromise the timeliness, confidentiality and effectiveness of the measures, the Ministerio Público through its prosecutors often does not request these measures from the judge. Instead, the prosecutors prefer to make use of Article 12 of the AML Act which gives them direct power to invoke "*Danger of Delay*" and issue a direct order for seizure, embargo or immobilization of property, documents and bank accounts. These orders must be ratified subsequently by the competent judge, and in practice the result has been positive: of a total of approximately 40 orders for urgent provisional measures issued by the Ministerio Público, only one has been revoked by the judge.

Power to identify and trace

130. (C.3.4) In Guatemala the Ministerio Público has the power of criminal prosecution, on the basis of parameters laid down in Article 9 of the AML Act. These are in addition to those embodied in Chapter II of the Code of Criminal Procedure, Article 24, which indicates that prosecution shall be the official responsibility of the Ministerio Público as the representative of society, over all public offences, with the exception of offences against the security of transport and offences whose main sanction entails a fine.

131. There are investigative bodies to assist the Ministerio Público, such as the police. However, the police personnel is not duly trained necessary to undertake a preliminary ML or FT investigation. Given this situation, the specialized ML prosecutors prefer to use an auxiliary department of the Ministerio Público, entitled DICRI, which is staffed for the most part by students, who suffer from many limitations, both budgetary and technical.

132. The IVE, in accordance with the provisions of sub-paragraphs a, b and f of Article 13 of the AML Act, has powers to identify and trace property subject to confiscation, as well as to demand and/or receive from regulated persons all information related to financial,

commercial or business transactions which may bear upon ML. The IVE also provides the Ministerio Público with assistance for the analysis of the information.

133. The Analysis Unit of the Ministerio Público, which gives direct assistance to the prosecutors in money laundering, amplifies, inter alia, the reports received by the IVE, deepening and structuring them to enable the prosecutor to develop an adequate charge within the framework of criminal procedure. The evaluation mission discerned a lack of communication and interaction between these two offices which could entail duplication of functions and delay in bureaucratic procedures, and which could have been solved by meetings between the staff of analysts in both agencies who are concerned at the technical level with the cases in question.

134. The IVE has power to demand from the regulated financial institutions additional information on the STRs when it deems necessary. In practice it was learned that the Ministerio Público through its specialized *fiscalías* requests financial information from the IVE on investigations which it is carrying on as a result of STRs, and it is IVE which requests this information from the financial system, and is more effective and prompt in obtaining it. However, this practice often causes log-jams in the work of the IVE and diverts it from its principal function of producing financial intelligence, and turns it into communication go-between between the Ministerio Público and the regulated entities. The Ministerio Público should have the capacity to obtain direct access to information from all the regulated institutions as and when it considers advisable.

135. The *beneficio de antejuicio* (right to a court hearing to determine whether their immunity from prosecution should be lifted) which some public officials enjoy in Guatemala makes it difficult for the authorities to trace and confiscate promptly their goods or property, since they must be previously submitted to a hearing for the lifting of their immunity. This difficulty has been especially notorious in the investigation of possible public corruption on the occasion of construction of public works by the Mayors of towns, which are frequently reported in the banks, but may stay for a long time in the investigative stage in the relevant *Fiscalía*, because the prosecutors do not have confidence in their power to obtain the lifting of the immunity or "beneficio de antejuicio" of the public official under investigation. The main reason for this lack of confidence, the evaluating team learned, is that the procedure for staffing the tribunals that decide in each case whether or not the immunity is to be lifted, is politicized. In the opinion of the evaluating team the *beneficio de antejuicio*, which is a means of protecting the public service, should be granted only to a small number of very senior officials, and not to the Mayor of every town in the country.

136. In the Guatemalan Ministerio Público there is a concept that is *sui generis* as a means of tackling the high level of corruption that finds its way into investigations: under a Convention signed between the United Nations and the Government of Guatemala, ratified by Guatemalan law, an International Commission against Impunity, CICIG, was created, directed by officials of the United Nations and devoted solely to providing support to the Ministerio Público in certain high impact cases. The trials and court decisions in these cases have turned out to be more rapid. Up to the present moment the CICIG has not played any role in ML or FT cases, but the reasons for its creation reflect structural deficiencies in the Guatemalan judicial apparatus which also limit the effective prosecution of these offences.

Protection for Bona Fide Third Parties

137. (C.3.5) The rights of bona fide third parties are adequately protected. According to Article 16 of the AML Act: "Measures and sanctions established in Articles 11, 12 and 15 [all of which refer to provisional measures] shall apply without prejudice to the rights of bona fice third parties". For its part, Article 8 establishes definitive confiscation of property "*unless it belongs to a third party not responsible for the act"*. Finally, third parties who claim rights over the property must intervene in the criminal case itself and comply with the conditions laid down in Article 17 of the AML Act which stipulates, inter alia, that it must be shown that the property was not transferred to such person "to avoid possible subsequent confiscation" and that he took "all reasonable measures to prevent the illegal use of the property".

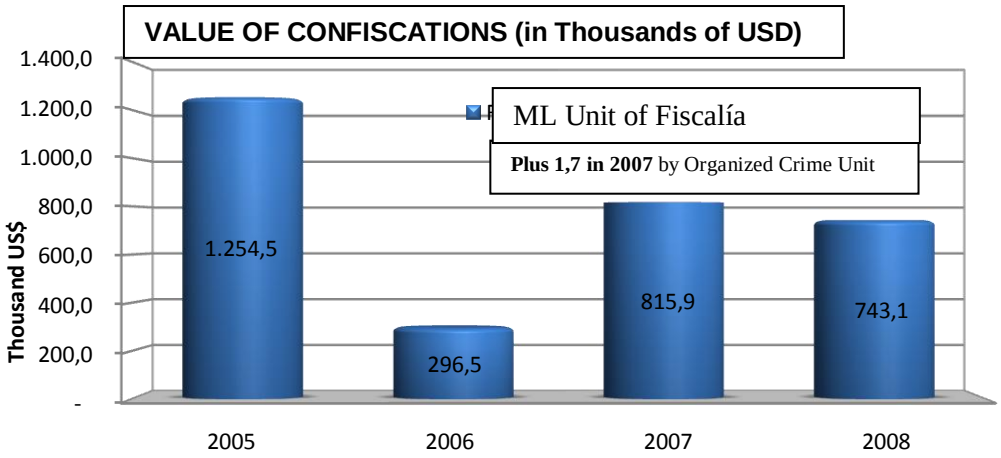
138. (C.3.6) The authorities do not have express powers to enable them to take measures to prevent or annul contractual or other acts in which the parties involved knew or ought to have known they would prejudice the ability of the authorities to recover property subject to confiscation. However, as mitigators we find that for cases in which the State finds evidence on the harmfulness of administrative acts and contracts it has the legal power to request [to the Courts] the declaration of said harmfulness by reason of the provisions of Article 17 of the Executive Branch Act, which provides that the Council of Ministers shall: "(...) b) concur with the President of the Republic to declare or not the harmfulness of the acts or administrative contracts for the purposes of proceedings of administrative litigation. (...)" Also the Law Against Organized Crime, Article 80 empowers the Attorney General to immobilize real or personal property owned by third parties and subject to registration, by judicial order, where there is clear evidence that these people have benefited directly or indirectly with the proceeds of crime committed by a member of an organized criminal group. This provision applies to organized crime related to the crimes of ML / FT.

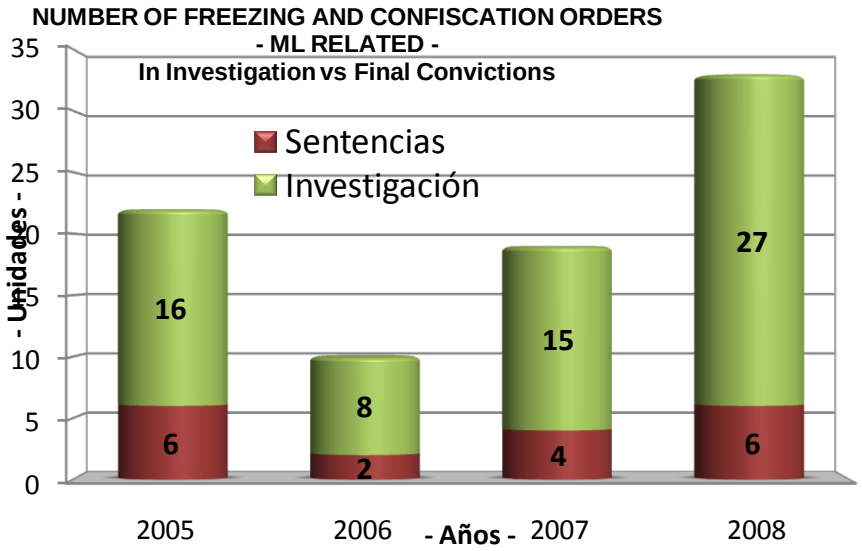
Statistics

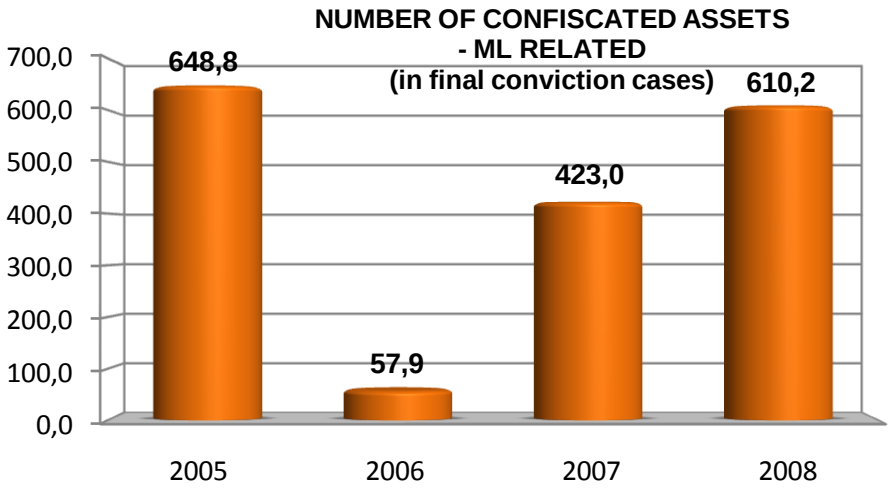
139. The Ministerio Público and the Judicial Authorities provided the following statistics:

Confiscatlons, seizures, immobilization of property by final judicial decision, with respect to ML in the last 4 years	**2005**	**2006**	**2007**	**2008**
PP Unit Against Money Laundering			27	29
PP Unit Against Corruption	1		25	59
PP Unit for Narcotraffic				2
PP Unit Against Organized Crime/Banks.			110	

Number of Confiscations, Seizures, immobilizations, provisional and final, involving ML. Last 4 years	**2005**	**2006**	**2007**	**2008**
Bank Accounts	1		105	90
Real Estate			57	


VALUE OF CONFISCATIONS (in Thousands of USD)
ML Unit of Fiscalía
Plus 1,7 in 2007 by Organized Crime Unit
Thousand US$
1.400,0
1.200,0
1.000,0
800,0
600,0
400,0
200,0
-
1.254,5
296,5
815,9
743,1
2005
2006
2007
2008


NUMBER OF FREEZING AND CONFISCATION ORDERS
- ML RELATED -
In Investigation vs Final Convictions
Sentencias
Investigación
- Unidades -
35
30
25
20
15
10
5
0
16
6
8
2
15
4
27
6
2005
2006
- Años -
2007
2008


NUMBER OF CONFISCATED ASSETS
- ML RELATED
(in final conviction cases)
700,0
600,0
500,0
400,0
300,0
200,0
100,0
0,0
648,8
57,9
423,0
610,2
2005
2006
2007
2008

Recommendations and Comments

140. Identify and eliminate the reasons for which the Ministerio Público fears that requesting provisional measures from judges puts confidentiality and efficiency of investigations at risk. Also eliminate undesired effects of the previous judgment benefit in investigations on money laundering for public offices benefited by this figure.

141. Authorize the confiscation of goods of equivalent value and create legal resources in order for authorities to prevent or void agreements entered into by individuals that simply seek to prevent confiscation or property.

142. Amendment to the law should be considered to enable money and property confiscated in ML and FT cases, as well as the temporary use of goods subject to provisional measures, to be divided in accordance with criteria of equity and criminal policy among all ML and FT agencies, not only to the judiciary.

143. Create inter-agency channels of communication between the IVE and the other public order bodies, such as the police and the prosecutors, and strengthen the technical, operational and budgetary capacity of the police and the prosecutors to identify and trace property subject to confiscation.

144. Work towards an interaction and a higher level of communication and coordination between the IVE and the Analysis Unit of the Ministerio Público, for the purpose of avoiding duplication of functions and achieving greater communication among the analysts at the technical level.

145. Consider modifying and broadening the mandate of the International Commission against Impunity (CICIG) to deal with ML and FT cases, which could unblock the system, streamline prosecutions and bring about convictions for these offences more speedily and effectively.

Compliance with Recommendation 3

	Rating	Summary of factors underlying the Rating
R.3	**PC**	There is no authority for confiscation of property of corresponding value There are no measures to prevent or annul acts or contracts concluded for the purpose of prejudicing the ability of the authorities to recover property subject to confiscation Requests from the Ministerio Público to courts for provisional measures is time consuming, not very effective, and compromises the confidentiality of the proceedings The *beneficio de antejuicio* enjoyed by some public officials, particularly at the municipal level, in practice limits investigation, tracing and confiscation of property in corruption cases There is no tactical, technical or operational coordination among public order authorities and agencies to adequately identify and trace property subject to confiscation

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

Description and Analysis

146. In Guatemala Article 12 of the law to prevent and repress financing of terrorism stipulates, as regards provisional measures in particular, that this procedure shall be the one used for purposes of the provisions of the Anti-Money Laundering Act.

147. (C.III.1, III.2 and III.4) Guatemalan law in this regard provides that a judge, at the request of the Ministerio Público at any moment in the trial and without previous notification, may issue any order or measure for securing property that is established in the Code of Criminal Procedure, including freezing of funds in general, including those belonging to Al-Qaida, the Taliban regime and Osama bin Laden, as well as any person associated with them, and designated under Resolution 1267 of 1999, or jointly to the designated persons and third parties. Article 11 of the AML Act stipulates that requests for these orders or measures must be resolved by the judge without delay. Nevertheless, the provision assumes the existence of a criminal trial in progress. If funds of Al-Qaida or another terrorist organization of those referred to in Resolution 1267 should turn up in Guatemala (which up to the present moment has not happened) it does not appear to be possible for the Ministerio Público to be empowered to open an investigation, formally request the judge to order the freezing of the funds, and to obtain a favorable response with the promptitude required by SR.III.

148. There is, however, an alternative legal mechanism that allows for a much faster response. Article 12 of the AML Act and article 12 of the CFT Act allow the public prosecutors to issue an urgent freezing order without court order based on the danger arising from delays in ordering to freeze, seize or immobilize any assets, documents or bank accounts (for details please refer to R.3 in this report). The Prosecutor's order must be subsequently reviewed by a Judge, and according to our interviews with judges and other authorities, Courts would not have difficulty in upholding a freezing order and investigations supported only by the UNSCR resolutions, because they would be based on international conventions that are already incorporated in domestic law.

149. The mechanism described above is not specifically designed for UNSCR 1267 and 1373 and it would normally require that a reporting institution detects and reports a transaction as suspicious. This is a clear limitation, as there is no general obligation for FIs to suspend the transaction while they receive a formal order, or to mandatorily report such name matches as a suspicious transaction. The IVE circulates all the lists received from Foreign Affairs, and there have been no name matches with UNSCR 1267 or 1373 but the examiners observed evidence of cases where funds related to money laundering were provisionally frozen by the Prosecutor using these powers, and the order was later confirmed by a judge, all in a matter of hours.

150. No procedure has been set up in Guatemala to instruct the authorities how to act in the case when another country notifies them that it has designated a person as a terrorist on the basis of United Nations Resolution 1373. The same general provisional measures apply for any freezing of assets required by another country through mutual legal assistance. However, designations in the framework of Resolution 1373 do not necessarily assume the character of mutual legal assistance and for such cases Guatemala would have to consider activating a clear internal procedure which would enable it to assess the reasonableness of the designation and take steps in consequence. Guatemala has not been notified up to the present moment by any country of the designation of any person based on Resolution 1373.

Provisional Measures and "Funds" on which they fall

151. (C.III.4) Apart from the lack of special procedures for prompt action in a case of designation of some person in the framework of Resolutions 1267 and 1373, Guatemalan law embodies a wide range of cautionary measures which enable property and assets related to terrorist activities to be frozen in the majority of the cases demanded by SR.III.

152. Article 12 of the CFT Act (Act 58-2005) stipulates that as regards procedures, confidentiality of investigation and provisional measures, the provisions of the AML Act shall apply. Particularly relevant is Article 11 on Provisional Measures ordered by the competent judge, and Article 12 on measures ordered by a prosecutor in cases of "*Danger of Delay"* (in this regard see the analysis of Recommendation 3 in section 2.3.1 of this report).

153. In addition to the procedural provisions mentioned, the law against organized crime, Act 21-2006, Article 73, provides a catalogue of provisional measures affecting the property of criminal individuals or organized groups, including those who finance terrorism. Among the available measures are: sequestration and embargo of property, blocking of bank accounts and immovable property, sequestration of account books and registers, suspension of licenses and permits which have not been properly issued or which have been used for the commission of a crime; confiscation and occupation of property.

154. Article 2 of Act 21 of 2006 defines a criminal organisation as "any structured group of three or more persons, which exists for a certain period of time and which acts in concert for the purpose of committing one or more of the following offences: *a) those included in the Anti-Narcotics Act…b) those contained in the Act Against Laundering of Money and other Assets…*d) those contained in the Act to Prevent and Repress the Financing of Terrorism, Financing of Terrorism and Transfer of Money, 4) Terrorism…."

155. Article 76 makes possible the blocking of bank accounts belonging to accused persons or other persons who benefit directly or indirectly from offences. In order to apply these measures the prosecutor must make a formal request to the *Juez de Garantías* or *Contralor*. Articles 79 and 80 also permit the blocking of "*movable or immovable searchable property of a person belonging to organized criminal groups, [when] these are in danger of being of being concealed, of appearing or becoming subject to fake transfer of ownership or control"*, as well as property "*which is the property of third parties, when there is clear evidence that such persons have benefitted directly or indirectly from the proceeds of a crime committed by some member of an organized criminal group".*

156. Article 74 of the Anti-Organized Crime Act also stipulates that "*Sequestration and embargo may be ordered of the property of accused persons belonging to organized criminal groups when this property is the direct or indirect product of the offence <u>or of the transformation or conversion into other types of property</u>. Also… when this property appears to be registered in the name of <u>third persons</u>"*. In accordance with this, the order for freezing may be extended also to other assets <u>indirectly generated</u> from other assets under the control of terrorist organizations, as well as assets that are in the hands of third persons.

157. The abovementioned provisions do not apply in the case of a terrorist or a person financing terrorism who do not belong to a criminal organization. To obtain an order for

measures against the assets of these persons requires recourse to the AML Act, in which, as explained above, there appear a considerable number of provisional measures. Nor does it include measures for preventing acts of simulation tending to hinder the search for the property in question.

Freezing at the request of another country

158. (C.III.3) Guatemala has signed various bilateral agreements and conventions on this subject which have been incorporated by law into its domestic legislation, and which authorize collaboration and reciprocal legal assistance among States to impose freezing already initiated in different jurisdictions. Among the types of mutual legal assistance covered by these conventions are identification, freezing, seizure or confiscation of laundered assets or assets which were to be laundered or which were intended for use in the financing of terrorism.

159. In addition, in order to ensure the immediate freezing of funds or assets ordered in other jurisdictions, Guatemala can rely on Article 21 of the FT Act, which stipulates that "*for the purpose of facilitating judicial actions and investigations concerning the offences referred to in this Act, the Ministerio Público and the competent judicial authorities may provide and request assistance from the competent authorities for…..h) Any other form of reciprocal legal assistance, authorized by domestic law"*. As we have explained above, although there are minor limitations (for example the need for ample interpretations for the possibility of freezing assets indirectly used by an individual terrorist) the domestic legislation possesses a broad range of provisional measures usable in response to requests from other States.

160. ***Communication with and guidelines for financial institutions*** (C.III.5) In 2007 the Intendencia de Verificación Especial issued a notice identified with the number IVE 1445-2007 to inform the financial sector about the consolidated lists of persons linked to terrorist activities, referring the institutions to the website of the United Nations to obtain the updated information; however the mission was able to determine that when a significant number of authorities and regulated institutions were questioned, they had no knowledge of the Resolutions adopted by the UN Security Council, nor were they clear on the measures that should be taken in the case of detecting possible matches. According to the abovementioned notice "*this list should be included as a consultation source*" to supplement due diligence and monitoring procedures, and should possible matches be found "*the provisions of….[ML Act, FT Act and their regulations]should be observed"*. According to the applicable procedure, which is the same for reporting any suspicious operation, the regulated institutions can take up to 15 days to report to IVE after the transaction takes place, which is an undue length of time to deal with possible matches of names with those on the terrorist list of Resolution 1267.

161. C.III.6) The evaluation mission learned that although the Intendencia de Verificación Especial (IVE) ML/FT Risk Management Guidelines is intended to orient the regulated institutions concerning measures to be applied in case they should hold funds or assets related to terrorism or its financing, this instrument is very recent, and therefore there is no experience of any kind in this area.

162. (C.III.7 and III.8) There is a procedure to which persons may have recourse if they consider themselves mistakenly affected by these provisional measures. Article 16 of the

AML Act provides for the return of property in deposit, stating in this regard that "the judge or tribunal hearing the case may order the return to the claimant, in the nature of a deposit during the trial, of the property, products or instruments of a commercial offence when it has been determined or decided, as a question incidental to the main cause of action, that:

a) The claimant has legitimate rights to the property, products or instruments;

b) The claimant cannot be accused of any type of participation, collusion or implication in the offences of laundering of money or other assets, that are the main issue of the action;

c) The claimant has not acquired rights to the property, products or instruments of the accused person in circumstances that would reasonably lead to the conclusion that the right to such assets was transferred to him to avoid their possible later confiscation, and

d) The claimant has taken all reasonable steps to prevent the illegal use of the property, products or instruments…."

163. Although there is a draft *Executive order Gubernativo* in existence to create the National Coordination Commission with a view to facilitating cooperation and the creation of mechanisms for effective compliance with the UN Resolutions, at the present time there is no established internal procedure for possible requests for deletion of persons or institutions from the consolidated list, or for the unfreezing of their funds and other assets. Likewise, there are no definite mechanisms for the unfreezing of funds or assets belonging to persons or institutions which have been affected involuntarily by these measures, when it is determined that they had no relationship with the designated persons.

164. (C.III.9) Article 15 of the AML Act stipulates procedures for temporary disposal, upon authorization by the competent judge, of objects, instruments and proceeds of ML or other acts, such as terrorism and its financing for the purpose of ensuring that the assets in question are assigned to authorities responsible for preventing, controlling, investigating and prosecuting these offences. In Guatemala this does not usually happen in practice and it is the judicial branch which benefits at the end of the trial from the entire volume of confiscated assets.

165. (C.III.10) Guatemalan law on criminal procedure, as regards Provisional Measures, indicates the appropriate judicial mechanism to enable a person or institution to object to or request review of a freezing measure applied to his funds or assets. Article 14 of the AML Act stipulates that all Provisional Measures orders may be subject to review, modification or revocation at any time by a competent judge or court, following a request from an interested party. Up to the present time this procedure has never been put into effect in Guatemala in a case of freezing of assets of terrorists.

166. (C.III.11) (C.III.12) Guatemala possesses legal means to ensure protection for the rights of bona fide third parties, specifically in Article 16 of the AML Act, which in a restrictive provision stipulates that "*The measures and penalties referred to in Articles 11, 12 and 15 shall apply without prejudice to the rights of bona fide third parties"*; that is to say, with reference to Provisional Measures, Procedures and Cautionary Orders and disposal of property, products or instruments that are the subject of Provisional Measures.

167. (C.III.13) Administratively, the responsibility for monitoring compliance with the Law to Prevent and Repress the Financing of Terrorism in Guatemala falls to the Intendencia de Verificación Especial (IVE) of the Superintendency of Banks. This is stipulated in Article 20 of the abovementioned Act. Likewise, all public and private institutions are required to collaborate with the IVE for the achievement of the objectives of the Act. Article 19 lays down the penalties applicable to persons who fail to comply with the Act. These range from US$10,000 to US$50,000, depending on the gravity of the infraction. Article 7 of the FT Act stipulates that when legal persons which have been subjected to criminal penalties are subject to the supervision and control of the Superintendency of Banks, the judge shall notify the Superintendency of the conviction so that it may take the relevant administrative measures.

168. In the criminal context, Article 4 of the FT Act sets out penalties for persons guilty either of the attempt or of the completed offence, ranging from 6 to 25 years incommutable imprisonment, in addition to an accessory pecuniary penalty of US$10,000 to US$625,000. Article 5 adds a special aggravating circumstance to the basic law consisting of an increase of the sentence by one-third for convicted persons who are "*public employees or officials"* and who have committed the offence of FT in the exercise of their function or employment. Article 7 also refers to criminal penalties for legal persons regardless of the criminal responsibility that may fall upon their owners, directors, managers, administrators, officials, employees or legal representatives, consisting of a fine equivalent to the total of the property or money that was the object of the offence and in the case of reoffending the definitive revocation of their legal personality. In addition to the ancillary penalties of confiscation, loss or destruction of the proceeds of the offence as well as the instruments used in its commission, the convicted person is liable for costs and expenses of the trial and the publication of the verdict.

Recommendations and Comments

169. Establish a specific procedure to enable the freezing within a matter of hours after their detection of assets of persons designated in the framework of the UN Security Council Resolution 1267 (1999).

170. Establish a procedure for reasonably prompt action in cases where another country notifies Guatemala that it has designated a person as terrorist on the basis of UN Resolution 1373, when such notification does not constitute mutual legal assistance.

171. It is suggested to inform regulated institutions more efficiently when the lists have been updated, and provide them with precise instructions on how to proceed. It is suggested furthermore that in cases of matches with United Nations lists, the report should be sent simultaneously to the IVE and to a specialized *Fiscalía*, for the purpose of obtaining a freezing order as promptly as possible.

172. Take steps to speed up the formulation and entry into force of the *Executive order Gubernativo* creating the National Coordination Commission, which would facilitate interagency coordination both at the governmental and private levels and make for more effective implementation of procedures for freezing of funds or assets of designated persons.

173. Develop a procedure to authorize the person whose funds have been seized under Resolution 1267 to have access to funds for his subsistence or to cover certain necessary fees and services.

Compliance with Special Recommendation III

	Rating	Summary of factors underlying the Rating
SR.III	**PC**	It has been demonstrated in practice the possibility of freezing very rapidly assets derived from any crime and the prosecutor could issue a warrant within hours based on the UNSCR listing, but there is no general obligation for FIs to suspend the transaction while they receive a formal order, or to mandatorily report name matches as a suspicious transaction. There is no procedure for handling requests to withdraw a name from the list of Resolution 1267, nor for authorizing access to minimal subsistence funds for individuals affected. There is no authority for embargo or sequestration of additional property generated indirectly from property used by a terrorist unless the terrorist is part of a criminal organization

Authorities

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

Description and Analysis

174. Summary: The IVE meets the basic requirements of a financial intelligence unit in the Egmont Group's definition of an FIU. There are certain operational deficiencies which inhibit its effectiveness and therefore prevent it from complying entirely with Recommendation 26. The structure and resources of the IVE enable it to fulfil its daily functions in accordance with its mandate. It assists other public and private agencies to combat ML and FT in Guatemala. It collects information from the regulated institutions and exchanges financial information with counterpart agencies abroad. Appreciable steps have been taken towards strengthening it, as well as restructuring it for providing better service to its main customer and ally, the Ministerio Público. Nevertheless, it must still improve the quality of the information it sends to the Ministerio Público; make better use of its human resources, assigning to its analysts functions that are more closely related to the chief mission of the institution; seek rapprochement and closer cooperation with a greater number of agencies to obtain better and more rapid access to information to support its investigations; provide more public information on ALM and CFT; and ensure that the information in its possession is always well protected.

Creation of the FIU and central functions:

175. (c.26.1): The Intendencia de Verificación Especial (IVE) is the financial analysis unit of Guatemala, and under Article 33 of the AML Act it is the only agency for receiving and centralising suspicious transactions reports (STRs) from the financial sector. Its budget and structure are approved by the Monetary Board of the Bank of Guatemala. Its main functions are to request and/or receive from all regulated persons all information relating to financial, commercial or business transactions which may have links to the laundering of money or other assets, for the purpose of analysing and transferring such information to

the Ministerio Público. It also carries out the same functions regarding information requested by the Ministerio Público and competent judges. Sub-paragraph b) of Article 33 of the AML Act stipulates that among the functions of the IVE are analysing information obtained in order to confirm the existence of suspicious transactions, and of operations or patterns of laundering of money or other assets. If, once the procedures of collection and analysis of the data are complete, the IVE considers that there are sufficient elements to indicate that an offence of ML and/or FT has been committed, it prepares a "denuncia" and submits it to the Ministerio Público.

176. It should be made clear that the IVE also exercises supervisory AML/CFT functions over all the institutions supervised by the SIB, in addition to other institutions such as remittance houses. However, for purposes of the analysis of R.26, this section will refer exclusively to the performance of the IVE as a financial intelligence unit.

177. The following table shows the number of "denuncias" sent to the Ministerio Público and the increase in the number of STRs incorporated in each "denuncia". The evaluators considered this to be indicative of increasing added value and quality in the product of the IVE's work. This opinion may be corroborated by study of samples of the working files of the FIU.

2005 - 2010

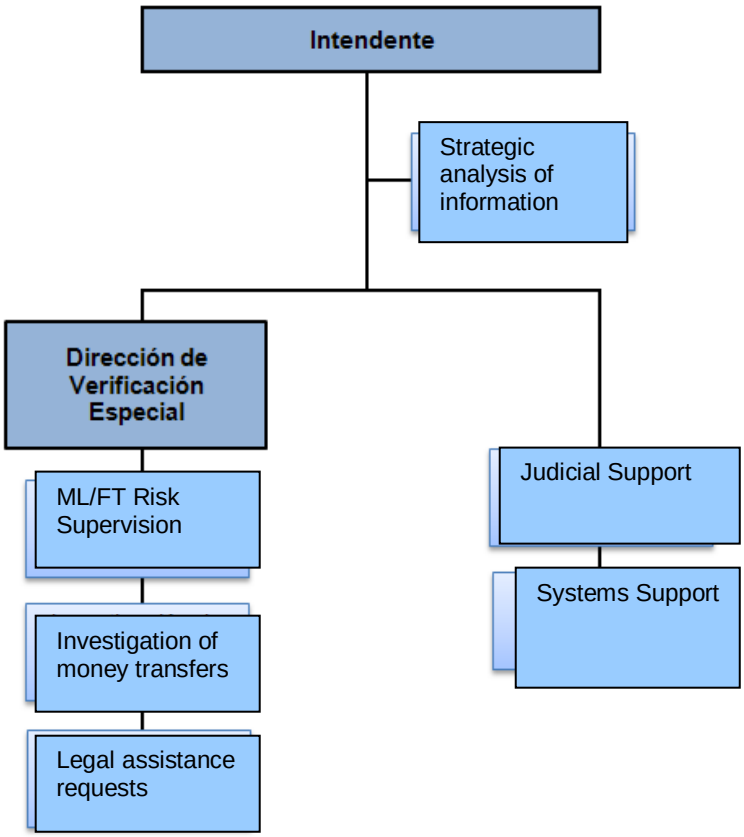
Possible offence and/or irregular activity underlying Denuncia	2005	2006	2007	2008	2009	2010[1]	Total
Corruption	3	11	12	10	14	1	51
Transfers	2	3	6			0	11
Extortion		8	1		17	0	26
Money Exchange Fraud			6	2	1	0	9
Drug Traffic		5	2			0	7
Illegal Adoption False Declaration	1	1	1		3	2	8
Robbery		2	2			0	4
Tax Fraud	1				1	0	2
Wire Transfers		2				0	2
Traffic in persons	1			2	2	0	5
			2	5	3	0	10
				2	1	0	3
	8	32	32	21	42	3	138

1-3 March 2010

STRs sent to MP in same period 472

178. Under Article 32 of the AML Act and Article 24 of its Regulations, the IVE is part of the structure of the Superintendency of Banks, and therefore the Superintendent of Banks is its head. Its budget for 2009 is US$2.8million. Its staff is made up as follows: a Director, a Supervisor of Investigation of Suspicious Transactions who has 12 analysts under him; a Supervisor of ML and FT risk supervision with 11 inspectors under him (these do not perform FIU functions); a Supervisor of Management of Legal Requirements with 11

staff; an Information Analysis Unit with 2 analysts, a secretarial pool of 3 secretaries; a Legal Advisory Unit, composed of 2 professionals, and a Systems Support Unit made up of 3 systems engineers. The total staff is 49, composed of lawyers and notaries, certified public accountants and auditors, systems engineers, business managers and economists, many of them with post-graduate degrees. This staff has experience in supervision of financial and insurance institutions, offshore banking, credit card issuers, banking institutions, tax, economic and criminal procedure law among other areas (see the Organizational Structure of the IVE below).



179. In addition to its present staff, the IVE has plans to engage an expert with Ministerio Público experience who will act as a liaison between the IVE and the Ministerio Público's Anti-Money Laundering *Fiscalía*, mainly in order that he may attend the hearings and trials requested by the Ministerio Público in complex ML and FT cases. This officer's duties will also include helping the technical personnel of the IVE to formulate criminal denuncias and to analyze the supporting documentation to be sent to the Ministerio Público. Finally, this official will provide legal advice to the Intendencia de Verificación Especial, the Director, Supervisors and the team of analysts and inspectors. The idea is that this official shall provide expertise not only in financial matters but also in the prosecution of ML/FT cases. This would obviate the need for the Ministerio Público to have subpoenas issued to compliance officials in the financial sector or analysts of the IVE to testify in court.

180. This plan of the IVE would help to strengthen ML/FT cases and reduce the risk of reprisals against witnesses[6] by defendants and their associates, which is occasioned by the exposure of the identities

of the compliance officers and analysts if they are called to testify in oral and public hearings related to high impact cases. The expected benefit of designation of a single expert was confirmed by the evaluating mission during interviews with representatives of the Ministerio Público, the judicial branch and compliance officers of banks. In fact, there was some prior experience of this in that an officer of the IVE, without actually being the Compliance Officer who issued an STR in the matter or having any first hand experience of the financial transactions in question, was able to explain a complex case to the judge so correctly that according to the Ministerio Público itself, his intervention was the determining factor in the achievement of a conviction. It was also possible to confirm with at least one judge interviewed that a good illustration of a complex financial case by an expert has more weight as evidence before a court than the statement of a Compliance Officer who only holds a part of the information. The evaluation team also observed that owing to the insecurity and high percentage of crimes against life in the atmosphere of impunity in the country, it is not advisable to summon compliance officers to testify before a court. In fact several compliance officers who were interviewed gave vent to their fears and the possibility of summoning them to court, although this has rarely happened[7]. This could also induce compliance officers not to supply the necessary detail in the STRs in order to avoid being summoned as witnesses. The engagement of such an expert by the IVE would therefore bring great benefit to collaboration with the Ministerio Público.

Guidelines for submission of STRs:

181. (c.26.2): The Superintendency of Banks, through the IVE, in Circular No. 2012 of 13th May 2002, distributed to regulated institutions a list of "Warning Signals for Detection of Unusual Transactions", consisting of examples that might be considered for the detection of possible unusual or suspicious transactions. However, each regulated institution must define its own warning signals, including among them those of which the IVE informs them by means of circulars. In addition, the IVE has fulfilled its role of developing the mandatory forms for suspicious operations reports, as defined in Article 26 of the AML Act.

182. By Circular No. 529-2006 of 20th April 2006 the IVE issued to all regulated institutions the single form IVE-RTS-LD/FT entitled Reporting of Suspicious Money Laundering and/or Terrorist Financing Transactions (STR ML/FT), which replaces Form IVE-BA-04, Reporting of Suspicious Money Laundering Transactions. In addition, Article 16 of the Regulations to the AML Act sets out the procedures which must be observed by the regulated entities in submitting suspicious transactions, such as the requirement for the officials who detect an unusual transaction to report it to the Compliance Officer, who in turn must determine whether it is of a suspicious nature in the space of no less than fifteen (15) days. At the end of this period, the Compliance Officer must note his observations and those of the official who detected the operation and proceed to notify the IVE within ten (10) days on the established forms, annexing the documentation required on those forms.

183. The documentation that the IVE requires to be sent along with the STRs includes: photocopy of the document on which the business relationship was initiated and a photocopy, printed on both sides, of the support documentation of the reported transaction.

184. The following table shows that the total of STRs received by the IVE between 2005 and 2008 amounts to 1,521, 67% of them from the banking sector.

[6] Just one month after the evaluating team visit to Guatemala, the ML fiscal resigned reportedly due to death threats related with one of the investigations under his control. This is indicative of the risk level that persons summoned to declare may face ("ML Fiscal, resigns due to threats" Free Press, Electronic Edition. 3/7/2009).

Suspicious transaction reports received by the IVE, by Regulated Institution

Suspicious transaction reports received in the IVE by Regulated Institution	2005	2006	2007	2008	Total	Percentage
Banks	237	250	301	236	1024	67.3%
Money Transfer businesses	104	57	26	34	221	14.5%
Cooperatives	54	47	37	32	170	11.2%
Credit Cards	9	9	12	12	42	2.8%
Offshore banks	9	11	5	6	31	2.0%
Insurance	3	7	7	7	24	1.6%
Finance Companies	1	0	0	2	3	0.2%
Trusts	1	0	1	0	2	0.1%
Stockbrokers	0	0	1	0	1	0.1%
Warehousing companies	0	0	0	1	1	0.1%
Bureaux de Change	0	1	0	0	1	0.1%
Cheque changing agencies	0	0	1	0	1	0.1%
Pawn shops	0	0	0	0	0	0.0%
Totals	**418**	**382**	**391**	**330**	**1521**	**100.00%**

185. It should be pointed out that the number of STRs received from all the regulated entities has gradually diminished from 418 in 2005 to 330 in 2008. The reason for this, according to the IVE, is the improvement of the quality of the STRs that are received.

186. The evaluation team observed that in fact the IVE has developed various initiatives for improving the quality of the STRs, among which should be mentioned a new system of rapid verification of minimum data and of the quality of the information. For receiving and classifying the STRs, the IVE now has a method which includes a system of feedback to the regulated institutions regarding the quality of the STRs submitted, called "Checklist", which combines all the elements contained in an STR when it is sent to the IVE. When an STR is received an IVE analyst carries out a quick check (taking approximately one day) of the quality of the information and if after this review the information is incomplete, the analyst "rejects" the STR and notifies the institution that sent it so that it may be completed and returned. Several regulated institutions expressed their satisfaction with this feedback from the IVE and confirmed that it has reduced the number of cases reported thanks to their better understanding of what a good STR should contain. In the words of the compliance officers themselves, they are being forced to send better quality STRs and therefore the number has been reduced. The following table shows that the additional requests that the IVE has had to make to regulated institutions in order to supplement the information have also diminished.

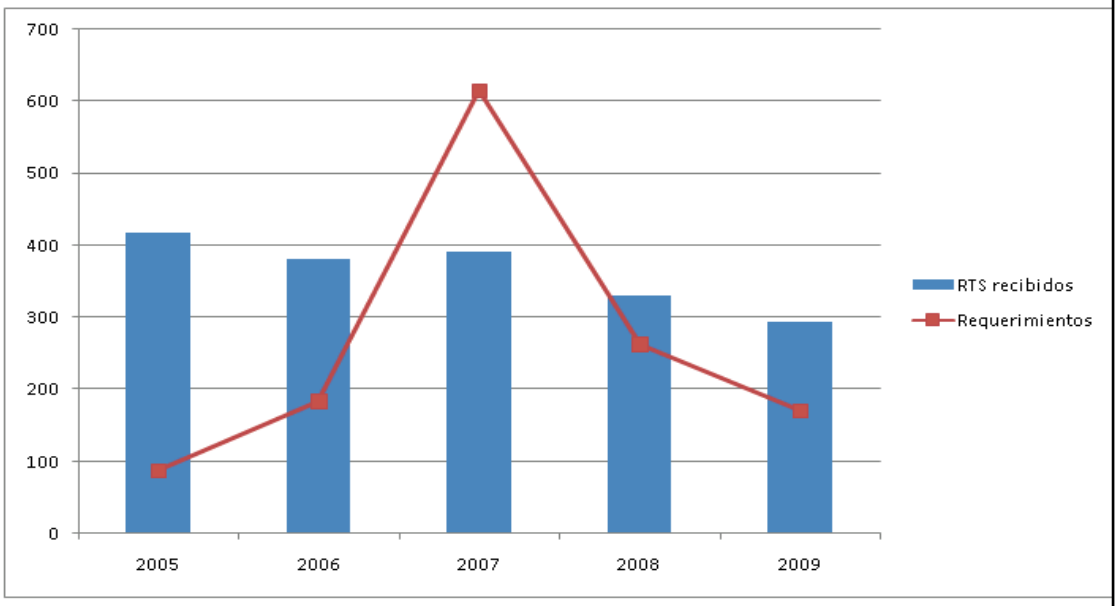
Comportar

IMPACT OF APPLICATION OF CHECKLIST (a)
Evolution of requests to regulated persons, derived from STRs Received and analysed

2005 - 2009

Calificación / Rating	2006	2007	2008	2009	Total
RTS recibid / **STRs received**	382	391	330	295	1816
Requerimien / **Requests**	184	615	263	171	1321
% de requerimient sobreRTSs recibidos / **% of requests on STRS received**	48,17%	157,29%	79,70%	57,97%	

(a) *Implemen* **(a) Implemented from August 2008**



De 2006 a 2
cual se imple
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From 2006-2007 the number of requests for information on STRs rose, therefore check list implemented in 2008, and number of requests dropped owing to resulting improvement in quality of STRs

187. In December 2008 the IVE carried out a survey of user satisfaction (the users being the fiscales) in the Ministerio Público. Those who responded were members of the *Fiscalías* for Narcotics, Organized Crime and Banks, Laundering of Money and Other Assets, Crimes against Life, Corruption; Economic Crimes and UNILAT (Specialized Unit against Criminal Organisations engaged in Narcotics and/or Money Laundering and Tax Crimes). They evaluated the response time to requirements; the formats of the documentation submitted; the organisation of information and the trustworthiness, quality and usefulness of that information; the action taken; and the overall level of satisfaction. 32% of the respondents replied "very satisfactory"; 59% "satisfactory"; 7% "not satisfactory"; and 2% "not applicable". The responses received contained positive comments on the form in which the information from the IVE is received, but some also expressed dissatisfaction with response times.

Access to Information

188. (c.26.3, 26.4): The IVE has powers to obtain from regulated institutions the information necessary to facilitate analysis of financial transactions. Under Article 28 of the AML Act, the regulated institutions must provide the IVE with information it requests in the form and within the period stipulated in the regulations. No type of confidentiality, legal or contractual, of the information to be submitted by the regulated entities to the competent authorities in compliance with this Act or its regulations may be invoked. If the institutions required to submit the information are unable to do so within the time stipulated by the IVE, they may request an extension with sufficient notice and explaining the reasons for it, and this must be resolved before the originally set deadline expires.

189. The IVE has ample powers of access to administrative, financial and other types of information to enable it to fulfil its role adequately. For this purpose the final paragraph of Article 34 of the AML Act stipulates that all public or private entities are required to provide any collaboration which the IVE may request for the fulfillment of the purposes of the Act. Article 35, for its part, stipulates that the IVE and any other competent authority may provide or request administrative assistance from competent authorities of other countries to assist it in meeting the goals of the Act.

190. Article 31 of the AML Act stipulates that regulated entities referred to in Article 18 shall be liable for non-compliance with the duties imposed on them by the Act and shall be penalised by the competent administrative authority in addition to repairing the omission. Sub-paragraph g of Article 33 of the Act confers on the IVE the power to impose these sanctions (see Executive order No. 43-2002 on Regime of Sanctions and the analysis in Section 3.10 of this report).

191. The Legal Requests Management Division of the IVE is responsible for responding to the information requests from the Ministerio Público, including the reception and assignment of level of priority to each request, the assignment of duties, searches in databases, requests for information to regulated institutions and foreign FIUs and the drafting of replies. It often undertakes the collection of information on site, going to the offices of the financial institutions when it receives urgent requests from the Ministerio Público. This specialized department has six officers working on replies to the Ministerio Público, which seems excessive compared with the 12 financial analysts who carry out the missions of the IVE as financial intelligence unit. Although it is true that this division is also responsible for dealing with the information requests from foreign FIUs, a lot of its time is devoted to waiting in person in the premises of financial institutions for documents which the Ministerio Público has requested from the IVE, or on its own initiative to supplement the information in the denuncias. The fact that the IVE can go directly to the offices of a financial institution when it needs urgent information is a positive factor, but the fact that this practice must be used sometimes to put pressure on the institution and to speed up the response is indicative of difficulty in obtaining information in a timely fashion and an inefficient use of human resources. Of a total of 56 requests from the Ministerio Público that were responded to in the first six months of 2009 in approximately 2 cases per month the information was obtained in person through "motorized requests" as they are known in the IVE.

192. The following table shows that since January 2009 the IVE had responded to a total of 56 requests from the Ministerio Público, that there were 23 pending, and that it had given partial replies to 9, making up a total of 88 requests by the 31st May 2009. This figure represents an increase of 70 requests per month which is indicative of a process of erosion in the requests. The team considers that the need to make requests in person also results from the fact that the Ministerio Público and its partner agencies have very limited technical and legal capacity to investigate crimes and for this reason unload on the IVE the work of obtaining information which the Ministerio Público should have the capacity to obtain on its own (see analysis of this problem in Section 2.6).

YEAR	REQUESTS FROM MINISTERIO PUBLICO TO IVE (31/12/2009)			
	Pending	Partially	Fully	Total
2005	0	0	167	167
2006	0	0	166	166
2007	0	0	207	207
2008	0	0	216	216
2009	4	4	219	227
TOTAL	**4**	**4**	**975**	**983**

193. The IVE requests information in support of its investigations mainly from the Register of Real Property, the Business Registry, the Directorate General of Immigration, the Superintendency of Internal Revenue, the Ministerio Público, the Judiciary, the Accountant General's Office, and other entities as the case may require. Nevertheless, it does not request criminal records from the police and none these requests are made online. It must submit requests in writing and wait for the reply from the institution. At the present time the IVE is negotiating a Memorandum of Understanding for requests for information with the Real Property Register. The fact that it does not have online access causes inevitable delays in access to information in cases in which the information is computerised, and this lack of prompt access to criminal records which the police may have in their possession weakens the IVE in the discharge of its functions.

Submission of cases to the Ministerio Público

194. (c.26.5): As regards submission of the data collected by the IVE, Article 33 (e) of the AML Act stipulates that among the functions of the IVE is that when there is evidence of the commission of an offence it must submit the corresponding denuncia to the competent authorities, indicate and supply the evidence that may be in its possession or of which it may have knowledge. Sub-paragraph f) stipulates that it must provide the Ministerio Público with any assistance requested in the analysis of the information it possesses, and assist in the investigation of activities and offences related to money laundering.

195. Some of the prosecutors interviewed during the evaluation expressed their disagreement with the added value of the analysis of the IVE with regard to the work that they perform. Only 3 denuncias had been received from the IVE by the Ministerio Público since the beginning of 2009 and the date of the evaluation visit. The latest of these denuncias had been received only days before the evaluation and related to an STR of 2007. This situation is explained because IVE receives ROS that for its characteristics are not immediately conformed within a denouncement and pass to a monitoring status while new information arises which makes feasible the determination of elements of the Commission of ML crime to prepare a denouncement that may be translated to M.P., at certain times it happens that an STR may pass in monitoring up to two years and until the new relevant information is identified and associated thereof in order for them to transfer all information to MP. However, some prosecutors interviewed stated that the level of communication with the IVE is not adequate. There are no discussions and no contact between the IVE and the Ministerio Público before a denuncia is sent to the money laundering prosecutor. This is due to the fact that the management of the analysis unit of ML topic according to the law, provides that it is only possible to communicate through the Money Laundering attorney´s office; notwithstanding, periodical meetings between IVE and Money Laundering Attorney´s Office have started.

196. The Analysis Unit of the Ministerio Público has 8 auditors and 2 highly qualified economists. They act as advisors to the special prosecutors of the Ministerio Público who handle ML cases. The advice may or may not relate to denuncias from the IVE. In cases of denuncias coming from

the IVE the prosecutors may request assistance from this unit to obtain optimal understanding of the case, especially complex ML cases. The auditors and economists of this Ministerio Público unit broaden the mapping and the information received together with the IVE denuncias, using the information resources already existing in the Ministerio Público itself, and information obtained through foreign mutual legal assistance requests. Sometimes the information or analysis added by the Analysis Unit of the Ministerio Público to the denuncias is not sufficient. Then they must request the IVE to amplify the originally submitted report. However, in the majority of the cases mentioned above the IVE has no knowledge of the amplifications made by the Ministerio Público. No routine meetings are held for collaboration in this regard between the IVE analysts and those of the Ministerio Público's Analysis Unit.

Autonomy

197. (c.26.6): Since the IVE is responsible for supervising the goals of and compliance with ML/FT legislation, it was created within the structure of the SIB, an entity which enjoys functional independence, for the achievement of its objectives, as laid down in the second paragraph of Article 1 of the Financial Supervision Act, Act 18-2002 of the Congress of the Republic and known in the country due to its technical and apolitical nature. In addition, the fact that IVE is created by law and that this same law indicates that it could be allocated adequate resources for compliance with its task grant a special degree of soundness and independence not given to other intendencies of SIB.

198. Within the SIB the IVE in practice possesses the necessary resources and technical autonomy to fulfill its functions of financial intelligence appropriately. This is demonstrated by Article 33 of the AML Act which assigns specifically to the IVE, and not to the Superintendency, the task of examining, analyzing and deciding on the disposal of the information. Therefore although the Intendencia de Verificación Especial is hierarchically subordinated to the Superintendent of Banks for administrative matters, for the control of its performance and the fulfillment of strategic plans, and particularly for the functions of AML/CFT supervision over financial institutions, this subordination does not imply any interference of the Superintendent in the technical decisions of the Guatemala FIU.

199. The budget of the IVE is submitted to the Monetary Board, which is the supreme authority of the Bank of Guatemala and the Superintendency of Banks, for approval after the Intendencia de Verificación Especial sends his requirements to the Board through the Superintendent of Banks. The Board is composed of various ministers and representatives of economic sectors, among others. The resources of the SIB, and consequently of the IVE, do not derive from an national budgetary law but from the taxes that the regulated institutions are required to pay. Should this be insufficient, the law provides that the Central Bank shall make up the difference. Finally, the Intendente de Verificación Especial may be removed by the Superintendent of Banks with prior approval of the Monetary Board. These facts also contribute to the autonomy of the IVE.

Protection of Information

200. (c.26.7): The SIB premises are reasonably well guarded. Within it the IVE occupies an exclusive area, separate from the other offices within the Superintendency. A biometric system (fingerprint code) is used for access to the IVE, and this is supported by a closed-circuit camera, and no other officer of the SIB can enter. Not all employees of the IVE have access to the same databases, but they are assigned access according to their duties.

201. The work area of the financial analysts who handle the largest volume of confidential documents is not physically separated from the rest of the IVE. Nevertheless, the maximum number of files that any single analyst may keep open at any moment is limited to five, and there are written procedures forbidding any physical document to be left in the work area when an officer is absent from the office.

202. The IVE databases and all the electronic information is maintained on its own server which is not part of and is not connected to the network of the rest of the Superintendency. In addition, access to internet, to the Egmont Secure Site (for exchange of information with counterpart units) and to external USB discs is authorized only for some employees according to their duties and their security clearances.

203. Article 63, Law Concerning Banks and Financial Groups, stipulates that except for the obligations and duties laid down by the money laundering legislation, the directors, managers, legal representatives, officials and employees of banks shall not furnish information by any means to any person, individual or legal, public or private, that tends to breach the confidential character of the identity of depositors in the banks, financial institutions and member institutions of financial groups, or information provided by private persons to these institutions. This article makes it possible to obtain information from banking institutions and institutions that are members of financial groups, in the case of investigations under the money laundering legislation. It also helps to protect the confidentiality of the information to which the IVE has access. However to avoid filtrations of information, it would be convenient that STRs be delivered directly to IVE personnel instead of SIB, although this latter in any manner is subject to confidentiality obligations. With the same purpose of avoiding filtrations it should be procured that denouncements transferred by IVE directly arrive to office of the Anti-Money Laundering Fiscal Attorney.

Public reports and membership in Egmont

204. (c.26.8): Sub-paragraph c) of Article 33 of the AML Act stipulates that the functions of the IVE include the development and maintenance of registers and statistics necessary for its work. The IVE has provided statistical data through different presentations, in accordance with the provisions of the second paragraph of Article 36 of the AML Act. Nevertheless it has just begun circulating bulletins (which it is hoped will be quarterly) to educate the financial institutions of the country and the first of these is not yet available on its web page. There is no evidence of the existence of the publication of periodic reports, studies or information on its activities. There is no dossier of IVE publications.

205. As regards the analysis and publication of trends and typologies, the IVE has carried out studies at the national level with information collected from regulated institutions on matters concerning drug trafficking, including drug production, drug related violence and drug trafficking routes. These studies were carried out individually with various regulated institutions in order to assist them in the identification of risks. In addition, the IVE recently took part in a study of regional typologies hosted by the Caribbean Financial Action Task Force (CFATF) which has not yet been published.

206. (c.26.9; 26.10): The IVE obtained membership of the Egmont Group during the plenary meeting of that organization in Sydney, Australia on 23rd July 2003.

207. One of the functions of the IVE is that laid down in sub-paragraph d) of Article 33 of the AML Act, which is the duty to exchange with counterpart institutions in other countries information for the analysis of money laundering cases, subject to prior signature with these institutions of memoranda of understanding or other cooperation agreements. In the memoranda of understanding it is laid down that the information exchanged shall not be shared with other bodies except with the written permission of the intelligence unit or analysis unit which provides it. It is also stipulated that the confidentiality of the information is protected at least to the extent that information on money laundering in the receiving country is protected.

208. As shown by the following table, the IVE has signed memoranda of understanding with 38 countries to date, among them those countries which in the opinion of the evaluators are those with which there is the greatest need for exchange.

Memoranda of understanding signed by the IVE

No.	Country	FIU official name	Signed by counterpart unit	Signed by IVE Guatemala	Money Laundering	Finmancing of Terrorism
	El Salvador	Unidad de Investigación Financiera	8-May-2002	8-May-2002	SI	NO
	Panama	Unidad de Análisis Financiero	16-May-2002	16-May-2002	SI	SI
	Montserrat	Money Laundering Reporting Authority	2-Aug-2002	2-Aug-2002	SI	NO
	Brazil	Conselho de Controle de Atividades Financeiras (COAF)	29-Aug-2002	29-Aug-2002	SI	NO
	Bolivia	Unidad de Investigaciones Financieras (UIF)	25-Sep-2002	25-Sep-2002	SI	NO
	Honduras	Unidad de Información Financiera	16-Oct-2002	16-Oct-2002	SI	NO
	Spain	Servicio Ejecutivo de la Comisión de Prevención de Blanqueo de Capitales e Infracciones Monetarias	15-Nov-2002	20-Nov-2002	SI	NO
	Venezuela	Unidad Nacional de Inteligencia Financiera (UIF)	11-Apr-2003	15-Apr-2003	SI	NO
	Argentina	Unidad de Información Financiera (UIF)	24-Jul-2003	7-Aug-2003	SI	NO
	Barbados	Financial Intelligence Unit	15-Aug-2003	22-Jul-2003	SI	NO
	Costa Rica	Instituto Costarricense sobre Drogas, Unidad de Análisis Financiero	16-Sep-2003	10-Sep-2003	SI	NO
	Bahamas	Financial Intelligence Unit	15-Oct-2003	27-Oct-2003	SI	NO
	Belgium	Financial Intelligence Processing Unit CTIF-CFI	3-Feb-2004	3-Feb-2004	SI	SI
	Korea	Korea Financial Intelligence Unit (KoFIU)	31-Aug-2004	7-Sep-2004	SI	NO
	France	TRACFIN-Traitement du Renseignement et Action Contre les Circuits Financiers Clandestins	13-Oct-2004	25-Aug-2004	SI	SÍ
	Albania	General Directorate for Prevention of Money Laundering	5-Apr-2005	21-Mar-2005	SI	NO
	Haiti	Unidad de Inteligencia Financiera (UCREF)	25-Apr-2005	25-Apr-2005	SI	NO
	Bermuda	Financial Investigation Unit (BPSFIU)	25-Apr-2005	25-Apr-2005	SI	SI
	St. Vincent and Grenadines	Financial Intelligence Unit	25-Apr-2005	25-Apr-2005	SI	SI
	Lebanon	Special Investigation Commission	15-Jun-2005	8-Sep-2005	SI	SI
	Italy	Ufficio Italiano dei Cambi (UIC)	24-Jun-2005	27-Jun-2005	SI	SI
	Chile	Unidad de Análisis Financiero	27-Jun-2005	27-Jun-2005	SI	SI
	México	Unidad de Inteligencia Financiera de la Secretaría de Hacienda y Crédito Público	27-Jun-2005	27-Jun-2005	SI	SI
	Netherlands Antilles	MOT - Meldpunt Ongebruikelijke Transacties Nederlandse Antillen	27-Jun-2005	27-Jun-2005	SI	SI
	Ucrania	State Committee for Financial Monitoring	3-Sep-2005	3-Sep-2005	SI	NO
	Rumania	National Office for the Prevention and Control of Money Laundering	5-Oct-2005	30-Sep-2005	SI	SI

Bulgaria	Financial Intelligence Directorate State Agency for National Security	6-Oct-2005	10-Oct-2005	SI	SI
Aruba	Unusual Transactions Reporting Office (Meldpunt Ongebruikelijke Transacties)	17-Jan-2006	30-Nov-2005	SI	SI
United States of America	Financial Crimes Enforcement Network (FinCEN)	9-Jun-2006	9-Jun-2006	SI	SI
Canada	FINTRAC (Financial Transactions and Reports Analysis Centre of Canada)	14-Jun-2006	9-Jun-2006	SI	SI
Caayman Is.	Financial Reporting Authority (CAYFIN)	24-Oct-2006	24-Oct-2006	SI	SI
Doominican Republic	Unidad de Análisis Financiero	25-Oct-2006	25-Oct-2006	SI	SI
Paraguay	UAF (Unidad de Análisis Financiero)	31-May-2007	25-May-2007	SI	SI
AnguiLla	Money Laundering Reporting Authority	20-Nov-2008	20-Nov-2008	SI	SI
St. Kitts and Nevis	Financial Intelligence Unit (FIU)	20-Nov-2008	20-Nov-2008	SI	SI
Peru	Unidad de Inteligencia Financiera del Perú	12-Dic-2008	20-Ene-2009	SI	SI

209. None of the countries which exchange intelligence with Guatemala, when questioned regarding their experience with that country, stated to the evaluation team that they had had any serious problems when they made information requests to the IVE. One of them expressed its disagreement with the lack of access of the IVE to police records of persons. The IVE, for its part, carried out a "User Satisfaction Survey" in 2008 addressed to Argentina, Colombia, Mexico, Venezuela, United States and Panama (the last of these did not respond to the survey). They gave their opinions on the response time for requests; the formats of the documents despatched; the organization of the information and its reliability, quality and usefulness; the attention received; and the general level of satisfaction. 50% of the respondents declared that these were "very satisfactory", 40% "satisfactory", 5% "unsatisfactory" and 2% "not applicable". The responses received contained positive comments on the supporting documents received from the IVE, but some also expressed dissatisfaction with the level of detail and the formats in which the information was presented.

Recommendations

210. Make greater efforts to convince the Ministerio Público of the advantages of hiring a legal advisor to increase cooperation and effectiveness of the assistance expected to be given to the anti-money laundering *Fiscalía*.

211. Explore possible manners to reduce efforts dedicated to gather information for MP and work more in coordination with MP in the investigation of complex cases.

212. Set up electronic communication of STRs from the regulated entities to the IVE, and the cases which the IVE submits to the Ministerio Público.

213. Sign memoranda of understanding with more public institutions, including the police, in order to improve prompt and secure access to information that may support IVE's investigations.

214. Procure more direct communication between IVE and MP to minimize the number of individuals that have access to denouncements that IVE transfers to MP.

Compliance with Recommendation 26

	Rating	Summary of factors related to S2.5 underlying the overall Rating
R.26	**LC**	The IVE does not have prompt access to police information The IVE does not receive prompt responses to requests for information which it makes to other bodies Considerable waste of time and resources in proceeding with Mo consultations to MP which may be assigned to strengthen the analysis of cases and the coordination with own MP for investigation of complex cases The Information Analysis Unit of the IVE has not yet published enough periodic reports with statistics, typologies and trends, and information on the activities of the IVE

Law Enforcement Authorities, Ministerio Público and other competent authorities (R 27 &28) – framework for investigation and prosecution of offences and for confiscation and freezing

Description and Analysis

215. Summary: The Ministerio Público (MP) receives denuncias from the IVE, other State bodies, and from citizens, and then proceeds to the relevant investigation with the support of the Criminal Investigation Division, the Analysis Unit of the Ministerio Público, and the National Civil Police. Undercover operations and controlled deliveries are special investigative measures which exist in Guatemalan legislation but which have not yet been put into effect, while telephone tapping had just begun to be used two months before the evaluation. The MP cannot lift bank secrecy without a court order, and experience indicates that it is not possible to preserve confidentiality in the investigation after the judge has been informed. Only the special ML *Fiscalía* may obtain this information through the IVE. To alleviate the problem the other specialized Fiscalías open at the same time an investigation for the predicate offence and another for laundering, which enables them to request the anti-money laundering prosecutor to ask the IVE for information. In addition, the *fuero* (immunity) enjoyed by mayors has become an obstacle for the MP (because the courts that decide on whether an investigation may proceed are subject to too many political pressures). These deficiencies, and perhaps others, may be contributing factors to the failure to prosecute high impact ML cases and/or large sums of money.

Designated Authorities and their Powers:

216. (c.27.1) In Guatemala the Ministerio Público pursues the money laundering investigation on the basis of Article 251 of the Constitution of the Republic of Guatemala, as well as the Organic Law of the Ministerio Público, Act 90-40, which in its first paragraph states that "the Ministerio Público is an institution with autonomous functions, responsible for criminal prosecutions, and directs the investigation of public offences; in addition to ensuring the strict observance of the laws of the nation".

217. In addition, in accordance with *Executive order* No. 2-2002 the Board of Directors of the Ministerio Público, on the basis of the above and of the provisions of Article 18 (3) of the Organic Law of the Ministerio Público (Act 90-94), orders the creation of the Anti-Money Laundering *Fiscalía*, to be responsible for all proceedings against crimes and actions relating to laundering of money or other assets, as referred to in Act 67-2001. Within the Ministerio Público the Anti-Money Laundering *Fiscalía* is the specialized unit responsible for ML/FT cases. However, the Corruption and Organized Crime/Banks *Fiscalías* also have the power to take cognizance of and investigate money laundering when it arises out of the investigation of the predicate offence.

218. Most of STRs sent by the regulated institutions related to corruption and it is estimated that 50% of the ML denuncias received by the Anti-Money Laundering *Fiscalía* also relate to corruption. In

2008 between 4 and 4.5 million dollars were confiscated and more than 1 million euros for money laundering offences.

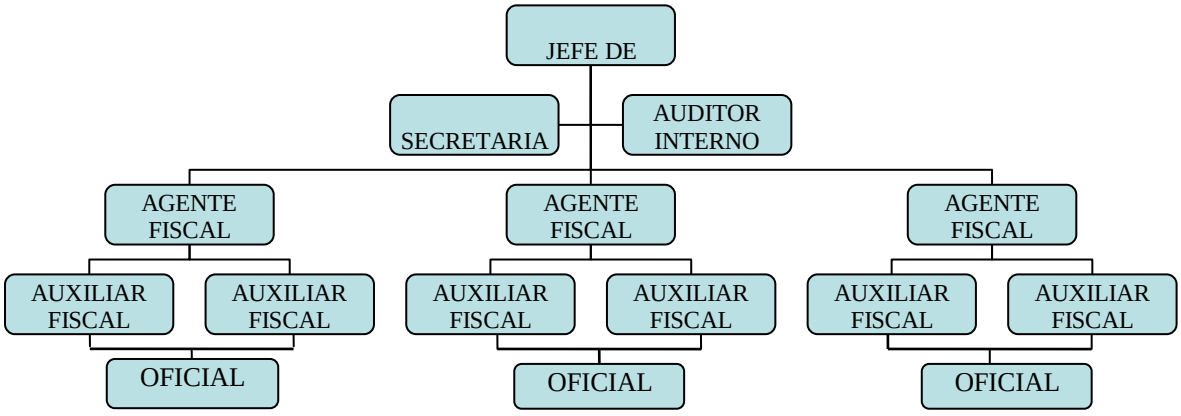
219. The Ministerio Público has a specific department entitled Criminal Investigation Directorate (DICRI) created by Article 40 of the Organic Law of the Ministerio Público. The DICRI agents are used for collecting evidence on crime scenes. It should be added that the MP also has an Analysis Unit which provides assistance in economic cases to all the special *Fiscalías* seized of ML and FT cases. This Ministerio has the operational support of the National Civil Police, in accordance with Article 10a of the Civil National Police Act, Act No.11-97, and Article 309 of the Code of Criminal Procedure. However this body does not participate in investigation and analysis of ML/FT cases because of its lack of knowledge and training in that sphere.

220. For ML and FT investigations the Ministerio Público can also rely on the support of the Intendencia de Verificación Especial (IVE) (Article 33 f) of the AML Act), through which it may have access to any information in the possession of the regulated entities, even information protected by bank secrecy, and without the need for any court order (Article 28). For all other investigations, not related to ML or FT the MP, may not obtain direct access to information protected by bank secrecy (Article 24 of the Constitution). However the MP does not have enough auxiliary staff for investigations that might make full use of the product of the IVE.

Structure and Resources of the investigative authorities

221. The Anti-Money Laundering *Fiscalía* is structured as follows: one Anti-Money Laundering Prosecutor, one Office Manager, three *Agentes Fiscales*, who have two Assistant Prosecutors each, and an Official for each two Assistant Prosecutors (see the following Organization Chart). The DICRI has approximately 200 staff who provide support to the entire Ministerio Público. But the Analysis Unit of the MP has 8 auditors and 2 economists to support the prosecutors in complex financial cases. There are deficiencies in the capacity of the judicial branch and the police in the AML/CFT sphere.

ORGANIZATION CHART OF THE ANTI-MONEY LAUNDERING FISCALIA



222. Within the Ministerio Público there is also a unit specialising in the investigation of criminal organizations involved in drug trafficking, and also money laundering and tax crime, entitled UNILAT. This was created by *Executive order Gubernativo* No. 40-2006. Article 3 of this *Executive order* confers on UNILAT the following duties: "To carry out investigation and criminal prosecution of certain high impact cases related to drug trafficking and/or money laundering and tax offences, when the latter have a bearing upon the criminal activity of organized criminal groups". Its organizational structure consists of: an *Agente Fiscal* in charge of the Unit; one *Agente Fiscal;* two Assistant Prosecutors; and one secretary. For this work, the UNILAT may request support and advice from experts in its field of competence. For this purpose the IVE has

assigned two analysts to meet weekly with the staff of the UNILAT and Tax Administration Service (SAT). In case of need, UNILAT makes requests for expansion or analysis of cases opened, which are processed in the offices of the IVE and then responded to as required. Owing to the secrecy of this group no statistics on pending cases, confiscations or verdicts resulting from the work of this unit could be obtained during the evaluation.

223. In addition, under an agreement between the United Nations and the Guatemala government, there is an International Commission against Impunity (CICIG) with powers to assist the Ministerio Público in high impact cases which are considered to derive from the activities of illegal security bodies and clandestine groups, as well as illegal security activities in which impartiality may be compromised. As part of its mandate, the CICIG may investigate ML cases.

224. The General Civil Intelligence Directorate (DIGISI) was recently created by Executive order Gubernativo 203-2008 to "advise the Ministerio de Gobernación (Article 2) in decision making and the formulation of policies and plans conducive to prevention, control, and suppression of organized crime and common crime". It has a strong organizational structure which includes: the Supreme Directorate, Operational sections, Administrative sections, Technical Assistance sections; and control bodies. Owing to the nature of the DIGISI, whose activities and procedures are considered matters of national security, and which is an institution that complies with the confidentiality laws, it was not possible to obtain figures, nor a precise number of its staff, during the visit to Guatemala. Nevertheless, the team was informed that the organization does not yet have enough experienced staff to collaborate effectively with other intelligence agencies and in ML/FT investigations.

225. The Judicial branch is responsible for judging and enforcing the result of judgements in accordance with Article 203 of the Constitution of the Republic. It achieves this through *jueces de paz* (justices of the peace), *jueces de primera instancia* (lower court judges), *tribunales de sentencia* (courts holding oral hearings), the Appeal Court, the Supreme Court of Justice and the *jueces de ejecución* (judges to oversee correct enforcement of decisions) (Article 43 of the Code of Criminal Procedure). The following table provided by the Ministerio Público shows that the Anti-Money Laundering Fiscalía obtained only 5 ML verdicts in 2008 and 4 in 2007. The Judicial branch did not participate in any training courses of the IVE or any other national agency directly involved with AML/CFT. Its judges only took part in events held jointly with the IVE and the Ministerio Público.

226. Furthermore, the training and resources of the police and other auxiliary bodies that are meant to investigate financial crime are minimal. Many of the police officers and other agents have only school leaving certificates, without any technical training, and this poses a risk for the investigations.

Money laundering convictions:	**2005**	**2006**	**2007**	**2008**	**2009**
ML Fiscalía	0	4	4	7	11
Drug Fiscalía	0	0	0	0	0
Corruption Fiscalía	1	1	2	0	0
Organized Crime Fiscalía	0	0	1	0	0
Total	**1**	**5**	**7**	**7**	**11**

227. The remit of the Ministerio Público gives it the right to act independently in the exercise of the functions conferred on it by law, on its own initiative and without subordination to any State body or authority whatsoever, except as laid down in its Organic Law (Art. 1, Organic Law of the Ministerio Público). Consequently, should circumstances arise in the course of an investigation to require it, the fiscal in charge could take the decision to postpone or suspend the arrest of any suspect or of provisional measures with a view to obtaining more information or achieving an

effective result in the investigation, which might be for ML/FT; always subject to the laws of the country.

228. In addition, the Anti-Organized Crime law, Act 21-2006, establishes special measures for investigating organized criminal groups and crimes of serious social impact. Article 90 of this Act also embodies the concept of "collaborator" and "*derecho premial*" (premial law, or law of recompense), under which the fiscal may give the benefits set out in the law to any person who has participated in an offence, whether or not he is a member of an organized criminal group, and who assists or collaborates effectively in the investigation and prosecution of organized criminal group members. Among the permitted benefits are: a) the criterion of opportunity or conditional suspension of prosecution; b) during the public oral hearing and up to the moment of the handing down of the verdict, stay of proceedings for accomplices, or reduction of the sentence by up to two thirds at the moment of sentence, for perpetrators; and c) conditional liberty or controlled liberty for a person serving a sentence. For the MP it also includes the following provision:

"*Article 17: Scope of the investigation. In proceedings concerning offences referred to in this Act, the investigation may also extend to discovery of the structures, forms of operation and fields of activity of organized criminal groups".*

229. From the above it may be seen that in Guatemala there are positive legislative provisions in force to enable the Ministerio Público, as competent criminal investigation authority in ML and FT cases, not only to postpone or suspend the arrest of suspects and/or of provisional measures, as the circumstances of the case may require, but also to use special investigative techniques and apply premial law to suspects willing to collaborate effectively in investigation and prosecution of organized crime and high-impact offences, including ML/FT cases, in accordance with the abovementioned Act.

Additional elements:

230. (C.27.3, c27.4): Title III of the Law against Organized Crime provides for Special Investigative Measures. These are: Undercover Operations (Articles 21 to 34); Controlled Delivery (Articles 35 to 47); tapping of telephones and other means of communication (articles 48 to 71). However, no agency in Guatemala has up to the present time, made use of the first two of these methods, and telephone tapping began to be implemented approximately two months before the date of this evaluation. The lack of implementation of such Special Investigation Methods may be a contributing factor for the investigation of ML high impact cases and/or involving high amounts of money is not sufficiently effective.

231. (c.27.5, c.27.6): During the evaluation it was not possible to identify any permanent or temporary group specializing in the investigation of criminal assets, nor the existence of joint investigations with other competent authorities in other countries. Nor is there any coordination among the law enforcement bodies, the IVE and other competent authorities for review of methods, techniques and trends in ML and FT. What could be determined is that the Ministerio Público has made a total of 111 requests for legal assistance to other countries over the last four years, and has responded to a total of 9 requests from abroad.

232. (c.28.1): The Constitution of Guatemala stipulates that searches shall be carried out always on the written order of a competent judge, and in its Article 27 on the "Inviolability of domicile" it states that "no one may enter the dwelling of another without permission of the occupant, except by written order of the competent judge in which the reason for the proceeding is given […]" Likewise Article 24 on "Inviolability of correspondence, documents and books" states that the correspondence, documents and books may only be searched by the order of a competent judge and with the due legal formalities […] In addition, the AML/CFT Act contains provisions relating to provisional measures and confiscation of goods, in ML/FT matters. In addition, the Organized Crime Act, Title IV, provides for provisional measures , and the confiscation of goods is covered

in Article 89. Finally, Article 60 of the Criminal Code refers to confiscation. The following table shows that there has been a constant increase in charges, evidence and searches for ML offences between 2006 and 2008.

CHARGES AND SEARCHES

	2005	2006	2007	2008	2009
Charges laid ML Fiscalía	4	5	12	17	15
Searches, ML Fiscalía	0	0	1	2	1
Charges laid ML Drug Fiscalía	0	0	0	0	1
Searches,, Drug Fiscalía	0	0	0	0	0
Charges laid Corruption Fiscalía	1	1		2	5
Searches, Corruption Fiscalía	7	0	6	42	9
Charges laid , Organized Crime Fiscalía	0	0	1	0	7
Searches, , Organized Crime Fiscalía	0	0	3	1	1

233. (c.28.2): The Ministerio Público has the power to take witness statements, during the preparatory phase of a case, and during the investigation of the case, under Articles 1, 2 and 49 of the Organic Law of the Ministerio Público. Within the trial the taking of witness statements is based mainly on the provisions of the Code of Criminal Procedure, Articles 107-110 and 207-224. In various discussions with MP prosecutors and analysts emphasis was frequently laid on the value of testimony in a court by the person who drafts an STR and sends it to the IVE (the Compliance Officer of regulated institution) and of those who analyze it before it is incorporated in a denuncia to be sent to the Money Laundering Fiscalía of the IVE. The statements of these persons, it was maintained, gives great credibility to a case because they are the ones who "were familiar with the STRs at first hand". On the other hand, the compliance officers of financial institutions who were interviewed said they feared for their personal safety if they were identified publicly by having to appear in court and show their faces to the subjects of the STRs. The IVE stated that this was a question of roles within the systems. That is to say, it was said that the role of a compliance officer should be only that of reporting suspicious transactions, and that of the analyst should be to assist in the analysis and investigation of cases, not to give evidence in oral public judicial hearings. Regarding the credibility of witnesses, after looking further into the matter, it became evident that what may have greater importance for a judge during a hearing would be the possibility of an expert witness to testify to the facts, and at the same time clearly illustrate the technical complexities of a given ML/FT case. The MP, the IVE and representatives of the banks all made reference to a case in which the testimony of a financial expert in an ML case resulted in a conviction, due to which IVE has foreseen to hire the services of a professional as mentioned before in this report, who shall be entrusted with the submittal of expert reports that support management of the public Ministry upon submitting evidence to the Courts of the country in cae of ML and FT.

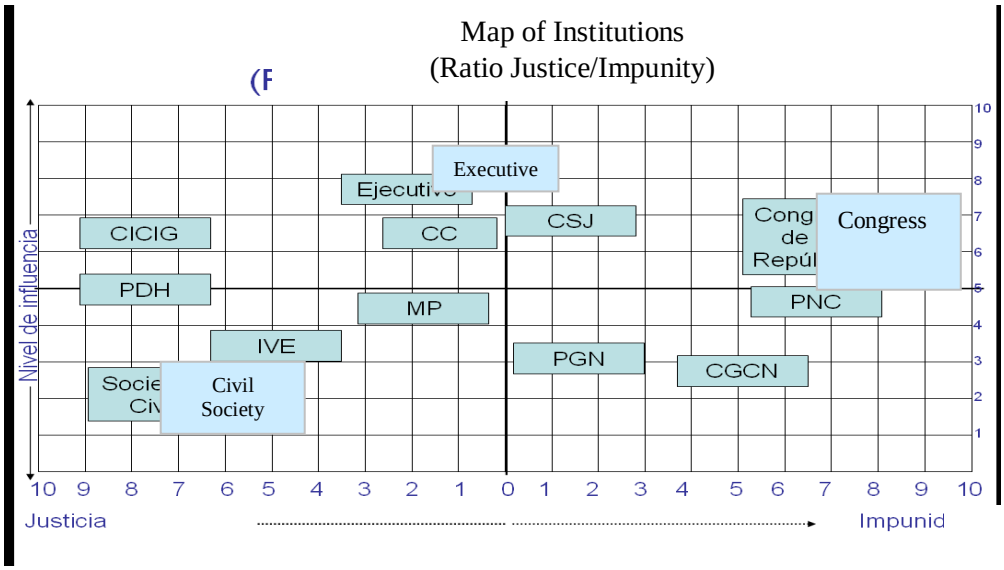
234. Concrete information was obtained concerning that in the past 5 years no compliance officer analyst of IVE has been summoned to declare on trial. The los probability that this situation arises added to the incorporation of the expert considerably reduce impact in the quality of the work of compliance officers and analysts. As stated in Section 2.3.1, everything relating to cautionary procedures and orders governed by the AML Act extends to cases of financing of terrorism, by express provision in Article 12 of the CFT Act.

Problems of Efficiency of the Judicial branch and the Law Enforcement Agencies:

235. The World Bank Institute (WBI) has developed an index to measure the quality of rule of law enjoyed by the citizens of a country. In this index, a country with a rating of 2.0 is a country in which the rule of law is fully respected. At the other end of the scale a country with a rating of -2.0 is a country in which total anarchy reigns. To Guatemala the WBI awards a rating of -0.64 for

respect of the rule of law. This means that the trend is more towards anarchy than towards full respect for the law. The institutional weakness of the country is also a high risk factor. It relates to weak law enforcement and absence of certainty of punishment.

236. In a recent study a panel of experts was asked to develop a map of institutions in which they were asked to a) identify the key institutions in the fight for justice and against impunity, b) determine whether this work results in more justice or more impunity and c. determine its level of influence. The results are as follows:



237. As mentioned above, at the time of this evaluation, the IVE was planning to hire a specialist with experience of the Ministerio Público to act as a liaison between the IVE and the Ministerio Público's Anti-Money Laundering Fiscalía, mainly in order that this expert might help in trials of complex ML and FT cases. This measure in addition that it could be a significant contribution both as regards preparation and presentation of the denuncia and in strengthening confidence of compliance officers so that they continue reporting at the same level and their STRs continue to have the same or better quality when they are submitted to the IVE also will contribute to offer Prosecutors and Judges more clarity in the understanding of complex cases of ML.

238. As regards cases arising out of denuncias from the IVE, the prosecutors can request assistance from that Unit of Analysts own of ML to obtain an optimal understanding of the case, particularly complex ML cases. The auditors and economists of the abovementioned unit of the Ministerio Público broaden the mapping and information received together with the denuncias from the IVE, using their own information resources already existing in the Ministerio Público, and information obtained through requests for foreign legal assistance. On some occasions the information or analysis added by the MP Analysis Unit to denuncias is insufficient. Then they have to request the IVE to amplify the original submission. However, in the majority of above mentioned cases the IVE has no knowledge of the supplementary material added by the MP.

Recommendations

239. **R.27** Provide more active training for members of the judiciary, the Ministerio Público and the DIGICI in AML/CFT matters.

240. Strengthen the Police and other agencies in AML/CFT subjects.

241. Set up permanent or temporary specialized ML/CFT investigation groups in order to carry out joint investigations with appropriate competent authorities of other countries.

242. Continue with the implementation of special investigative measures in ML/FT cases, such as undercover operations, controlled delivery and wire tapping in order to achieve confiscation of high amounts of money, and the capture and prosecution of the most important figures behind organized crime.

243. Review, in a spirit of collaboration, the implementation of investigative methods used by the law enforcement bodies in ML/FT cases in order to share and disseminate the resulting findings or studies with other actors in the AML/CFT system.

244. Explore measures to prevent information leaks when judges are informed, and ensure that mayors' immunity is not an obstacle in the investigation of ML/TF cases.

Compliance with Recommendations 27 and 28

	Rating	Summary of factors relating to s.2.6 underlying the overall Rating
R.27	**PC**	Efficiency problem: criminal actions against money launderers are relatively few and without sufficient emphasis on leaders of criminal or corrupt organizations. The legal authorities responsible for the crime investigations specially national civil police do not have technical or human capacities sufficiently to support the Public Ministry in ML/CFT investigations. Past experiences indicate that it is not possible to preserve confidentiality in the investigation of ML/TF cases after the judge has been informed. The Immunity privilege of mayors can be, in some cases, an obstacle for the MP in the investigation of ML/TF cases
R.28	**C**	

Cross Border Declaration (SR.IX)

Description and Analysis

245. Summary: In Guatemala there is a form entitled Sworn Customs Import or Export Declaration, which was designed jointly by the Superintendency of Internal Revenue (SAT) and the Intendencia de Verificación Especial (IVE) of the Superintendency of Banks (SIB). It is assumed that these forms must be made available to the public by the Superintendency of Internal Revenue (SAT) at frontier crossing posts. The information obtained from these forms is stored in an IVE database. However, control at terrestrial frontier posts is relaxed.

246. (c.IX.1) Article 25 of the AML Act adequately covers the requirement for cross border declaration:

> *"Declaration. All persons, natural or legal, national or foreign, who transport into or out of the Republic, alone or through intermediaries, money in cash or documentary form, to an amount greater than ten thousand United States dollars or its equivalent in national currency, must report it at the exit or entry point of the country on the forms designed for the purpose by the Intendencia de Verificación Especial."*

247. The first paragraph of Article 8 of the CFT Act provides criminal penalties as follows:

"Transfer of money: The offence of transfer of money is committed by anyone who, omitting to make the relevant sworn declaration at the port of exit from or entry to the country on the forms established by the AML Act, either alone or through an intermediary, transports into or out of the Republic money in cash or negotiable instruments for an amount greater than ten thousand United States dollars or its equivalent in national currency"

248. For these purposes at the Aurora International Airport the airline or travel agency is responsible for providing the passenger with the sworn declaration for exit from Guatemala; the representative of the Internal Revenue Service (SAT) in the airport x-ray security area is responsible for collecting the form duly completed, after the check by the police. Then SAT classifies the forms, before sending them to the operations section of the Customs, which is responsible for sending to the IVE those which are relevant. On entry into the country the declaration form is received by a SAT agent. At that moment the agent determines whether the baggage of the traveller should be searched. If transport of money is detected the Ministerio Público is immediately contacted.

249. It was not possible to confirm that the same procedure is in operation on the terrestrial crossing points and the ports. The majority of information obtained regarding the frontier crossing points and the ports from interviews with SAT officials related to the control of freight. This indicates a deficiency in the detection of physical cross border transport of cash or negotiable instruments which are connected to money laundering and terrorist financing.

250. Apparently, the forms filled out by travelers who carry out more than $10,000 is only being used at the airports, and have not been put into effective operation on land or coastal frontiers, which are also points vulnerable for the transport of cash. It is considered that the authorities should take measures to correct this since Article 37 of the regulations of the AML Act also states:

"Declaration. The sworn declaration that must be made, on the basis of Article 25 of the Act, by a person transporting cash or negotiable instruments equal to or in excess of ten thousand United States dollars (US$10,000) or the equivalent in national currency out of or into the Republic, shall be made on the form designed for the purpose by the Superintendency of Banks, through the Intendencia. These forms shall be made available to the public by the Superintendency of Internal Revenue (SAT), at frontier points."

251. For these purposes, the IVE, jointly with the Superintendency of Internal Revenue, designed a form entitled Guatemala Entry or Exit Customs Declaration. In addition, at the time of this evaluation the group of experts was told of single sworn declaration for the whole of Central America, the design and implementation of which is being studied by the governments of the region.

252. (C.IX.2, IX.3, IX.4) The customs authorities have power to demand this information from travellers and to impound the money when necessary, as stipulated in Article 25 of the AML Act:

"Declaration […] The competent authority may verify the information provided on the sworn declaration contained on the form referred to in the previous paragraph. In the case of any omission or falsity in the declaration, the money or related documents shall be impounded and placed at the disposal of the authorities for purposes of the criminal prosecution."

253. The third paragraph of Article 37 of the AML Act states:

Article 37. Declaration(…)When money in cash or documentary form is impounded, it must be handed over immediately to the Ministerio Público, which must enlist the help of the National Civil Police, for the purpose of safeguarding it. At the time such money or documents are handed over, a certificate must be drawn up attesting to the handover(…).

254. Below are the annual figures for totals of money or property seized at airports or other locations within the national territory connected to ML-FT investigations, from 2005 to the present.

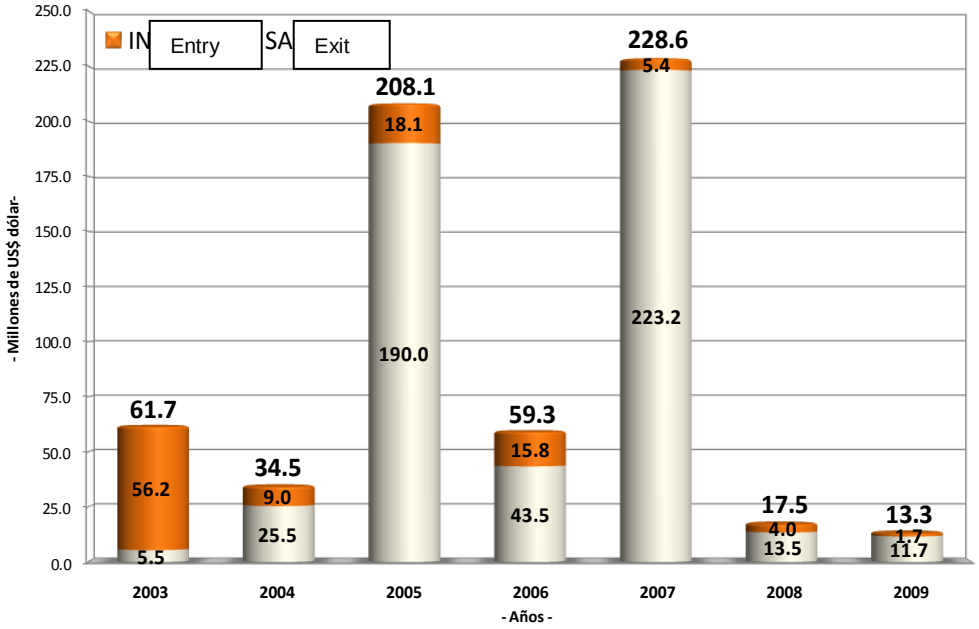
Money impounded at airports and other locations related to ML-FT investigations

	2005	2006	2007	2008	2009
Euros	16,990	0	17,070	2,300	10
Dollars	454,238	189,681	1,553,845	4,383,251	2,036,256
Quetzals	210	246,400	1,187,385	630,435	276,977
Colombian Pesos	0	0	522,500	119,000	24,500
Mexican Pesos	46,000	0	0	10,000	229,380
Costa Rican Colons	0	0	0	55,000	0

255. (C.IX.4) In addition, according to Article 37 of the Regulations of the AML Act *"The SAT shall prepare monthly reports of declarations referred to in the previous paragraph in which it shall include the date of entry or exit, the name of the person making the declaration and the amount declared. This report shall be submitted to the Superintendency of Banks through the Intendencia within one month of the date to which it refers".*

256. (c.IX.5) The Internal Revenue Service prepares a monthly report of the declarations referred to in the previous paragraph, including the date of entry or exit, the name of the person making the declaration and the amount declared. It then submits this report to the IVE. The IVE keeps the information on a database for use in strategic analysis and investigation of cases and at the disposal of the Ministerio Público.

D



(c.IX.6, c.IX.7): The Customs Intendencia of SAT maintains a certain degree of coordination with the Immigration Service and the Police. The Police, through the Ministerio de Gobernación check for explosives and trade in human beings at the frontiers, and have received CFT training. SAT, for its part, contacts the Ministerio Público when it detects transport of money. It was not possible to confirm whether there were working groups or coordination mechanisms among SAT, the Ministerio de Gobernación and the IVE to detect ML/FT. SAT signed a Customs Cooperation Convention with El Salvador concerning the transit of persons, goods and cash in March 2009, and at the present time is negotiating a similar one with Mexico. However, there are no available figures regarding cooperation that has taken place between El Salvador and Guatemala up to the present time.

Sanctions:

257. (c.IX.8, IX.9): Criminal sanctions may be imposed for violation of this obligation (Article 26 of the AML Act regarding money transport, quoted above), which would cover situations in which the requirement to declare. Although the penalty in these cases would be only one to three years imprisonment, this would not exclude a parallel investigation for ML or FT itself, and this would meet the proportionality requirement.

258. However, there are no administrative sanctions of any type. This regime is therefore insufficient since criminal penalties are not applicable to persons who involuntarily fail to make the declaration, nor those who intentionally omit to do so (for example, for fear of being mugged) but are able to show in court that the money is of lawful origin, a situation that has in fact occurred. (IX.10). The imposition of the relevant penalties for commission of this offence of money transport is without prejudice to provisional measures that be applied in the case of where there is omission to declare of false declaration. On conviction for money transporting the penalty is one to three years' imprisonment.

259. (c.IX.11): In Guatemala there is no mechanism to enable the authorities to identify, nor any law requiring them to check and impound, money at the frontier which could be linked to persons listed by the UN Security Council Resolutions.

260. (c.IX.12): Under Article 3 of the Organic Law of the Superintendency of Internal Revenue, Guatemala may cooperate, depending on international treaties and conventions which SAT may have concluded in the field, with other countries. However, there is no efficient and established policy for unusual cross border movement of gold, metals or precious stones. The Customs agents do not search the jewelers known to them, unless their goods cease to be jewellery and watches. For example, according to the authorities, only a jeweler entering the country with merchandise other than jewellery would arouse the suspicion of the authorities. A subjective approach of this kind to customs control could make the country vulnerable to money laundering by means of the trade in gold, precious metals or precious stones.

261. (c.IX.13): The IVE has a database of the information contained in the sworn customs entry and exit forms. This information is safeguarded by means of analysis and consultation passwords. It is also used in investigations by the competent authorities. The hard copies are also safeguarded in the general filing system of the IVE (for analysis of the security measures of the IVE please refer to Section 2.5 of this report)

262. *(c.IX.14, c.IX.15) [These criteria are not evaluated by CFATF during the Third Round of mutual evaluations. In any case they are not applicable to the case of Guatemala, since there is no supranational regulation there governing cross-border transport of cash.*

Additional criteria:

263. (c. IX.16, IX.16). The country has given no consideration to implementing the measures suggested in the document on best practices for S.R. IX. However, as indicated above, Guatemala does store the information from these declarations in a database managed by the IVE, and used by the MP and other competent authorities.

Recommendations

264. Set administrative penalties for non-compliance with frontier cash declaration requirements.

265. Require customs authorities to check and impound money at the frontiers that might relate to persons on the United Nations Security Council resolutions. Set up an effective mechanism to put this requirement into effect.

266. Make Sworn Declaration Forms available to all persons entering or leaving the country not only by air, but by land or sea, and strengthen verification capacity on land frontiers.

267. Set and implement strict controls on unusual cross-border movement of gold, metals and precious stones, and procedures to inform the relevant customs authorities of other countries when unusual movement of this type of merchandise is detected.

268. Create clearly defined mechanisms for cooperation between the customs, immigration, police authorities, the Ministerio Público and the IVE.

Compliance with SR IX

	Rating	Summary of factors related to s.2.7 underlying the overall rating
RE.IX	**PC**	There is no effective control of movement of persons and cash at frontiers and seaports. There is no effective cooperation between the competent ALM/CFT authorities and the Internal Revenue and Customs services. There is no established and effective policy for control of unusual cross-border movement of gold, precious metals or precious stones. There is no mechanism in Guatemala to enable authorities to identify, nor any regulation requiring them to check and impound, money at the frontiers that might be related to persons listed in the United Nations Security Council resolutions. No administrative sanctions for the violation of the obligation to declare

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer Due Diligence and Record Keeping

Risk of Money Laundering or Financing of Terrorism

269. Guatemalan legislation and regulations do not provide for a reduction or gradation of controls according to ML/FT risk. It was noted, in this regard, that the provisions do not permit certain requirements to be bypassed for low-risk cases, and that, for example the same rules and forms apply to opening a personal customer account and a payroll account.

270. Despite the above, Guatemala took a step forward in risk-based approaches with the issuance in April 2009 (shortly before the visit) of the Guidelines for ML/FT Risk Management, which includes useful directions for institutions on how to identify and manage risk, and emphasizes that the greater the risk, the greater the controls that must be applied.

271. These Guidelines allows individual institutions adequate discretion to identify its risks within certain minimal parameters, but it would be convenient for it to include a mechanism to modify some controls in proven low risk cases (for example the frequency of updating of CDD for dormant accounts). The Guidelines apply solely to banks, finance companies and offshore entities. IVE informed evaluating team that the decision was adopted to of starting the implementation of this Guide with such entities, based on the Country Risk Study accomplished before the visit, by virtue of which it was determined that this group covers 92.8% of the Guatemala Financial System, as observed in the following chart and likewise that in a following phase this Guideline shall be extended to other enforced institutions, or at least to other relevant financial activities.

PERSONAS OBLIGADAS	SUCURSALES			ACTIVOS		
	Central	Agencias	Total	Monto	Estructura	Acumulado
BAJO SUPERVISIÓN DE LA SIB	**120**	**2,516**	**2,636**	**228,729.8**	**96.5%**	
Bancos	20	2,516	2,536	193,054.1	81.5%	81.5%
Entidades Off-Shore	8	-	8	21,095.2	8.9%	90.4%
Sociedades Financieras	16	-	16	5,707.9	2.4%	92.8%
Otras[1/]	17	-	17	4,235.0	1.8%	94.6%
Compañías de Seguros	17	-	17	3,878.7	1.6%	96.2%
Compañías de Fianzas	11	-	11	493.8	0.2%	96.4%
Compañías Almacenadoras	15	-	15	197.8	0.1%	96.5%
Casas de Bolsa	15	-	15	57.4	0.0%	96.5%
Casas de Cambio	1	-	1	9.9	0.0%	96.5%
RESTO DE INSTITUCIONES	**273**	**0**	**273**	**8,217.0**	**3.5%**	
Cooperativas	251	-	251	5,352.7	2.3%	2.3%
Operadores de Tarjeta de Credito	2	-	2	1,376.7	0.6%	2.8%
Arrendadadoras	5	-	5	1,002.7	0.4%	3.3%
Empresas de Transferencias de Fondos	13	-	13	438.5	0.2%	3.4%
Empresas de Canje de Cheques	1	-	1	32.8	0.0%	3.5%
Factoraje	1	-	1	13.5	0.0%	3.5%
TOTAL	**393**	**2,516**	**2,909**	**236,946.8**	**100.0%**	**100.0%**

272. In practice, some institutions stressed that they had been applying an ML/FT risk based approach even before the Guidelines were issued, which shows a high level of commitment to AML/CFT work. Perhaps as a result of this, a significant number of STRs from the banking sector are based on suspicion of possible acts of corruption, which according to the authorities in one of the main sources of illicit money, along with the drug traffic, smuggling, white individuals trafficking and kidnapping.

273. The SIB is putting into effect a risk-based approach for all its areas of supervision, and the IVE, which is responsible for AML/CFT supervision, has developed with the support of the International Monetary Fund a Risk Based Supervision Methodology. This model has been used in nine banking entities before the visit of the mutual evaluation and is projected to be continued with the application thereof in all banks of the country during 2009 for then to follow-up improvement processes of each entity under supervision.

274. There are persons that are not included as being ML/FT obligated under Guatemalan law, and are not regulated by the IVE for this purpose, although they are considered by FAFT as financial institutions to which 40 recommendations must aply such is the case of insurance intermediaries (agents and brokers). These omissions may represent a ML/FT risk for the country.

Customer Due Diligence, including enhanced and reduced measures (R.5 to 8)

Description and Analysis

Recommendation 5: Customer Due Diligence (CDD)

Anonymous accounts (c.5.1):

275. In Guatemala anonymous accounts and accounts in fictitious names are prohibited, in accordance with the FATF guidelines. Article 20 of the AML Act stipulates that *"in no case may the regulated institutions maintain anonymous accounts or accounts under fictitious or incorrect names"*. In addition, numbered accounts were prohibited or have been prohibited since the 23rd May 2003 by Resolution JM-68-2003 of the Monetary Board. The authorities and financial institutions interviewed asserted that this kind of account does not exist.

CDD and verification of information (c.5.2, c.5.3, 5.4):

276. Financial institutions are urged to apply CDD measures when regular or occasional business relations are established, regardless of the amounts involved. Article 21 of the AML Act states that *"regulated institutions must keep a special register on the forms which the Intendencia de Verificación Especial will design of individual and legal persons with whom they establish business relations or relations in the normal or apparent conduct of their business, whether these customers be occasional or regular; and of transactions with them, particularly as regards the opening of new accounts…"*. Institutions which sent transfers stated that when business relations are opened, they obtain data on the customer through forms developed by the IVE and the evaluation found that in practice these forms contained minimum information required by the legislation. The Banking Association criticizes the fact that customer identification form is so detailed for any customer, including low risk customers, and hopes that with the new "Risk Management Guidelines" CDD may be simplified in certain cases. Some institutions indicated that they do not record their occasional customers, doing so only when they become frequent customers. They also said that the do not have the form for opening of business, but collect the data on frequent customer forms.

277. Institutions are required to take CDD measures when they make transfers of any amount. Article 17 of the CFT Act and Article 9 of its Regulations state that in cases of wire transfers "the regulated institutions must collect adequate and meaningful information regarding the person originating the transfer, within or outside the national territory, as laid down in the regulation" and for that purpose they must use a form designed by the IVE. IVE stated that to comply with this mandate form IVE-TF-21 was designed, as a consolidated report to be sent electronically by the institutions every month, containing the transfers equal to or in excess of $2,000 or those of lesser value sent or received by a single person and which in aggregate equal this amount in the course of

the month of the report. (According to IVE Oficio no. 1585-2008 and the instructions for completing the form). The amount of $2,000 is used only to limit the number of reports sent to IVE but does not limit the institutions to collecting information on all transfers, since in order to consolidate on the form small transfers amounting in aggregate to $2,000 or more, they would need to collect information on all small transfers. In this regard, the institutions interviewed stated that they ask for the data regardless of the amount of the transfer and that such information as any other pertinent, this provisions of IVE when requires or lower amounts . It should be mentioned that the form contains basic fields that would enable the originator to be identified, e.g. name, type and identification number. With regard to incoming wire transfers, the financial institutions indicated that sometimes they do not contain information on the sender, and some of their representatives said that these data do not depend on the Guatemalan institutions but on the foreign ordering institution.

As a CDD measure when there is suspicion of ML/FT in any transaction, the legislation provides detection of transaccion and issue of unusual transactions (the same Article 16 of Regulation f ML Act applies.

278. Law Against ML Paragraph 3 of Article 12 of the Anti-Money Laundering Regulations stipulates that transactions should not be undertaken with persons who do not provide information or documentation in a timely manner. Article 20 of the Regulations states that institutions must "review and, where necessary, update the information on the form [i.e. the Know Your Customer form], and this meets the requirements of essential criteria 5.2 e) on reviewing of CDD with customers when doubt arises as the veracity or suitability of data previously provided. In addition the same provision requires information to be updated at least yearly.

279. Likewise, Article 21 states that the regulated institutions "*must verify in a trustworthy manner the identity, business name or denomination of the person, age, occupation or social purpose, civil status, domicile, nationality, representation, legal capacity and personality of their customers."* The financial institutions stated that they carry out the verification of the information on their customers in process of starting a relation before being recorded as clients and in addition they shall have the duty of updating data at least yearly.

280. It is important to note that identification of customers is carried out through the presentation of the *Cédula de Vecindad* ("neighborhood identification card") which was, up to the time of the visit, the official identification document used in Guatemala. The financial institutions stated that this document has several security deficiencies, in that it can be easily falsified, and in addition is issued by the municipalities, so that a person may have more than *Cédula de Vecindad* if he is registered as a resident in more than one municipality. The Law on National Register of Persons (Act 90-2005) in one of its preambular paragraphs confirms this, stating that this document "*lacks reliability"* and that it is administered by the *Registros de Vecindad* (neighbourhood register offices) which "*exercise no controls over its issue"*. Article 50 of this Act, (adopted on 23rd November 2005) states that a new identification document entitled Personal Identification Document (DPI) will be issued, and under Article 22 it will be issued by the National Register of Persons (RENAP). Article 92 states that the replacement of the *Cédula de Vecindad* by the DPI must take place within a period of not more than 2 years from the 1st January 2009. The financial institutions stated that this change is already in progress and that they expect it to be completed by 31st December 2010.

281. There are provisions intended to ascertain that the person who claims to be acting on behalf of a legal person is authorised to do so. The opening of business relation forms for legal persons contain questions on the legal representative of the businesses and request attachment of the letters of appointment of the latter. The data collected must be verified, for which purpose the form has a section in which the signature and code of the employee carrying out the verification must be shown. According to the institutions interviewed, they comply with the requirement for obtaining data and the letters of appointment of the legal representative. Article 21 of the AML Act

stipulates that the financial institution must keep a record of the persons with whom they establish commercial relations, especially as regards trust transactions, on the forms designed for the purpose by the IVE. Trust in Guatemala is a Trade Agreement without independent legal personality (article 768 of the Commerce Code) and only legally organized banks in Guatemala may act be trusts. In order to constitute a trust the trustees and trustors must be fully identified through Public Deed and such information and documentation is part of the relevant docket of each client for which upon opening a banking account all participants of the agreement shall be identified including the trust bank itself.

282. The requirement for verification of the legal status of legal persons is complied with. The mandatory initiation of business relations forms for legal persons indicate that they have to attach a photocopy of their document of incorporation.

Beneficial Owner (c.5.5)

283. There are provisions to require financial institutions to identify the beneficial owner and verify the identity of that person: Articles 21 and 22 of AML Act, quoted above, together with the mandatory forms for opening relations with customers which include the question of whether the person who opens an account is acting on their own behalf or on behalf of a third party. Except for the form for opening of relations – individual person or business – for credit card businesses, and for opening of relations – legal person - for bureaux de change, all other forms include the question as to whether the person initiating the relationship is acting on his own behalf.

284. Article 22 of the AML Act states that "*regulated persons must adopt the necessary measures to obtain, update, verify and conserve the information on the true identity of third persons on whose behalf an account is being opened or a transaction being performed <u>when there is doubt</u> regarding whether these third persons may be acting on their own behalf or at the same time are doing it on behalf of another third person, especially in the case of legal persons who do not engage in commercial, financial or industrial operations in the country or in the country where they have their headquarters or domicile"*. Although there seems to be no doubt among the financial institutions regarding the mandatory nature of <u>always</u> identifying the beneficial owner, the wording of the Article could lend itself to a restrictive interpretation, according to which the obligation arises solely "when doubts arise".

285. The possible legal lacuna is resolved by means of the forms for opening accounts for customers issued by the SIB, which are mandatory for financial institutions. These forms include a specific question as to whether the customer is acting on his own behalf or for a third party. Nevertheless, there are problems of practical application, because some financial institutions interviewed were not certain whether the forms in fact included the subject of the beneficial owner, and others stated that the customers sometimes do not understand the purpose of these questions, which casts doubt on their usefulness.

286. Financial institutions are required to take measures to learn the ownership and control structure of a legal person. As has already been mentioned, under Article 21 of the AML Act regulated persons must identify the legal persons, using the forms designed by the IVE. It was learned that the opening of business relations form for a legal person, given to the banks, includes fields which enable identification of the members of the Board of Directors, the single administrator or similar. Nevertheless, this form indicates that to the form must be annexed a sample of the initial public document setting up the company, from which the initial ownership of the legal person can be determined, but not the present owners of it. In addition some of the mandatory forms designed by the IVE do not include the question as to whether the person is acting on behalf of a third party, which is the case of the forms designed for businesses, credit card businesses, and for opening of relations – legal person – for bureaux de change.

287. In practice, all the institutions say that they easily obtain the information on the shareholders of the firms, but some stated that they do not ask for information on the Directors on all occasions.

Nature and purpose of the commercial relationship (c.5.6):

288. In the opening of business relations form designed by the IVE there is a section entitled "Economic-Financial Information on the Applicant", in which the customer provides information on the services he will be using, the level at which he will maintain these services and the source o9f the funds. It may be inferred from this that there are two ways of complying with the FATF recommendation that financial institutions must obtain additional information on the purpose or character for which it is claimed the business relationship is being opened. The new ML/FT Risk Management Guidelines for Banks, Finance Companies and Offshore Businesses, IVE *Oficio* no. 434-2009, stipulates that obtaining the information on the purpose and nature of the business relationship is one of the "*minimum subjects which the regulated institutions must consider when developing, modifying and/or updating their compliance programme."* It is evident that these guidelines deal with the subject more clearly than do the forms, although the language used is not mandatory.

289. The institutions, according to comments made to the evaluating team during the interviews, do not routinely investigate additional details on the use to which the customer hopes to put the account or whether the customer expects to make or receive foreign transfers, etc. Notwithstanding, this information is required for the form concerning the beginning of relations.

CDD for Trusts

290. It should be made clear that in Guatemala only banks established in the country can manage Trusts (according to Article 768 of the Commercial Code) and likewise Articles from 766 to 796 of the same legal entity provide everything related with this type of agreement as well as the structure and control obligations of the Trust in Guatemala. The trust is a service as any other provided by a bank to its clients (authorized in Artilce 41, paragraph I of the Law of Banks and Financial Groups). Therefore, same obligations of CDD apply both for the trust service as for any other service without exception. According to the authorities clients are all participants of a contractual structure such as the trust. The IVE started that in practice the following is required with regard to Trusts:

1. That the trustee (i.e. the bank) requests the opening of business relations forms to be filled out along with the respective supporting documents, for trustor and trustee.

2. In addition, for those cases in which the trust contract entails the management of a credit portfolio, the trustee must also request in addition to the trustor and the trustee, and each of the persons composing the portfolio, to fill out the relevant form.

3. In cases in which by the nature of the trust it is impossible for the bank to fill out and document the relevant forms, it must request this information from the trustor who is bringing to the trustee the portfolio in question, for the purpose of being able to apply the know your customer policy.

Updating and Ongoing CDD (c.5.7):

291. As regards updating of information, there are provisions to require the institutions to keep the information collected in the CDD process continually up to date. Article 23 of the AML Act stipulates that the records that must be maintained by regulated persons under this Law "*must be updated during the life of the commercial relationship, and retained for at least five years after the end of the transaction or the closure of the account".* Article 20 of the Regulations to the AML Act stipulates that the regulated persons must review, and if necessary, update the information on

the identification forms designed by the IVE, at least once a year, recording in writing the date on which this review and/or updating takes place.

292. The financial institutions interviewed stated that the updating of the information on their customers turned out to be a difficult task and some of their representatives considered that the measure is not practical. They stated that the updating of these data has been greater for active than for passive accounts. The evaluation team considers it advisable that after making a reasonable attempt at updating, the financial institution should be allowed to desist from updating the data on clearly inactive accounts yearly, always provided that they have strict mechanisms to ensure that if the customer shows up again after a long period he is prevented from performing any transaction until the information is brought up to date. This would accord with the risk-based approach recognised in the FATF recommendation. However, it does not seem possible under the present Guatemalan regulations.

293. Another difficulty encountered with regard to updating of customer information, which mainly worries the banking sector, is that owing to the high level of tax evasion and informal business and services in Guatemala, many of their customers avoid providing detailed personal information, for fear of this information bringing tax demands on them.

294. Article 26 of the AML Act indicates that institutions must pay close attention to all transactions whether included or not complex in solid significant and all transaction patterns which are not habitual and non-significant but periodical transactions that have no economic or legal evident grounds being enforced to communicate such fact immediately to IVE. Although it is true that monitoring works is not expressly included it is inferred that it is necessary to comply with this article and therefore cover basic principles of criteria 5.7 of methodology of FATF with respect of demanding continues due diligence over commercial relations. The institutions interviewed stated that they do in fact use technological systems and/or manuals to monitor customer activities. It must be pointed out that inclusion of examination of customers' transactions as an element in ongoing CDD (criterion 5.7.1) is a Core Obligation marked with an asterisk in the methodology. In Guatemala this is adequately provided in ML Law (Article 26 already mentioned): The new "ML/FT Risk Management Guidelines" issued by the SIB on 24th April 2009 requires determination of the risk profile of each customer as one of the necessary elements of managing the inherent ML/FT risk in each institution, and indicates that in the highest risk cases the financial institution must strengthen its controls. It also states that monitoring transactions is one of the "*minimal areas which the regulated persons must take into consideration when developing, modifying and/or updating their compliance programme"*. In addition, Section 4.4 of the Guidelines states that the purpose of "risk monitoring" is to "*compare the evolution of inherent risk with the evolution of residual risk"* for which purpose the financial institution must "*establish warning signals…..to indicate potential sources of ML/FT risk (…) analyse unusual and suspicious transactions which they detect in order to be able to establish, inter alia, where the weakness in the prevention mechanisms lies."*

Controls graded according to risk (c.5.8 to 5.12):

295. The ML/FT Risk Management Guidelines requires banks, finance companies and offshore businesses to perform enhanced due diligence for higher risk categories of customers, business relationships and transactions. These guidelines indicate that the first phase of risk management is identification of the risk, and the third is control of the risk. In the identification phase are included some risky customers or transactions such as private national or international banks, services which inherently confer more anonymity or which may easily cross frontiers, such as trusts, and *sociedades anónimas,* in which it is very difficult to identify the beneficial owner or control. In the control phase it is laid down that "*the internal programmes, policies, standards, procedures and controls established must lay greater emphasis on those segments of the risk factors that were identified as being inherently high, for the purpose of reducing their probability and their impact"*.

296. The above indicates that the measures must be stricter for this type of customers or transactions, and leaves the financial institutions at liberty to decide the type of enhanced CDD measures that should be applied to these cases. During the visit, some institutions interviewed stated that they had identified the high risk customers, products or transactions on their own initiative even before the guidelines were issued. The majority of them stated that owing to the fact that the guidelines were only recently issued, they are beginning to implement them or to adapt their existing risk systems. It is important to point out that some financial institutions expressed their disagreement that these guidelines should be immediately applied and that they should expose them to penalties during the process of adaptation, since the guidelines do not establish a grace period for their implementation.

297. Guatemala stated that "*there are no simplified legal measures for application of the know your customer policy"*, and therefore there exist no guidelines to indicate the occasions on which simplified measures may be applied. However, the insurance sector stated that in the form for identification of customers provided by the IVE there are guidelines which enable a simplified CDD to be applied according to the level of premiums paid on the insurance policies. This was confirmed by the fact that there are two forms for both natural and legal persons: one jfor operations in excess of $10,000.00 in damage insurance and $5,000.00 in life insurance, and another for transactions below these figures that contains fewer identification requirements. Since there is a possibility of simplified measures in this sector, Guatemala should issue guidelines to insurers as to when they may apply these simplified measures and when they may not. This is in keeping with criterion 5.10 which says that these measures must not apply to customers residing in countries which do not apply FATF measures, and with criterion 5.11 which says that these measures must not be applied when there is suspicion of ML or FT en the simplified measures form no mention of these two subjects was found).

298. It is important to point out that some of the institutions interviewed mentioned that it would be desirable to allow them to apply simplified CDD measures in some cases in which the ML/FT risk is less. The non-existence of simplified measures does not affect the result of this evaluation, but the team considers it desirable to evaluate this possibility in the light of the new risk-based approach which the IVE is beginning to introduce.

Time for verification of identity (c.5.13 to 5.17):

299. Articles 21 and 22 of the AML Act make it mandatory for financial institutions to verify the identity of the customer and the beneficial owner, and Article 12, paragraph 3 of the AML Regulations states that "*the regulated entities may not carry out any transaction with customers who do not provide in a timely fashion the information and documentation required"*. Article 21 of AML Act provides that enforced persons must keep a record in forms for such purpose designed by IVE on legal persons or individuals with whom they establish commercial relations or apparent normal relations of the businesses whether they are occasional or habitual clients. Despite the mentioned regulations are not explicit concerning the time in which the verification must take place both authorities in the Country and enforced parties have it clear that the duty of registration and verification of information start upon establishing or starting a relation with clients. The FATF guidelines in this regard state that this verification must take place during the opening of a business relationship or before any transactions are performed for occasional customers, except in specified circumstances. The majority of the institutions interviewed pointed out that this verification is performed before the business relationship is initiated, but on some occasions the accounts are activated before the customer data is verified, and the verification is completed during a prudential period of time after the accounts are opened for which the criteria may be considered as complied with.

300. Guatemalan regulation provides in Article 12 of the Regulations of the AML Act states that "*the regulated institutions may not perform any transaction with customers who do not provide in a timely fashion the information and documentation requested"*. This provision stipulates that

transactions should not be performed when the customers do not provide the information requested, but it does not cover cases in which the institution, having obtained the information required from the customer in due time and form, has not yet been able to verify the veracity of this information through available independent sources.

301. Although the financial institutions are not expressly told that they must consider preparing a suspicious transaction report when they are unable to obtain or verify these data. During the visit, the financial institutions expressed the opinion that they do not open commercial relations with persons from whom they are unable to obtain or verify this information, and the majority of them stated that they do consider sending in an STR on these occasions.

302. **(c.5.17)** With regard to CDD for customers predating the issue of the AML regulations, the regulation satisfies the rule that institutions must be required to apply CDD to existing customers. Article 21 of the AML Act states that regulated entities must keep records on the "individual persons with whom they establish commercial relations or relations in the normal or apparent course of their business". Article 20 of the Regulations for the AML Act requires revision and if necessary updating of these data at least yearly. The minimum information that must be maintained on each customer is precisely that contained in the mandatory forms designed by the SIB for the opening of commercial relationships.

303. During the visit some financial institutions stated that in fact they are making efforts to achieve the updating of the entire base of customers, including the oldest of them, and that they monitor the accounts of all of their customers.

Recommendation 6: Politically Exposed Persons (PEPs) (c 6.1. to c.6.4):

304. Article 19 of the AML Act stipulates that institutions must adopt, develop and implement suitable programmes, standards, procedures and controls to avoid improper use of their services and products in ML/FT schemes. The IVE stated that this article was the basis for the issue of the provisions for PEPs detailed below.

305. The new ML/FT Risk Management Guidelines sets out obligations with respect to PEPS for banks, finance companies and offshore entities. Section 4.4.1 states that "*the regulated institution shall determine whether a particular customer poses a high risk* [for which] *the following factors, among others must be taken into consideration… Customers that the institution determines to be Politically Exposed Persons (PEPs)"*.

306. Other provisions concerning the identification of PEPs have also been recently issued in Guatemala and enforce finance companies, banks (including offshore banks) and the Bank of Guatemala were informed of these provisions in IVE *oficios* No. 244-2009, No.245-2009 and No.303-2009 respectively, and these indicate that the measures must be put into effect from the 1st April 2009. The IVE stated that the provisions concerning PEPs were sent to a first stage since those institutions they were the most representative of the financial sector according to the Country Risk Study accomplished by external consultants. However, the IVE recognizes the need to require the rest of the institutions to implement these measures for which in the next stage shall be implemented in other enforced sectors.

307. These *oficios* clearly stipulate that "*the regulated institution must establish mechanisms to enable it to determine whether the persons requesting the opening of relations with the institution are Politically Exposed Persons*". The forms for opening of relationships (IVE-F1-01 and IVE-BA-01) include direct questions to discover whether the potential customer is a PEP, if he is a relation of a PEP or if the person is acting on their own behalf or on behalf of another. It would be useful for the Oficios to state explicitly that the financial institutions must adopt machinery to determine if the beneficial owner is a PEP (and not only "persons who request the opening of relations). That would be more in line with the obligation in Art. 22 of the AML Act, which also includes PEPs

when it says that "regulated persons must adopt the necessary measures to obtain, update, verify and conserve the information on the true identity of third persons on whose behalf an account is being opened or a transaction being performed.

308. The *Oficios* mentioned indicate that people will be considered to be PEPs when they "*occupy or have occupied a relevant public office in Guatemala, the leaders of political parties, the heads of foreign ministries of state and government, who because of their visibility are exposed to risks inherent in their hierarchical grade or position. PEPS are also considered to be parents, siblings, spouses or children of the latter"*. It is also made clear that political party leaders are understood to be "*Secretary General, Deputy Secretaries General and Recording Secretary of national political parties"*. The status of PEP remains in force as long as the person holds the office and for the two years following.

309. It is important to note that both Recommendation 6 and the FATF's definition of PEPs make reference to officials of foreign countries. The definition given by Guatemala includes as PEPs senior foreign officials, but excludes others such as high rank militars which Rec 6 of FATF suggests to include. Besides, the FATF states that not only the family members but also the close associates of PEPs represent a risk similar to that posed by the PEPs themselves. However authorities in Guatemala indicate that this extreme particular is covered by the vigilance duty that enforced parties must have before unusual or suspicious operations in which after the relevant verification some of these cases is identified and therefore a report of suspicious operation should be submitted. According to Guatemalan Law many high government officials, such as the Superintendent of Banks are recognized as having ministerial rank and for that reason it is common that institutions apply PEPs control not only to the Heads of State and Ministers of Cabinet .

310. Guatemala's definition of PEP promotes AML/CFT prevention measures with regard to politically exposed persons in the national framework, and this is considered adequate, since it reduces the risk of funds linked to acts of national corruption entering the financial system. During the visit, some of the institutions to which the *oficios* were addressed stated that they were taking measures to determine if their potential customers are PEPs, and among these measures was a search in a list of national officials provided by the IVE. Some of these institutions also indicated that they carry out searches in databases listing international PEPs in the broader sense.

311. There are limitations on the type of operations to which provisions concerning PEPs are applied. IVE oficios No.244-2009, No.245-2009 and No.303-2009 instruct the institutions to which they are addressed to "*adopt, develop and put into effect internal policies, procedures and controls with regard to the abovementioned politically exposed persons with whom they are carrying out active (granting of financing) or passive (deposits and financial obligations) operations"*. Article 41 of the Banks and Financial Groups Act (Act No.19-2002) stipulates that authorised banks may execute passive operations, active operations, trust operations, contingent liabilities, and provide services. Although the *oficios* make reference to any obligation to apply the measures related to PEPs when the relationship is part of trust operations, contingent liabilities and service provisions, in practice these operations are not accomplished should client has not priorly established a business relation with the obliged institution through an active or passive account upon which the obligations contained in the mentioned *oficios* shall apply. In addition it shall be considered that the special attention requirement on unusual or suspicious operations that enforced parties are obliged to, plus the precepts contained in the Guide for Management of PEPs Risks, allow to reasonably comply with the intrinsic purpose of this recommendation. The Guide of AML/CFT Management Guide requires to identify, measure, control and monitor the risk of all the transactions with clients that are considered high risk, including PEPs.

312. (c.6.2) The existing provisions concerning PEPs require financial institutions to whom they are addressed to obtain management level approval to open business relations with a PEP. Sub-paragraph 2.3 of IVE *oficios* No. 244-2009 and No.245-2009 indicate that "The opening of a

business relationship with Politically Exposed Persons shall be authorised by the relevant management level official in accordance with the policies of the regulated entity, and this must be verified by the compliance officer". During the visit the representatives of some institutions to which these *oficios* were addressed stated that the compliance officer is the officer who authorises the opening of business relationships with the PEPs.

313. Financial institutions are not required to obtain management level approval to continue the business relationship, when a customer has been accepted and later it is discovered that the customer or beneficial owner is a PEP, or later becomes a PEP, as is laid down in criterion 6.2.1 of the FATF evaluation methodology. Sub-paragraph 4 of Annexe 2 of IVE *oficio*s No.244-2009 and 245-2009 provide for "Minimum Guidelines on Politically Exposed Persons whose Business Relationship began before 1st April 2009". This sub-paragraph indicates that for relations already established "*during the month of April 2009, the regulated entity must identify whether among its customers with active and passive operations there are politically exposed persons, in accordance with the definition indicated in the circular oficio, and apply to them the relevant control mechanism for monitoring transactions"* indicating in addition that they are required to apply points 3.1 and 3.5 of the abovementioned annexes. However none of these points includes approval of the already established relationship by a management level official.

314. (c.6.3) The provisions concerning PEPs require reasonable measures to be taken to discover the source of the funds of the customers and beneficial owners identified as PEPs, as well as the origin of funds that shall be managed in the account. The forms for opening of business relationships, sent by the IVE to these institutions as annexes to the *oficios* concerning PEPs, include in sub-paragraph 8, entitled "Economic and Financial Information on the Applicant" questions on the source of their income, but considers that such questionnaire may request more information related with the source of their wealth.

315. (c.6.4) Some financial institutions are required to carry out ongoing enhanced due diligence on their relationship with PEPs. Sub-paragraph 3.1 of Annexe 2 of IVE *oficios* No.244-2009 and No.245-2009 and annexe 1 of *oficio* 303 state that the institutions to which these oficios are addressed must "*permanently monitor operations carried out in active and passive accounts in the name of Politically Exposed Persons. For this purpose they must establish whether the nature, volume and frequency of the operations are within the declared profile, and at their discretion require the Politically Exposed Person to provide additional information or documentation to substantiate to the origin of the funds"*. This requirement stipulates that the institutions must carry out ongoing monitoring of the customer's operations and compare them with his profile, and this applies also to all customers of the institutions, since the Guatemalan law does not provide for simplified due diligence measures. In addition, the ML/FT Risk Management Guidelines stipulates that the PEP status of a customer must be taken into consideration as a high risk element to which, therefore, enhanced measures must be applied. Section 4.1.1 states that PEPs represent a potential ML/FT risk, and that therefore under Section 4.3 the internal programmes, policies, standards, procedures and controls established must be applied more positively for the purpose of reducing this possibility and their impact. During the visit, representatives of the financial institutions stated that in fact PEPs are considered in their systems as high risk customers, and that they therefore apply enhanced monitoring measures. Note that the IVE has stated that regulated institutions submitted 56 STRs related with national PEPs between 2005 and 2009, and that these resulted in 50 denuncias from the IVE to the Ministerio Público.

316. Additional criteria: As explained at the beginning, the rules and regulations about PEPs lay special emphasis on national PEPs (c.6.5). In addition, Guatemala stated that it has ratified and implemented the United Nations Convention Against Corruption (c.6.6).

Recommendation 7: Correspondent Accounts and similar relationships

317. Provisions concerning ML/CFT prevention in cross border correspondent banking have only recently been issued in Guatemala. They were set out in the "Basic Prevention Guidelines for Corresponding Bank Services, Branches of National Banks Abroad and Subsidiaries" (hereinafter "Guidelines on Correspondent Banking, Branches and Subsidiaries"), issued by the IVE during the period of the visit in oficio No.837-2009 of 17th June 2009. This *oficio* is not addressed to all financial institutions, but only banks and offshore institutions given that in Guatemala only they use correspondent bank. Other sectors in which in the future correspondent relations may vary could be the sector of financial cooperatives and stock exchange companies, notwithstanding Guatemala has currently has a capital market IVe indicates that according toits knowledge other financial institutions in Guatemala do not have correspondent relations with foreign institutions.

318. It is important to note that according to representatives of the banking sector interviewed, no Guatemalan banks are correspondent banks for foreign banks. It was stated that some have correspondent relationships, but not as intermediaries ("correspondent") but as banks that order or receive payments ("respondent bank") from foreign banks. Therefore at the present time the risk in this area is considered to be low, although there is nothing to prevent local financial institutions from providing these services to foreign institutions in the future, especially at the Central American level, in view of the integration processes that have been taking place in recent years for which it is positive that regulation has been issued to this matter.

319. (c.7.1) The Guidelines on Correspondent Banking, Branches and Subsidiaries contains various points that are considered to be appropriate to ensure that banks and offshore companies are familiar with the ordering institution (known as the "customer respondent bank" in the IVE guidelines). It is stated that information must be known on the location, ownership and control structure, type of business, type of target market, type of products and services offered. This is accompanied by an overall requirement to "*implement internal programmes, standards, procedures and controls to avoid the improper use of their service as a correspondent bank"* (Section 2.1) and the duty to "*take into consideration the type of business in which the customer respondent bank engages, as well as its target market"* (Section 2.2.3). Finally, "*amendments resulting from the implementation of these Guidelines must become an integral part of the programme/compliance manual of the regulated institution"*.

320. The foregoing is considered to be mandatory and sufficient to cover the FATF Guidelines to the effect that financial institutions must "*collect sufficient information on the ordering institution to have full understanding of the character of the respondent's business"*.

321. The mentioned Guidelines establishes the obligation of obtaining knowledge with respect to the correspondent until the entity feel comfortable with respect to references. In addition, sub-paragraph 3, states that "*the regulated institution <u>may</u> also rely on available public information….to meet due diligence requirements"*. Sub-paragraph 3.4 adds that "*<u>if the situation requires</u>, the regulated institution must consider the available public material to ensure that the customer correspondent bank has not been the subject of adverse legal, administrative or criminal action in the past"*.

322. (c.7.2) It is not clear whether the provision that urges some financial institutions (bank and offshores), to evaluate the AML/CFT controls of the ordering institution. Sub-paragraph 3.5 of the Guidelines on Correspondent Banking, Branches and Subsidiaries states that "*the nature of the AML and CFT controls and how they are enforced <u>must be taken into consideration and evaluated</u>*". However, sub-paragraph 3 of the Guidelines removes the mandatory element when it states that "*when due diligence is being performed on any customer correspondent bank [responding bank] <u>it is considered appropriate</u> to take into consideration the following elements"*, one of these elements being sub-paragraph 3.5.

323. (c.7.3) There are provisions to compel some financial institutions (banks and offshores) to obtain management level approval before initiating new correspondent relationships, as laid down in

criterion 7.3. The Guidelines on Correspondent Banking, Branches and Subsidiaries states in its sub-paragraph 2.1 that "*the corresponding bank business relationship must have the approval of a senior official"*.

324. (c.7.4) The Guidelines on Correspondent Banking, Branches and Subsidiaries requires some financial institutions (banks and offshores) to document their correspondent relationships.

325. (c.7.5) The Guidelines on Correspondent Banking, Branches and Subsidiaries defines the guaranteed payment accounts payable through accounts of PTAs in the section as definitions as as payment accounts in other locations, duly and implicitly complying with the due diligence that must be taken into account with this product in section 2.5. There is refers to the verification that the enforced person must make on the business and client base of correspondent bank with which there is correspondent relation. The other requirements in the Guidelines, especially Section 3, imply that the Guatemalan institution may not maintain correspondent accounts with foreign institutions that do not apply adequate AML/CFT controls. However, there is no express requirement to "*be certain that the represented bank has verified the identity and performed ongoing due diligence procedure on the customers having direct access to accounts of the corresponding bank and that it is able to supply relevant customer identification data of a customer upon request to the correspondent bank"* as required by FATF R.7. As mentioned above, up to the time of the visit Guatemalan banks acted solely as ordering institutions in correspondent relations, and therefore do not open this type of account. Therefore the risk of this type of product being used for ML

FT Recommendation 8: Risks from new technologies

326. Section 4.2 of the ML/FT Management Guidelines, which governs banks, finance companies and offshores, requires the regulated institutions "*to be aware of the risk associated with new and innovative products and services that are not offered by all regulated persons, but which in their very nature could be useful to regular or occasional customers intending to commit money laundering and/or financing of terrorism".* It adds that "*to mitigate the inherent ML/FT risk the respective suitable internal programmes, policies, norms, procedures and controls must be developed and put into effect"*. It is considered that the essential criterion is broader than the guidelines concerning technological progress in patterns of money laundering or financing of terrorism, since the guidelines allude to prevention of the use of new and innovative products or services. There may in fact be technological advances capable of being used for ML/FT that are not necessarily products or services, such as for example the system of management and transmission of data used within the institution, which might be susceptible to manipulation by employees or outsiders.

327. (c.8.2) Section 4.1.3 of the Risk Management Guidelines deals with the risk of distribution channels (means used to lend, offer and promote services and products) stating that some of these "do not necessarily require the identification of the customer", which would be jthose not requiring the physical presence of the parties. It points out that among the highest risk distribution channels are intermediaries or sub-agents, kiosks, regional Banks, automatic cash machines, on-line banking and mobile banking. It is evident that the last three represent non-face-to-face relationships. Section 4,3 states that "to mitígate the inherent ML/FT risk, relevant internal programmes, policies, standards and procedures should be adopted, developed and implemented". For this purpose there are provisions which require Banks, finance companies and offshore institutions to have policies and procedures to tackle risks associated with non face-to-face relations or transactions , even though the provisions of Section 4.1.3 is aimed at distribution channels in general and not specifically at this type of relations. As already mentioned, the Guidelines was only recently issued and does not apply to all regulated persons. Some financial institutions stated that they had policies relating to the use of products by internet, and that these policies had been established on their own initiative. The insurance sector stated that policies are

placed via the web, and that the customers concerned are then contacted by the insurance company.

328. It was learned subsequent to the visit to Guatemala that "the team of inspectors of the Risk Based Supervision Department, in all the audits carried out, has verified and followed up implementation of the abovementioned Guidelines, taking account in their verifications geographical risks, and risks associated with products and distribution channels; this enabled them to learn from the regulated entities that none of them opens any on-line account or any other medium without verifying personally the identity of the customers".

Recommendations and Comments

Rec. 5

329. R.5 Include insurance brokers within the group of obliged persons.

330. R.5 Require that financial institutions consider whether to file an STR when information cannot be obtained or verified. Improve the reliability of the national identification document, as in fact is being planned with the issue of the new Personal Identification Document. Set up mechanisms to enable financial institutions more easily to identify their customers on the basis of the DPI. It is suggested that agreements should be promoted among the financial institutions and the authorities responsible for the issue of the new identification document so that the latter may provide information to the financial institutions to assist in updating customer data.

331. R.5.4 Include the express question about if acts are being accomplished in benefit of a third party in forms designed for credit cards, and Exchange House companies concerning the starting of relationships with legal persons.

332. R.5.5. Expressly demand financial institutions to know the beneficial owner in trust agreements and verify the information on all those involved in such agreements. No information was found in the articles referred to by Guatemala.

333. R.5.5 Make it clear in the regulations that the beneficial owner of an account must always be identified making special emphasis on Corporations accounts with bearer shares.

334. R.5.5 Establish clear guidelines requiring financial institutions to take measures to determine who are the natural persons who in the final instance are the owners or controllers of legal person or company.

335. R.5.7 It is suggested that meetings should be held with the financial institutions to find solutions to problems difficult the updating of customer data.

336. R.5.8 Require all financial institutions to apply enhanced due diligence to higher risk categories of customers, business relationships or transactions. (The Risk Management Guidelines could be applied to the rest of the regulated intuitions and not only to banks, finance companies and offshores).

337. R.5.8 It is particularly recommended that among the high risk customers be included non-resident customers, and that examples of enhanced CDD to be applied by regulated institutions in high risk relationships and operations be included also.

338. R.5.9 – 12. Study the possibility of allowing regulated institutions to apply simplified CDD measures, in accordance with the FATF recommendations, to lower risk cases.

339. R.5.14) Set out rules for the financial institutions indicating that they may perform the verification of the identity of the customer and beneficial owner after the establishment of the business relationship provided this takes place as soon as reasonably practical, and it is necessary in order not to interrupt the normal conduct of business or when the ML/FT risks are effectively managed.

340. R.5.14.1) Require financial institutions to adopt risk management procedures when they allow their customers to use the business relationship before their data are verified. These procedures must include a series of measures such as limitation of the number, types and/or amounts of transactions that may be performed, and monitoring of large or complex transactions being performed outside the expected parameters of this type of relationship.

Rec 6

341. R.6. Broaden the provisions relating to PEPs to require implementation by bonding companies, warehousing companies, rental companies, insurance companies, stockbrokers, bureaux de change, pawnshops, cheque changing businesses, cooperatives, finance companies, factoring companies, credit card operators, money transfer operators, credit card companies and other persons regulated under the AML/CFT Acts.

342. R.6. Amend the definition of PEPs contained in the *oficios* issued by the IVE so that it indicates that individuals who occupy or have occupied prominent official posts in a foreign country, along with their family members and close associates, shall be considered PEPs. This should be without prejudice jto national officials and other persons included in the present definition continuing to be considered PEPs.

343. R.6 Require financial institutions to obtain management level approval to continue a business relationship when a customer has been accepted but it is later discovered that the customer or beneficial owner is a PEP, or becomes a PEP.

Recommendation 7

344. R.7 Require all institutions that may al least hypothetically establish correspondent or similar relations to apply the provisions issued for cross border correspondent banking.

345. R.7 Issue a clear instruction to financial institutions to evaluate the AML/CFT controls of the ordering institution and to decide whether they are adequate and effective.

346. R.7 . Require all financial institutions which might provide correspondent or similar services to document the respective AML/CFT responsibilities of each institution regarding the correspondent relationship.

Recommendation 8

347. R.8 Require all financial institutions to have established policies or take necessary measures to prevent the improper use of new technologies in money laundering of terrorist financing schemes. This could be done by sending the Risk Management Guidelines to the remainder of the regulated persons.

348. R.8 Require all financial institutions to have policies and procedures to handle any specific risk associated with non-face-to-face relationships or transactions. These policies and procedures must be applied when the customer relationship is being set up and when ongoing due diligence is being performed. This could be done by sending the Risk Management Guidelines to the remainder of the regulated persons. It is recommended that consideration be given to amending the wording of the Guidelines to place more emphasis on non face-to-face transactions, in order that institutions should have greater clarity on the subject.

Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	Some obligations which should be enshrined in laws or regulations (criteria with asterisk 5.5.2.b y 5.4.a), are only included in mandatory circular letter of less hierarchy. 5.3) The limited reliability of the neighborhood identification card (*cédula de vecindad*) could present difficulties for financial institutions to appropriately identify their clients as required by Article 21 of the AML Act. 5.5.2) 5.5.2) Effectiveness problems when determining the benefitial ownership of a legal person, because the account opening form is heavily focused on the certification by the Company Registry, which does not have sufficient nor up to date information, and the existence of bearer shares also limits knowledge about securities holder. 5.7.2 According to the regulated persons, efforts at updating information have not been fully successful. 5.8) The Risk Management Guidelines was only addressed to banks, finance companies and offshores. Therefore the other financial institutions have not been required to apply enhanced due diligence to high risk categories of customers, business relationships or transactions. 5.14) No limits are set to the cases in which the verification is allowed to be postponed of the identity of the customer and the beneficial owner is allowed to be done after the initiation of the business relationship. In addition, financial institutions have not been instructed to set up risk management procedures when they allow this to happen. 5.15) Financial institutions are not told to consider filing STRs when they are not able to obtain or verify information on a client or a real beneficiary, or information relating to the nature of the business relationship.
R.6	**PC**	Due diligence requirements regarding PEPs have not been imposed on all financial institutions only of Banks, finance companies and offshore entities that concentrated a higher risk. Financial institutions are not required to obtain management level approval for continuing an already established business relationship with a politically exposed person. The definition of PEPs is not as extensive as required by the FATF and does not include close associates
R.7	**MC**	Regulations not applied to relations between stock exchange brokers and hypothetical counterparts abroad No guidelines have been issued on AML/CFT measures to be taken by financial institutions concerning payable through accounts.
R.8	**PC**	The specific provisions on technological advances and non face-to-face relations have recently been issued, so it was not possible to assess their effectiveness (The Risk Management Guidelines was issued a few months

		before the visit). The Risk Management Guidelines issued by the IVE in April 2009, which is the guide that deals directly with innovative products and services, and the question of distribution channels (among which may be included non face-to-face relationships) has not been fully implemented and applies only to Banks, finance companies and offshore entities, so the other regulated entities lack clear and specific instructions on the subject.

Third parties and introduced business (R.9)

Description and Analysis

349. Summary: From interviews it was learned that up to the time of the visit institutions had not used the services of intermediaries or other third parties to perform CDD, and the authorities' interpretation of the law is that they are not authorised to delegate any aspect of it.However, there is no explicit prohibition.

350. The insurance sector stated that the greater part of their business of sale of services (about 80%) is done through independent insurance agents or brokers, who are not covered by the AML/CFT regime. However, for CDD purposes these intermediaries are only a form of outsourcing the work of sale and collecting documents. All the information and documentation collected by brokers is passed immediately to the insurance companies, and it is the latter who are responsible for verifying the data and performing CDD before accepting the customer. Although this task is apparently not delegated to third parties, the lack of a clear prohibition could mean that in future the regulated institutions might do it.

351. Under Arts. 1-3 of the Regulations for Insurance and Bonding Agencies and Agents (*Acuerdo Gobernativo* M DE E 5-73) insurance and bonding agents promote sales of policies and bonding, and may be dependent or independent, but in both cases must sign a contract with the insurance or bonding company.Representatives of the insurance sector stated that in the contracts concluded with the insurance brokers there are no clauses relating to AML/CFT measures.

352. The insurance sector stated that they also promote business through banks (Banca Seguros) In this type of relationship both the bank and the insurance company perform CDD.

353. The requirement to identify the customer and verify information falls directly upon the persons governed by the laws. Article 21 of the AML Act states that regulated persons must keep a record of their regular and occasional customers and they must reliably verify the information. Representatives of the insurance sector stated that they are aware that the final responsibility to carry out CDD falls on the insurance company and not on the insurance broker.

Recommendations and Comments

354. Issue instructions to inform institutions of the measures to be adopted when they rely on a third party to perform elements of CDD or to present business. These provisions must be in keeping with FATF Recommendation 9. Otherwise prohibit the operation explicitly.

Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**LC**	There are no guidelines for cases in which institutions delegate some aspects of CDD, for in the opinion of the authorities this is not permitted, and in practice has never happened. However, the evaluators consider that such

		delegation is not clearly prohibited.

Financial institutions secrecy or confidentiality (R.4): Description and Analysis

355. Summary: In Guatemala no law, standard or order on confidentiality or bank secrecy inhibits the implementation of the FATF recommendations. The Intendencia de Verificación Especial has direct access to financial information, and the Ministerio Público has access through a court order, and both use those powers.

356. (c.4.1): Article 24 of the Constitution of the Republic of Guatemala refers to the "inviolability of correspondence, documents and books", and states that they "may only be searched or confiscated by virtue of a definitive order of a competent judge, in compliance with all legal formalities […]". In addition, bank secrecy is clearly covered in article 63 of the Banks and Financial Groups Act, Act 19-2002.

357. The Judges of the Republic, in the course of their duties and under the law, have unrestricted Access to any information in the possession of public or private institutions or persons. In criminal matters, under Article 319 of the Code of Criminal Procedure, the Ministerio Publico, to request information from individual or legal persons, must obtain the authority of the competent judge. Likewise, the fiscales who wish to obtain information protected by secrecy may request it through the judge.

358. Furthermore, for ML and FT cases the specialized money laundering *Fiscalía* may obtain access to secret information without the need of a court order, by simply requesting it through the Intendencia de Verificación Especial (IVE), which enjoys special powers with regard to access to information. Article 28 of the Act on the "obligation to inform" states that "regulated entities must provide the Intendencia de Verificación Especial with the information requested by it in the form and within the time period laid down in the Regulation […]". In addition, the Anti-Money Laundering Prosecutor of the Ministerio Público has access to financial information on the basis of a court order and through the IVE in possible ML/FT cases.

359. Other specialized prosecutors of the Ministerio Público may request information from the IVE through the special ML prosecutor, always provided that their investigations of previous offences point to ML activities, in which case the investigation of both activities is carried out jointly.

360. In order to obtain a court order the MP has to assemble sufficient elements to convince the judge to issue it, while the IVE has no need for a court order to lift bank secrecy in ML/FT cases. For this purpose, despite the power the MP has to obtain a legal order if necessary, it more frequently does this through the IVE's powers in order to speed-up cases investigation processes . This has unnecessarily overburdened the IVE (see details in Section 2.5).

361. Article 36 of AML Act provides the duty of a reserve on particular financial operation that are being investigated by authorities; however the second paragraph of this same article allows the disclosure of data with statistical purposes in order to be used as strategic information and to help risk management by enforced persons.

REQUESTS TO REGULATED PERSONS

Iniciales	Tipo de Persona Obligada	2005	2006	2007	2008	2009	2010
BA	Banks	2777	1342	2121	1973	2300	173
FI	Finance Cos	755	528	558	931	1354	32
OS	Offshore	582	353	193	350	571	8
TJ	Credit Card	239	36	406	290	137	
CB	Stockbrokers	150			27	47	
OT	Others	3					
TF	Money Transfer	27	172	96	52	99	1
CP	Cooperatives	216	218	695		243	29
AF	Credit Card Operators		1				
OP	Bonding cos			4	1		
AS	Leasing				34	68	
AR	Cheque Changers					8	
CH	Bureaux de Change					1	
CC		71	31			2	
		4,820	2,681	4,073	3,658	4,830	243

Fuente: Sistema IVE

Recommendations and Comments

362. A balance should be struck between the requests for information from the Ministerio Público through the IVE, and through court orders, in order to avoid erosion of requests from the Ministerio Público to the IVE for amplification of information.

Compliance with Recommendation 4

	Rating	Summary of factors underlying the rating
R.4	**C**	**[**compliant**]**

Record keeping and wire transfer rules (R.10 and SR.VII)

Description and Analysis

363. In accordance with articles 21 and 23 of the AML Act and Article 13 of its Regulations, Guatemalan financial institutions are required to retain records of customers and their transactions for five years after the conclusion of the transaction or of the relationship with the customer, in such a way as to permit reconstruction of the transactions and so that they may be at the disposal of the competent authorities. This includes wire transactions, with precise information on the originator, account, amount and beneficiary, and this must be maintained throughout the chain of payment in compliance with article 17 of the CFT Act and Article 9 of its Regulations. It should be pointed out that the financial institutions interviewed stated that the products with highest ML/FT risk are monetary deposits, wire transfers and family remittances. The main FATF requirements on these aspects are covered in Guatemalan legislation, but there are certain situations which partially affect its effective implementation.

Recommendation 10 – Record Keeping

364. The most important provisions concerning record keeping as part of the CDD to be applied by the regulated institutions are to be found in Articles 21 and 23 of the AML Act and Article 13 of its Regulations, which, respectively, stipulate:

"Article 21. Records. Regulated institutions must keep a special record, on forms to be designed for the purpose by the Intendencia de Verificación Especial, of individual or legal persons with whom they establish commercial relations or relations in the normal or apparent conduct of business, whether these customers are occasional or permanent; and of the operations carried out with them, especially regarding the opening of new accounts, the performance of trust transactions, rental of safe deposit boxes or execution of cash transactions in excess of the amount specified in Article 24 of this Act".

"Article 23. Updating and retention of records. The records referred to in Articles 20, 21 and 22 of this Act must be kept up to date during the life of the business relationship, and retained for at least five years after the completion of the transaction or the closure of the account. Likewise, regulated institutions shall retain records that enable reconstruction of transactions in excess of the amount specified in Article 24 of this Act, for at least five years after the conclusion of the transaction".

"Article 13 "*Updating and retention of records. The records referred to in the Act and these Regulations shall be organized in accordance with an adequate filing system, on hard copy, magnetic or other electronic devices,* ***in such a way as to enable them to be used efficiently by the institution and meet the requirements of the competent authorities***. *When magnetic or any other electronic device is used, backup copies must be kept. Regulated institutions must inform the Superintendency of Banks through the Intendencia , with at least one month's notice, of the date on which the destruction of the records is to take place, the minimum period of retention laid down in the law having elapsed,".*

365. Mention may also be made of Art. 382 of the Commercial code: "*ARTICLE 382. Documentation and Correspondence. Every businessperson must keep, in orderly and organized form, for not less than five years, the documents of the business, except as may be provided in special laws*". However, this provision does not require the period to apply after conclusion of the relationship with the customer. Under Article 20 of the AML Regulations financial institutions must update their customer information during the life of the contract and at least yearly. The regulated sectors interviewed by the evaluation mission stated that they were aware that some limitations on updating of customer information makes reconstruction of transactions difficult, some of these factors being the high degree of informality in the business and services sector, and the reluctance of these sectors to provide information.

366. The institutions interviewed pointed out certain difficulties in the process of updating customer records, among them: 1) risks of false declaration, unreliability and duplication of the official identity document; 2) difficulties in the updating and computerisation of old customers; 3) insufficient information on customers in the informal sector. Banks use computerised solutions to follow up their customers' transactions, and are in the process of modifying the customer profiles by differentiating them according to ML/FT risk and strengthening their policies of updating of information. It is important to point out that the Guatemalan State is well advanced in the process of putting in place the new National Identity Document (DNI), which will certainly solve the problems that the present system poses for good CDD, including the maintenance of up-to-date records.

367. The financial institutions are required to maintain data on identification of customers and their accounts and transactions for at least five years after the conclusion of the relationship with the customer. Article 15 of the Regulations of the AML Act requires findings, written conclusions and files of unusual transactions detected to be recorded and Article 13 pf the same legal corpse provides updating and preservation conditions of records referred to in the law and the regulations for which includes all unusual transactions files.

368. Under Articles 21 and 23 of the AML Act and Article 13 of its regulations, Guatemalan financial institutions are required to keep records of information on customers and transactions at the disposal of the competent authorities.

369. IVE on site inspections in this area are infrequent, do not cover all the entities regularly. With the current Methodology of Supervision based on Risk specific guidelines for on-site review of the implementation of controls, procedures and systems to ensure integrity, security and updating of customer information records, their transactions and correspondence, including wire transactions; and the directions and instructions to repair deficiencies in accordance with Article 3 c) of the Financial Supervision Act. IVE indicates that a card of results shall be delivered to Board of Directors or Management Councils. Upon the vist 9 banking institutions has been applied as model being pending delivery of the referred card. IVE stated that the practice of meeting with the boards of directors of the banks to inform them orally of the findings of the on-site inspections began only in 2009.

Special Recommendation VII – Wire Transfers:

370. Article 9 of the CFT Act's Regulations lays down the requirement to obtain and maintain complete information on the originator of a wire transfer:

"Article 9. Transfers of funds. For purposes of compliance with the provisions of Articles 17 and 20 of the Act, regulated institutions shall use the form which the Superintendent of Banks shall design for the purpose, through the Intendencia de Verificación Especial, which shall contain at least the following adequate and significant information:

a) Personal identification data of the originator;
b) Personal identification data of the beneficiary;
c) The amount of the transaction;
d) The account number, and failing this a number identifying the transfer.

Particular attention must be given to the complete names, addresses, date and place of birth, and ID document number of both the originator and the beneficiary. The Superintendency of Banks, through the Intendencia de Verificación Especial, is empowered to issue instructions or other types of complementary measures necessary for ensuring compliance with the provisions of this Article."

371. Article 17 of the CFT Act requires the inclusion of complete information on the **originator of a cross border wire** transfer:

"ARTICLE 17. Transfer of funds. …
collect adequate and meaningful information on the person originating the transfer, within or outside the national territory,… Such information must remain on the transfer or the message concerning it throughout the chain of payment.
Regulated institutions shall pay particular attention to transfers not containing all the information referred to in the previous paragraph and, should transactions be considered suspicious, they shall report them to the Intendencia de Verificación Especial.
Failure to comply with this provision shall be penalised in accordance with the provisions of Article 19 of this Act…"

372. The requirement to include complete information on the originator of a domestic wire transfer is set out in Form IVE TF-21, which came into effect in December 2008, It requires banks, finance companies, offshores, remittance houses and cooperatives that are members of the FENACOAC to complete a form for: "Recording of Transfer of Funds equal to or in excess of US$2,000 or the equivalent in other currency". This information is sent once a month to the IVE, in the first ten working days of the month following the transfer. The IVE states that the information is in its data

bases and is used in information exchange with counterpart agencies and with the Ministerio Público.

373. The IVE stated that since 2005 money transfer firms had been submitting information on operations equal to or in excess of US$2,000.00 on forms IVE-TF-09 and IVE-TF-10, which were replaced by the abovementioned form IVE-TF-21. This includes multiple transactions which in aggregate equal or exceed the established amount, performed by one originator or received by a single beneficiary located on the national territory**.**

374. The structure of this report is very detailed and includes all the data required by SR.VII. Includes operations of lesser amount that added during a calendar month reach $2,000. Such records are available to IVE even when the maximum amount to be sent in the monthly electronic form is not reached. In addition, although the financial institutions were already sending these forms to the IVE, at the time of the evaluation the IVE had not started any on-site supervision of compliance with these requirements in remittance entities and saving and credit corporations**.**

375. The duty to include complete information on the originator of a domestic wire transfer is included in Articles 17 of the CFT Act, and Article 9 of its Regulations, included in in Form IVE-TF-21.

376. Article 17 of the CFT Act also stipulates that "(…) information must remain with the transfer or message relating to it throughout the chain of payment". It also stipulates that "regulated institutions shall pay particular attention to transfers not containing all information referred to in the previous paragraph, and if they are considered to be suspicious such transactions shall be reported to the Intendencia de Verificación Especial" (Article 17 of the CFT Act).

Some institutions interviewed stated that when they receive from abroad transfers that are not accompanied by all information, they adopt such measures as temporarily suspending payment until the information is complete, or failing this, reverse the transaction.

377. The IVE is empowered to monitor the compliance of some of the financial institutions with the requirements concerning wire transfer as regards data on originator, beneficiary, type of person, amount, maintenance of information throughout the payment chain, etc. by means of implementation of Form IVE-TF-21. However, since this form has only recently been issued and come into force, the IVE has not yet performed any on-site inspections in this regard in remittance entities and saving and credit corporations.

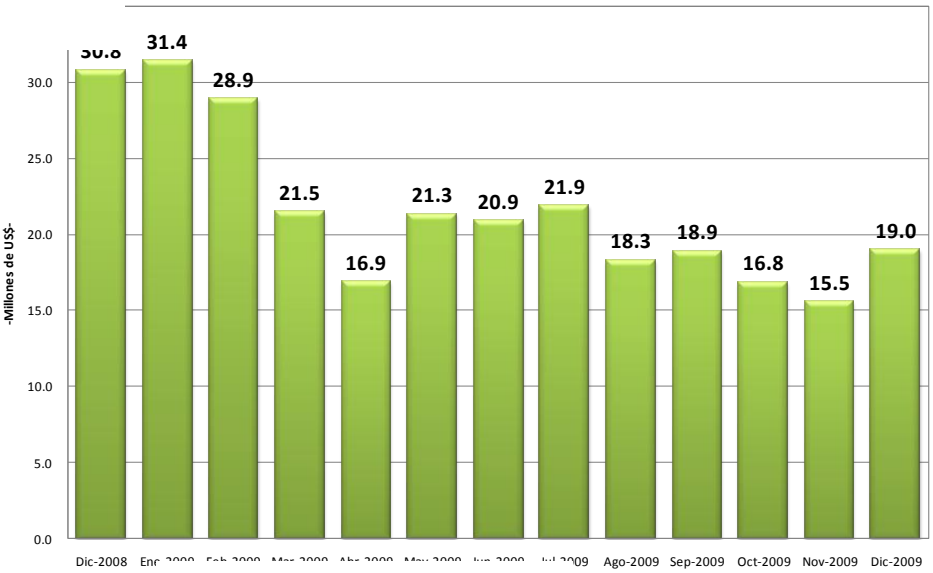
378. The IVE on-site inspections are not sufficiently frequent for some financial institutions although currently apply a new Supervision Based on Risks methodology developed with the support of the International Monetary Fund which is indicated shall be implemented for all enforced individuals according to their characteristics. The evaluation mission found no indications or written instructions for repairing deficiencies in this area in accordance with Article 3 c) of the Financial Supervision Act.

379. Failure to comply with obligations concerning wire transfers (Article 17 of CFT of 2005) entails sanctions in accordance with Article 19 of the CFT Act. However, no levels or gradations have been established in accordance with the gravity of the case as is done for ML in Executive order 43-2002 issued by the Superintendent of Banks in 2002. The penalties imposed by the Superintendency of Banks in ML/FT cases are few, and none is for non-compliance with money transfer requirements.

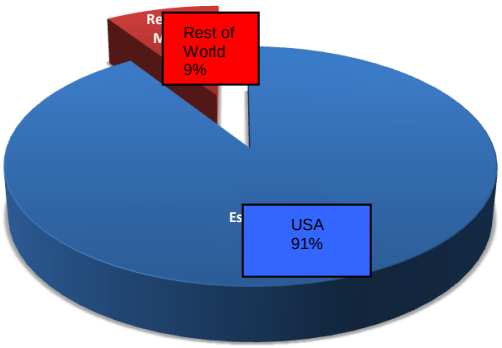
380. Additional elements: In Guatemala requirements concerning CDD for wire transfers are not subject to a threshold. The amount of $2,000 referred to in the regulations is only used to determin which transactions must be monthly reported to IVE .

STATISTICS ON MONEY TRANSFERS EXCEEDING $2000

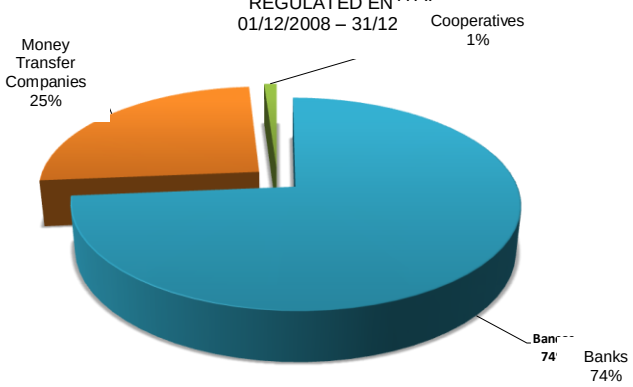
REMITTANCES RECEIVED EXCEEDING US$2,000.00 BY MONTH
FROM 01/12/2007 to 31/12/2009



REMITTANCES RECEIVED EXCEEDING
US$2.000.00 AGGREGATED BY COUNTRY
OF ORIGIN
FROM 01/12/2008 to 31/12/2009



REMITTANCES RECEIVED EXCEEDING
US$2.000.00 AGGREGATED BY TYPE OF
REGULATED ENTITY
01/12/2008 – 31/12



Recommendations and Comments

381. Rec 10: Require enforced subjects to keep plans of action, design resources, set reasonable time limits for completing and updating data, documents and profiles of old customers.

382. Strengthen the supervision by the Superintendency of Banks in general, and the IVE in particular, of compliance by all regulated entities with the requirements for secure and up-to-date customer records, as laid down by previously defined matrices and guidelines, recording on physical and/or electronic supports (written reports and/or aide-mémoires) of any discovered weaknesses or non-compliance, as stipulated by Article 3 c) of the Financial Supervision Act.

383. R.E. VII: Issue guidelines on wire transfers to eliminate any possible doubt as to the obligation to identify the customer regardless of the amount of the transaction. More effective controls and guidelines should be applied for remittance businesses in order to reduce informal sectors and integrate them into the DNFBP supervision regime.

384. The IVE should review and update, in keeping with the gravity of the incidents of non-compliance, the gradation or scale of pecuniary sanctions in accordance with the minimum and maximum amounts incorporated in the Act, concerning the area of FT in the matter of wire transfers.

Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	The rules do not expressly specify the moment from which the five-year period for records of the commercial correspondence of clients that are not related with transactions.
SR.VII	**LC**	Although the Law and the CFT regulation provide obligations according with RE VIII and banking sector complies it to a great extent this could generated doubts about the threshold as of which it is demanded to obtain information and monitor wire transfers. The factors governing rating of Rec. 17 (sanctions) affect compliance with this recommendation.

Unusual and Suspicious Transactions

Monitoring of transactions and relationships (R.11 and 21)

Description and Analysis

Summary:

385. In Guatemala, regulated financial institutions are required to monitor transactions and relations for the purpose of detecting and analysing unusual aspects in accordance with parameters and signals laid down in the law, or in instructions issued by the IVE or in their own ML/FT prevention manuals; and they are required to record the results in writing and keep them at the disposal of the competent authorities. These requirements are set out in the following legal provisions: Article 26 of the AML Act, Articles 13, 15 and 17 of its Regulations, Articles 15 and 16 of the CFT Act. However, since the IVE's on-site inspections are very infrequent, it is not able to regularly ascertain the quality and effectiveness of the process of examining background and purposes, nor

the existence of written conclusions, records and files of those transactions discovered to be unusual but which did not give rise to an STR. The requirements for special attention to business relationships with persons from or in countries which do not apply FATF is not expressly established Recommendations or do so inadequately, is expressly established. In the case of banks, finance companies and offshore entities, the ML/FT Risk Management Guidelines issued in IVE Oficio no. 434-2009 at the end of April 2009 (one month prior to the visit) is applied. Under it these entities are in fact told (though in language that is not imperative) to assess risks on the basis of geographical factors.

386. The IVE, in its recent ML/FT Risk Management Guidelines (point 4.1.4), provides orientation to the banks, finance companies and offshore entities on measurement of risk on the basis of geographical, national and international factors in accordance with information generated by specialized bodies and the other regulated entities are forseen to be included in the next stage for which upon the visit have not been advised on weaknesses of AML/CFT systems of other countries.

Recommendation 11 – Monitoring of Transactions

387. The requirement to give particular attention to large, complex and unusual transactions is set out in the following provisions:

In the AML Act:

"*Article 26. Notification of suspicious or unusual transactions. The regulated institutions shall give* ***particular attention*** *to all transactions, whether concluded or not, that are complex, unusual, large, and to all unusual patterns of transactions and to small but regular transactions which have no apparent economic or legal basis, and shall immediately inform the Intendencia de Verificación Especial."*

388. The requirement to analyse and examine transactions found to be complex or unusual, and to put the conclusions of this examination in writing, is set out in the Regulations to the AML Act:

"Article 15. Recording of unusual transactions. Through the compliance officer, regulated institutions ***shall examine unusual transactions*** *to determine whether they are of a suspicious character and shall open files, couched on documents, magnetic supports or any other electronic device, assigning to them identification numbers to identify them for later proceedings. The file shall contain all the supporting documentation, regardless of whether it is determined that the transaction is not suspicious and it is not necessary to report it to the Superintendency of Banks through the Intendencia".*

389. Article 16 of the same Regulations stipulates that *"for the purpose of detecting and preventing suspicious transactions, every regulated institution shall define warning signals, including among them those notified by the Superintendency of Banks in its circulars*".

390. In addition, the ML/FT Risk Management Guidelines issued by the IVE for banks, finance companies and offshore entities, requires these to "*establish descriptive and prospective warning signals to indicate potential sources of ML/FT risk"* and advises on monitoring, analysis, parametrisation and documentation of the warning signals for the purpose of detecting unusual transactions (points VIII and IX of the Guidelines). However, up to the time of the evaluation visit, the IVE communicated only alert signal documents of international instruments as document of 100 cases of Egmont Group and recently provided information through training speeches given to regulated entities and sent an electronic bulletin with links and typologies of FATF and FATFUS.

391. For purposes of detection of possible financing of terrorism, the CFT Act provides as follows:

"Article 16. Reporting of Suspect Transactions – STRs. Regulated persons shall report promptly and with due diligence to the Superintendency of Banks, through the Intendencia de Verificación Especial, any transaction which has no apparent lawful purpose, or when there is suspicion or reasonable evidence to suspect that there are funds related to or which may be used for the financing of terrorism.

For this purpose, regulated institutions shall apply the procedures established in the Regulations of this Act, and failing this, in the Anti-Money Laundering Regulations, including those concerning recording of unusual transactions that are not brought to the attention of the competent authority".

392. The legal requirement for financial institutions to keep their findings and conclusions at the disposal of the competent authorities is to be found in the following provision:

Article 13 of the Regulations of the AML Act: "*Updating and retention of records. The records referred to in the Act and these Regulations shall be organized in accordance with an adequate filing system, on hard copy, magnetic or other electronic devices,* ***in such a way as to enable them to be used efficiently by the institution and meet the requirements of the competent authorities***. *When magnetic or any other electronic device is used, backup copies must be kept. Regulated institutions must inform the Superintendency of Banks through the Intendencia with at least one month's notice, of the date on which the destruction of the records is to take place, the minimum period of retention laid down in the law having elapsed,"*.

Article 15, AML Act Regulations, cited above, stipulates that financial institutions must keep records of findings, analysis and written conclusions and files on transactions discovered to be unusual, whether or not they are the subject of an STR and on its part Article 13 of the same legal entity provides updating and preservation provisions of all registrations referred to in the Law and its regulation which includes unusual operation records. The on-site ML/FT prevention inspections carried out by the IVE have been unable (in some cases for several years) to cover all the non banking financial institutions, and this makes it impossible for it to regularly ascertain the quality and effectiveness of the process of examination of background and purposes, or the existence of written conclusions, records and files of those transactions discovered to be unusual though they did not figure in an STR, in compliance with Article 26 of the AML Act, Article 13 and 15 of its Regulations and Article 15 (second paragraph) of the CFT Act in this type of entity.

393. Regarding the practical application of monitoring of transactions by the regulated institutions, it should be noted that the improvement in the quality of the STRs of which we were informed by the IVE (see R.13) is in part the result of better follow-up of transactions by the regulated institutions.

Recommendation 21 – Attention to High Risk countries

394. The ML/FT Risk Management Guidelines (point 4.1.4) issued by the IVE at the end of April 2009 (one month before the visit) and applicable to banks, finance companies and offshore entities, stipulates that financial institutions are responsible for evaluating risks on the basis of geographical factors and applying monitoring measures to high ML/FT risk jurisdictions on the basis of information generated by specialized bodies. It also directs them to internet sites available to the regulated institutions to learn the status of compliance with international anti-money laundering and anti-terrorist financing standards of the countries on which they need information. However, it was not possible to determine how effectively these guidelines were implemented, because they had been very recently issued. The other regulated institutions are not expressly required by ML/FT prevention laws and regulations to pay particular attention to business relations and transactions with persons (including legal persons and other financial institutions), coming from or located in countries that do not apply the FATF recommendations, or apply them insufficiently, however as indicated above for the time being it has been covered with this guidelines 92.8% of the financial sector of the country.

395. As regards making known concerns, weaknesses or warnings about AML/CFT systems of other countries, IVE gave information that every time it received or obtained information in IVE about this topic remits official letters to banks, financial entities, insurers and off-shore as well as savings and credit cooperatives and other enforced financial parties in order to adopt relevant measures having placed available for this mission a copy of several official letters to that respect.

396. *Oficio* IVE No 574-2008 (coinciding with the evaluation visit) also sent to banks, finance companies and offshore entities the "Basic Prevention Guidelines for Correspondent Bank Services, Branches of National Banks Abroad, and Subsidiaries", indicates that cities should implement measures to protect from this type of different risk and control measures are recommended.

397. Article 19 d) and 21 of the AML Act which concerns prevention programmes to be put into effect by financial institutions includes aspects concerning foreign customers. If these transactions have no apparent or visible lawful economic purpose, the background and purpose of these transactions must be examined in the greatest possible detail, and the conclusions put down in writing and kept available to assist the competent authorities (e.g. supervisors, law enforcement bodies and the FIU).

398. The requirements for analyzing and examining transactions found to be complex or unusual and to put the conclusions in writing and keep the information at the disposal of the competent authorities, is covered in the abovementioned Articles 15 of the Regulations of the AML Act and 16 (second paragraph) of the CFT Act.

399. General and complementary reference may be made to Article 6 of the AML Act Regulations:

ARTICLE 6: Foreign agencies, branches, subsidiaries and offices. Regulated persons shall ensure that their agencies, branches, subsidiaries or offices located abroad comply with the legal provisions of the host country for prevention of laundering of money or other assets".

400. Nevertheless, no other provisions and/or instructions were discovered concerning countermeasures in cases of countries which continue not to apply, or apply insufficiently, FATF recommendations. According to what was informed to this mission this is conserved covered through the risk management guide of ML and FT which refers to the care that must be taken with geographic risk.

Recommendations and Comments

401. R 11. Strengthen the supervisory work of the Superintendency of Banks in general, and the IVE in particular, to be able them to cover all the regulated entities regularly and at reasonable intervals, and ascertain the quality and effectiveness of the process of examination of, and written conclusions, records and files on, those transactions discovered to be unusual but which do not become the subject of an STR.

402. Include in the legislation and/or in circulars and standards the requirement for financial institutions (other than banks, finance companies and offshore entities) to pay particular attention to business relations and transactions with persons from or in countries that do not apply FATF recommendations or apply them insufficiently.

403. R. 21: Amend the ML/FT Risk Management Guidelines to make its wording more imperative.

404. Require insurance intermediaries to abide by Recs. 11 and 21.

Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**LC**	Insurance intermediaries, as financial institutions, are not ML/FT prevention obligated, nor required to monitor, detect and analysis unusual operations.
R.21	**LC**	The Guidelines which recently included preventive measures and information on high risk countries have the following deficiencies: a) they apply only to Banks, finance companies and offshore entities; (higher risk sector according to study accomplished by Guatemal) and not the other financial institutions such as stock brokerage firms that do not belong to financial groups and savings and credit cooperatives (these latter have almost the same amount of assets that financial companies) ; b) their wording does not make them mandatory.

Suspicious Transaction Reports and other reporting (R.13-14, 19, 25 and SR.IV)

Description and Analysis[8]

Summary:

405. Guatemalan legislation expressly includes the requirement for submitting Suspicious Operation Reports (SORs) by regulated entities under the obligation of preventing ML and FT, and the most relevant provisions in this area are to be found in the following legal instruments: Article 26 of the AML Act, Articles 16 and 17 of its Regulations, Article 16 of the CFT Act and Articles 7 and 8 of its Regulations. They are also required to submit Cash Transaction Reports (CTRs) above a threshold defined in Article 24 of the AML Act and Article 14 of its Regulations. In practice the overwhelming majority of STRs and CTRs are submitted by banks. In addition, the regulated institutions, their owners and officials, are legally protected against any criminal, civil or administrative liability which might derive on occasions from the submission of the abovementioned reports in accordance with Article 30 of the AML Act. The prohibition on tipping off appears in Articles 27 and 36 of the AML Act, Article 26 of its Regulations and Article 63 of the Law on Banks and Financial Groups. The requirement for the competent authorities, particularly the IVE in its role as FIU, to provide feedback to the regulated institutions is covered in Article 25 of the Regulations of the AML Act.

Recommendation 13 and SR IV – suspicious transaction reporting

406. Guatemala's FIU is the Intendencia de Verificación Especial (IVE) which is part of the Superintendency of Banks. Regulated institutions, both financial institutions and DNFBPs, are expressly required to submit Suspicious Transaction Reports for ML and FT to the IVE in conformity with the following provisions:

407. In the AML Act:

"Article 26. Notification of suspicious or unusual transactions. Regulated institutions shall pay particular attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions that are small but frequent and which have no apparent economic or legal basis, and shall report immediately to the Intendencia de Verificación Especial".

408. In the Regulations to the AML Act:

"Article 16. Notification of suspicious transactions. Regulated institutions shall inform the Superintendency of Banks, through the Intendencia, of transactions which they discover to be suspicious, applying the procedure described below (….):

409. In the CFT Act:

"*Article 2:[…] d) Suspicious transaction: is an unusual transaction duly examined and documented by the obliged institution which, not having an evident economic or legal basis, could constitute a criminal offense"*

"Article 16. Suspicious Transaction Reports – STRs-. Regulated institutions shall inform promptly and with due diligence the Superintendency of Banks, through the Intendencia de Verificación Especial, of any transaction that is apparently without obvious lawful purpose or when there is

[7] The description of the suspicious transaction reporting system in s.3.7 is integrally connected to the description of the FIU in 2.2.5, and the two texts are intended to complement, not duplicate, each other.

suspicion or reasonable evidence of the existence of funds linked to or which may be used for the financing of terrorism.

For this purpose, regulated institutions shall apply the procedures established in the Regulations of this Act, and failing this, in the legislation against money laundering, including rules for recording of unusual transactions that are not reported to the competent authority.

410. In the CFT Act regulations:

"Article 7. Reporting of Transactions Suspected to be Related to Financing of Terrorism – STR/FT-. For purposes of compliance with the provisions of Article 16 of the Act, regulated institutions referred to in Articles 15 and 18 of the said Act shall apply the form designed by the Superintendency of Banks, through the Intendencia de Verificación Especial, and abide by the time limits and procedures set out in Article 16 of the Regulations of the Act Against Laundering of Money and Other Assets (….)

Article 8. Amplification. In cases in which the information contained in Financing of Terrorism Suspicious Transaction is incomplete, confused, ambiguous or contradictory, the Superintendency of Banks, through the Intendencia de Verificación Especial, shall request the regulated institution concerned to provide the necessary amplification of the said report and such documents as may be necessary"

411. There is a form issued by the IVE entitled IVE-RTS- LED/FT "*MONEY LAUNDERING AND/OR FINANCING OF TERRORISM SUSPICIOUS TRANSACTION REPORTING – STR ML/FT"*, used by regulated institutions to report suspicious transactions. It includes the following items:

- Information on the reporting institution
- Information on the persons related to the suspicious transaction
- Information on the suspicious transaction
- Documentation that is required to be annexed to the suspicious transaction
- Description of the suspicious transaction and warning signs detected.

412. The figures submitted by the IVE on STRs are as follows:

Suspicious Transaction Reports sent to the IVE, by Regulated Institutions

Suspicious Transaction Reports received in the IVE by Regulated Institution	2005	2006	2007	2008	Total	Porcentaje
Bancos	237	250	301	236	1024	67.3%
Empresas de Transferencias de fondos	104	57	26	34	221	14.5%
Cooperativas	54	47	37	32	170	11.2%
Tarjetas de crédito	9	9	12	12	42	2.8%
Bancos Off shore	9	11	5	6	31	2.0%
Aseguradoras	3	7	7	7	24	1.6%
Financieras	1	0	0	2	3	0.2%
Afianzadoras	1	0	1	0	2	0.1%
Casas de Bolsa	0	0	1	0	1	0.1%
Almacenadoras	0	0	0	1	1	0.1%
Casas de Cambio	0	1	0	0	1	0.1%
Empresas de Canje de Cheques	0	0	1	0	1	0.1%
Casas de Empeño	0	0	0	0	0	0.0%
Totales	**418**	**382**	**391**	**330**	**1521**	**100.00%**

Denuncias submitted and number of underlying STRs

Denuncias presentadas y número de RTS que las originaron

	2005	2006	2007	2008	Total
Denuncias	8	32	32	21	**93**
STRs	68	113	90	48	**319**

Suspicious transaction reports received in the IVE by type of account of service

Tipo de Cuenta	2005	2006	2007	2008	Cantidad de RTS	Porcentaje
Cuenta de Monetarios	195	180	241	185	801	52.66%
Checking/Current Accounts	61	80	64	51	256	16.83%
Savings Accounts	122	23	10	23	178	11.70%
Remittances					-	0.00%
Customers without type of account	6	45	22	24	97	6.38%
Transfers	9	12	16	10	47	3.09%
Credit Card			6	3	9	0.59%
Without type of account (no customer)	10	12	16	4	42	2.76%
Long term deposits	9	12	4	9	34	2.24%
Loans	3	7	8	5	23	1.51%
Policies	1	5	3	13	22	1.45%
Other		5	1	2	8	0.53%
Purchase and/or collection of cashiers cheques	2	1		1	4	0.26%
Purchase/sale of foreign currency	**418**	**382**	**391**	**330**	**1,521**	100.00%

No of persons included in STRs

	2005	2006	2007	2008	Total
STRs received	418	382	391	330	**1,521**
Persons involved in the STRs	1,159	1,337	1,708	1,651	**5,855**

413. From these figures can be seen a reduction in the number of STRs submitted in 2008 compared to the previous year, from 389 in 2007 to 329 in 2008; in addition to the small number of STRs submitted by non-banking financial institutions such as finance companies, insurance companies, bonding companies, stockbrokers, bureaux de change, warehouse companies and cheque changing businesses. However, in the case of the remittance houses there is an increase in STRs from 26 in 2007 to 34 in 2008. The number relating to FT is minimal (the IVE has received two reports in which the reporting institution suspected possible terrorist financing)..

414. There are shortcomings in the effectiveness when building prosecutions as their number is still low compared to the denuncias submitted to the Ministerio Público.

415. Some compliance officers and some of the authorities interviewed expressed concern at the possibility that compliance officers may be summoned by courts as witnesses or experts during high impact trials. According to the authorities this has not happened in recent years but is still a concern for compliance officers. In the interest of supporting and protecting compliance officers, IVE plans to hire a skilled expert of the Ministerio Publico who shall act as liaison between IVE and the attorney´s office against money laundering of the Ministerio Público. This expert will be able to attend hearing and debates in which he is summoned by the Ministerio Publico in complex and ML and FT cases. His would also assist technical personnel of IVE in the preparation of criminal lawsuits as well as on how to analyse soporting documentation that is submitted to the Ministerio Publico. This vacancy is already approved and budgeted and the person elected as of the time of visit has passed all the selection criteria in order to be incorporated to the IVE.

416. In spite of the possible fear or disincentive to report, statistics reflect constant reporting activities. However, onsite inspections sometimes fail to cover all non banking financial institutions (often for several years) and this makes it impossible to ascertain the number of operations detected as unusual which the financial institution ultimately decides not to report as an STR, nor the quality of analysis, nor of the supporting documents or their records.

417. The STRs are submitted on physical media, regardless of the sum or the type of transaction involved. The financial institutions, through their associations, share information on STR typology. There have been no cases of tipping off when STRs are prepared.

418. With respect to the so-called Persons Obligated under Special Regime "PORES" (DNFBPs) who have been regulated institutions since 2005 is until April 2009 that the registration process has started in IVE in order to verify compliance with obligations established in the CFT Act. Independent professionals (lawyers, notaries, accountants and auditors) who are regulated entities under Article 18 of the CFT Act, are not required to submit STRs either for ML or for FT since the possibility of reporting suspicious transactions is at the discretion of the professionals concerned. Lawyers are not regulated persons in Guatemala.

419. The requirement to present STRs on Terrorism and its Financing (c.13.2) is embodied in the abovementioned Article 16 of the CFT Act and Articles 7 and 8 of its Regulations, as well as in Form IVE-RTS-LD/FT issued by the IVE. Article 26 of the AML Act extends this requirement to attempted operations as well (c.13.3) and regardless of their amount. The IVE confirmed that it has received only a some STRs based on attempted operations.

420. Concerning the obligation for the provision on the requirements for submitting an STR whether or not it is considered that the transactions are related to tax matters. It should be pointed out that tax fraud is a crime in Guatemala (Article 358 of the Criminal Code) and the regulated institutions must report money laundering suspicion derived from any offence.

421. Additional element (c.13.5) – Reporting of any criminal act. The duty to report suspicious operations is not limited to possible ML/FT activities, but is extended also to all types of "*transactions…that are complex, unusual, or large, and all unusual patterns of transactions and transactions that are small but frequent, and have no apparent economic or legal basis"* (Article 26 of the AML Act).

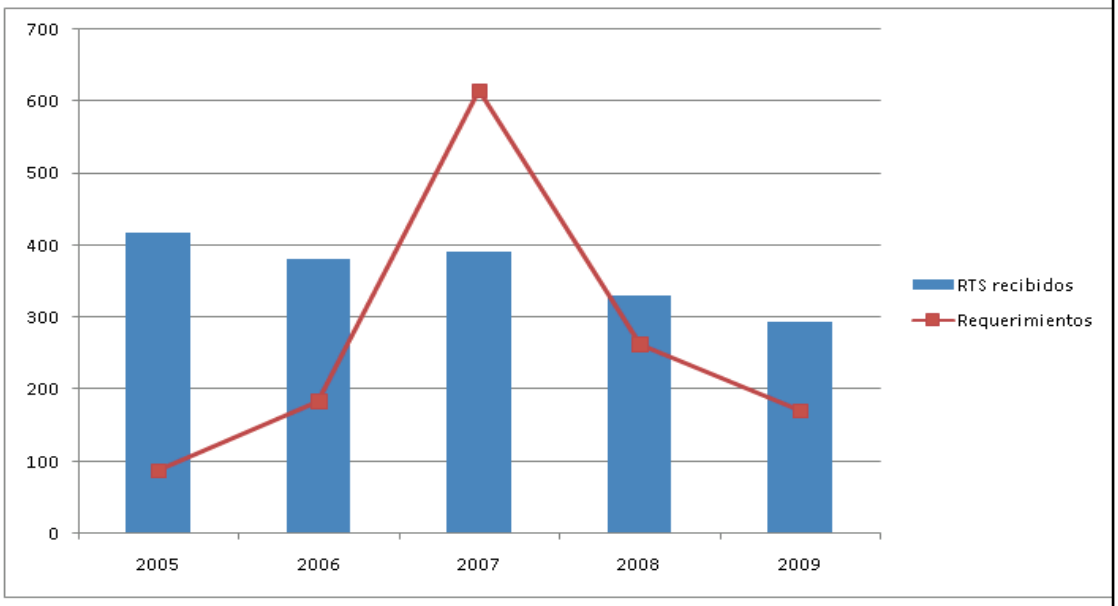
422. According to the special ML/FT unit of the Ministerio Público, the STRs show defects in quality and content. However, the IVE, for the purpose of improving the quality of the STRs and of their analysis, decreed from July 2008 the implementation of a Checklist for admissibility of an STR, and has reinforced its department of specialized analysts. Although few STRs have been rejected by the IVE for non-compliance with the Checklist, this filter has resulted in a decreased number but increased quality of reactive STRs, an opinion confirmed by several compliance officers, and which can be seen in the following table:

IMPACT OF APPLICATION OF CHECKLIST (a)
Evolution of requests to regulated persons, derived from STRs Received and analysed

2005 - 2009

Calificación / Rating	2006	2007	2008	2009	Total
RTS recibid / **STRs received**	382	391	330	295	1816
Requerimien / **Requests**	184	615	263	171	1321
% de requerimient sobreRTSs recibidos / **% of requests on STRS received**	48,17%	157,29%	79,70%	57,97%	

(a) Implemen / **(a) Implemented from August 2008**



De 2006 a 2
cual se imple
debido a la n

From 2006-2007 the number of requests for information on STRs rose, therefore check list implemented in 2008, and number of requests dropped owing to resulting improvement in quality of STRs

Recommendation 14 – Protection for reporting and prohibition of tipping-off

423. In Guatemalan legislation, the most relevant provision regarding protection of financial institutions and their officials against criminal or civil liabilities on submission of STRs is Article 30 of the AML Act:

"Article 30. Exemption from liability.

Regulated entities, their owners, directors, managers, administrators, officials, legal representatives and duly authorised employees who have provided information in compliance with this Act are expressly exempted from criminal, civil or administrative, or any other type of liability."

424. The provisions which Guatemala presents as most relevant concerning the prohibition on disclosing the fact that an STR is being submitted are the following:

425. In the AML Act:

"Article 27. Confidentiality of requested information. The regulated institutions shall not inform any person, except a court or the Ministerio Público, that information has been requested or that it has provided it to another competent tribunal or authority"

"Article 36. Confidentiality. For the purpose of ensuring confidentiality of financial operations, the persons who are members of the Intendencia de Verificación Especial and any other person who by virtue of his office has knowledge of or access to information referred to in this Act, is required to keep it confidential even after having quitted the office."

426. In the Banks and Financial Groups Act:

"Article 63. Confidentiality of operations. Except for the obligations and duties laid down in the legislation on laundering of money and other assets, the directors, managers, legal representatives, officials and employees of banks shall not provide information, by any means, to any person, individual or legal, public or private, conducive to disclosing the confidential character of the identity of depositors in the banks, financial institutions and member institutions of a financial group, as well as information provided by private persons to these institutions."

427. The financial institutions do not share information, within their associations, on specific STRs, but only on STR typologies. It was learned that they have had no tipping-off problems when STRs were submitted. The banks implement security measures for STRs, which are presented on paper.

428. Although there is a reserve duty by officers of IVE with respect to information acknowledged in the execution of its position. There is no express provision or measure to ensure that the names and personal details of the officials of the regulated entities who formulate and submit an STR shall be kept under seal of confidentiality in the IVE, in case information is requested by P or competent court

Recommendation 19 – Reporting based on Thresholds

429. Guatemala opted for a threshold of $10,000 or more for reporting of cash transactions:

"Article 24 of the AML Act. Requirement for daily records. Regulated entities shall keep a daily record, on the forms designed for the purpose by the Intendencia de Verificación Especial, of all transactions carried out in cash, whether occasional or regular, in national or foreign currency, which exceed ten thousand United States dollars or the equivalent in national currency. Multiple cash transactions in national or foreign currency which in aggregate exceed the sum established in this Article shall be considered as a single transaction if they are carried out by or on behalf of the same person in the course of one day."

430. Article 14 of the Regulations of the AML Act:

"Article 14 of the Regulations of the AML Act. Daily records. The information in the daily operation record which the regulated entities must keep in compliance with Article 24 of the Act shall be submitted to the Superintendency of Banks through the Intendencia, in the form and conditions to be determined by the Intendencia. This information shall be submitted within five working days of the month following that to which it relates. If no cash transactions of the kind referred to in the previous paragraph are performed, the Superintendent of Banks must be so informed, through the Intendencia, within the same time frame".

431. To meet the requirements of the Act and its Regulations, the IVE designed the following forms: 1) IVE-BA-05: "Electronic Storage of the Monthly Summary of Cash Transactions in excess of US$10,000 or the Equivalent in National Currency to the Superintendency of Banks"; 2) IVE-BA-03: "Record of Cash Transactions in Excess of US$10,000 or the Equivalent in National Currency". The initial letters marked as BA of the report vary depending on the institution referred to. In addition it is important to point out in this regard that in *oficio* 1585-2008 regulated institutions (banks, finance companies, cooperatives and money transfer businesses) were notified that Form IVE-TF-21: "RECORD OF TRANSFER OF FUNDS EQUAL TO OR IN EXCESS OF US$2,000" shall be mandatory from the 1st December 2008, and must be submitted monthly to the Superintendency of Banks, through the Intendencia de Verificación Especial. The CTRs are submitted online and the IVE keeps statistics, including total amounts by type of institution.

432. The threshold in Guatemala is US$10,000 in a single day. For Guatemala this sum seems to be reasonable, especially taking into account that fractioned operations aggregating to this amount must also be recorded. No customers are exempted from CTRs.

433. Additional element – Database (c.19.2): The information submitted on cash transactions is received on magnetic media by the IVE and is stored in a database available to other competent authorities on request. With this information the IVE is beginning to carry out strategic analyses including the use of already used ARGIS georeferential software to support its work of operational analysis and the study of typologies.

Recommendation 25 – Guidelines and Feedback on STRs and other reports

434. Regarding feedback and guidelines that must be received by financial institutions from the competent authorities, and in particular the IVE, on the subject of STRs, the following provisions must be taken into consideration:

435. The second paragraph of Article 36 of the AML Act:

"Article 36. Confidentiality (...). However, the publication of data for statistical purposes is permitted, provided it is done in such a way that the persons or institutions concerned may not be individually identified directly or indirectly."

436. Article 25 of the AML Act Regulations:

"Article 25. Communication of new patterns of laundering money or other assets. In cases in which, on the basis of analysis of the information obtained, of internationally known patterns, and communications received from specialized institutions, the existence of money laundering patterns is detected, the Superintendency of Banks, through the Intendencia, shall inform the regulated institutions, by whatever means it considers suitable, of the new methods of money laundering, in order that they may take the relevant preventive measures.

In addition, the Superintendency of Banks, through the Intendencia, may instruct the regulated institutions, in whatever form it considers suitable, of new measures to be implemented by them, within the framework of the relevant legislation, to prevent its institution being used for the laundering of money or other assets".

437. The IVE is the only State agency that has issued guidelines to assist regulated entities, (especially financial institutions) in implementing and complying with some of the AML/CFT requirements. Among these efforts are the following Oficios:

- Oficios IVE No. 247-2003, on Money Laundering Preventive Measures .

- Oficio IVE No. 1585-2008, on Development of Electronic Data Base for Monthly Reporting of Transfers of funds equal to or n excess of US$2,000.00 or the Equivalent in Other Currencies,

- Oficio IVE No. 13-2009, on accountancy guidelines for Companies or other Entities in process of formation..

- Oficio IVE No. 180-2009, on Development of an Electronic Data Base for Monthly Reporting of purchase or Sale of foreign currency in Cash

- Oficio IVE No. 181-2009, , on Development of an Electronic Data Base for Monthly Reporting of entry or exit of national currency in cash..

- Oficios IVE No.244-2009, IVE No. 245-2009 e IVE 303-2009, On Acceptance and Maintenance of Relations with Politically Exposed Persons (PEPs) by Regulated Persons..

- Oficio IVE No. 424-2009, for Regulated Persons unde Special Regime regarding Cash Transaction and Suspect Transaction Reportings.

- Oficio IVE No. 434-2009, or Money Laundering and Terrorist Financing (ML/FT) Risk Management Guidelines .

- Oficio IVE NO. 837-2009, Basic Prevention Guidelines for Correspondent Bank Services, Branches of National Banks Abroad and subsidiaries.

- Oficio IVE NO. 838-2009, Basic Guidelines on measures to be adopted by Regulated Persons regarding Assets or Property that might be or are linked to Terrorism, Financing of Terrorism and Related Activities..

438. The IVE informed the evaluation mission that during the month of April the first information bulletin was sent to regulated institutions and that it includes information on sites of interest that may be consulted, for example sites of lists of terrorists, and that it also includes statistics on STRs, MOUs that Guatemala has signed, and suggests visiting the webpage of the Superintendency of Banks where documents on ML and FT typologies may be found.

439. The number of STRs submitted by non-banking financial institutions, such as finance companies, insurance companies, bonding companies, stockbrokers, bureaux de change, warehousing companies and cheque changing businesses, is very small (about 2% of the total); however it is important to highlight the fact that the sector of banks, fianacial institutions and off-shore constitutes 92.8% f the financial sector of the country although this does not hinder accomplishment of SIB and IVE efforts to create awareness and provide guidelines on the need for monitoring, early diagnosis and reporting of suspect operations.

440. As already mentioned, the IVE has implemented a Guide or Check List for controlling the quality of the STRs presented by regulated institutions, and that this has turned out to be an efficient form of feedback for the reporting institutions on the quality of reports submitted to IVE.

441. In practice there is no feedback from the IVE or from any other regulatory and/or supervisory body to financial institutions on decisions and results arising from STRs: for example whether they proved worthy of further investigation and/or prosecution; or whether the analysis showed that the reported transaction was lawful.

442. The IVE is authorized to submit clear examples of real money laundering cases, in accordance with the abovementioned Article 25 of the AML Regulations and the second paragraph Article 36 of the AML Act: *"(...) the publication of data for statistical purposes is permitted, provided it is*

done in such a way that the persons or institutions concerned may not be individually identified, directly or indirectly." The evaluation mission only was aware about circulation of information on on typologies through the above mentioned Bulleting.

Recommendations and Comments

443. **R.13:** Take appropriate measures on the following aspects:

- Continue overcoming the defects of quality and content still present in STRs.
- Verify regularly and at reasonable intervals the compliance of all regulated institutions, and ascertain the quality and effectiveness of the processes they use for determining and submitting STRs

444. **R.13**: Establish in the best manner possible protection or alternate measures in order for the compliance officer not be exposed being summoned to court proceeding with the appointment of an expert of IVE in order to offer assistance on debates

445. **R 25**. Strengthen the IVE's work of feedback to financial institutions on STR subjects with respect to follow-up thereof.

Compliance with Recommendations 13, 14, 19 and 25 (criterion 25.2) and SR.IV

	Rating	Summary of factors underlying rating
R.13	**LC**	The number of STRs submitted by non-bank financial institutions, such as finance companies, insurance companies, bonding companies, stockbrokers, bureaux de change, warehousing companies and cheque changing businesses is tiny (about 2% of the total) STRs show certain defects of quality and content. There is fear among certain compliance officers to be summoned as witnesses or experts before the court in relation with the reported operation
R.14	**C**	
R.19	**C**	
R.25 (c.25.2 STRs)	**LC**	Limited and recent feedback to financial institutions. Only 2% of STRs are submitted by non-banking financial institutions, such as finance companies, insurance companies, bonding companies, stockbrokers, bureaux de change, warehousing companies and cheque changing businesses. This could be due to a lack of adequate guidelines and awareness raising in these sectors.
SR.IV	**LC**	The requirement to submit STRs on FT matters embodied in Art. 16 of the CFT Act refers to intended or not concluded operations Same factors as Rec 13 affect the Rec

Internal controls and other measures

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

Description and Analysis

Recommendation 15 – Internal Policies, Procedures and Controls

446. 19 of the AML Act requires financial institutions to *"adopt, develop and implement suitable internal programmes, standards, procedures and controls to avoid the improper use of their services and products in activities of laundering of money and other assets"*, requiring them to cover, as a minimum, subjects relating to integrity of employees, training of employees on relevant legal obligations, auditing and identification and knowledge of customers. It also requires appointment of management level employees responsible for compliance in these areas. In addition, the ML/FT Risk Management Guidelines for banks, finance companies and offshore entities requires all the subjects referred to in criterion 15.1 of the Methodology to be included in internal control manuals of the institutions.

447. Article 22 of the Regulations to the AML Act states that the compliance officer shall, among other duties, *"inform the staff of the regulated institution of all legal and regulatory provisions, as well as existing internal procedures for prevention and detection of laundering of money and other assets"*

448. There are provisions requiring the financial institutions to appoint an AML/CFT Compliance Officer at the management level. Article 19 of the AML Act stipulates that *"The regulated institution shall designate management level officers responsible for ensuring compliance with internal programmes and procedures, as well as compliance with the obligations imposed by [this Act]"*. In addition, Article 15 of the CFT Act stipulates that these officers *"shall include in their functions and duties compliance with the laws against financing of terrorism*". The authorities stated that financial institutions have appointed these officers, who in some institutions are devoted exclusively to the task of compliance. The financial institutions interviewed stated that they have a compliance officer responsible for ML and FT prevention. The position of the compliance officer within the organisation and his hierarchical status varies in the different institutions.

449. Article 21 of the AML Regulations requires regulated institutions to inform the IVE of the appointment of their compliance officers within a period of days after the appointment, enclosing the curriculum vitae of the officer.

450. Article 22 of the AML Regulations sets out the duties of the compliance officer, as follows: to propose internal AML programmes, standards, procedures and controls, inform staff of legal provisions and AML internal procedures, coordinate with other departments of the institution the implementation of the internal programmes, standards, procedures and controls; prepare and document Suspicious Transaction Reports and other reports required by the Act, and submit them to the IVE; maintain ongoing technical and legal updating of subjects related to AML, and establish channels of communication and cooperation with the compliance officers in other regulated institutions, regarding training and ML patterns; organize staff training on AML, submitting to the Superintendency of Banks, through the Intendencia, half-yearly report on such training; document the actions taken by the institution in the sphere of AML; submit quarterly reports to the Board of Directors of the institution on the efficacy of the internal control mechanisms operated by the institution, as regards the compliance programme; and other duties as may be required by the relevant Acts.

451. There are no provisions specifically requiring the AML/CFT Compliance Officer to have timely access to customer identification data and other CDD information, records of transactions and other relevant information. Nevertheless, this may be inferred from the set of standards governing the compliance officer's activity, and especially from Article 22 of the AML Regulations, according to which this officer shall prepare and document all the information to be sent to the SIB in compliance with AML Act, including Suspicious Transaction Reporting (Article 22 d) and also ensure that internal standards, procedures and controls are complied with (sub-paragraph c). In addition, according to the IVE and the interviewed institutions, in practice this official has timely access to such information.

452. (c.15.2) Financial institutions are required to maintain an auditing programme for ensuring compliance with the AML/CFT system. Article 19 of the AML Act stipulates that regulated institutions must "*adopt, develop and execute suitable internal programmes, standards, procedures and controls to avoid the improper use of their services and products in activities of laundering of money and other assets"* and that they must include *"the establishment of an auditing mechanism to verify and assess compliance with programmes and standards"*. Article 11 of the AML Act Regulations and 11 of the CFT Act Regulations require financial institutions to include the AML/CFT component in their internal auditing procedures and to incorporate it in their external auditing contracts. During the visit, the institutions interviewed stated that review of AML/CFT programmes and compliance with the requirements are included in their internal and external auditing programmes.

453. (c.15.3) There are provisions to require financial institutions to carry out ongoing AML and CFT training of employees. Article 19 of the AML Act stipulates that regulated institutions must carry out ongoing training of staff and instruct them "*regarding responsibilities and duties derived from this Act*". It also stipulates that "*training must also include knowledge of techniques to enable employees to detect operations that may be related to [ML] and how to proceed in such cases"*. Article 15 of the CFT Act extends training activities to FT matters, since it imposes on the institutions regulated by this Act, among which are financial institutions, "*the same regime, duties, obligations, policies for knowing customers and prohibitions laid down in the [AML Act]"*. The financial institutions stated that they provide training for their employees regarding the duties imposed by the AML and CFT Acts as well as training in ML and FT methods.

454. (c.15.4) Financial institutions are required to establish background checking procedures to ensure high standards in the hiring of employees. Article 19 of the AML Act states that regulated institutions shall "*adopt, develop and implement suitable internal programmes, standards, procedures and controls to avoid the improper use of their services and products in activities of laundering of money and other assets"* and that among these they must include *"procedures to ensure a high level of integrity in staff and knowledge of the personal, labour and personal wealth background of the employees"*. During the visit it was learned that not all the interviewed institutions checked the criminal records of candidates but that they do have various programmes for finding information on their employees, including among others verification of references and visits to their homes.

(c.15.5) Additional element – independence of compliance officer: Given that the regulation of Aml Act provides that the Compliance Officer must be a management officer which serves as liaison between the entity and IVE in addition of high relevance task such as submit quarter reports to the management body of the entity this may infer that the AML/CTF compliance officer may act independently and report to senior management

Superior Recommendation 22 – Branches and Foreign Subsidiaries

Financial institutions are not required to ensure that their branches and foreign subsidiaries abide by, as a minimum, AML/CFT measures in the country of origin (Guatemala). Article 6 of the Regulations to the AML Act lays down the opposite principle, "*Regulated institutions shall ensure that their agencies, branches and subsidiaries or offices set up abroad, comply with the <u>legal provisions of the host country</u> in matters concerning prevention of laundering of money or other assets"*.

455. On the 17th June 2009 the SIB issued a circular applicable only to banks and offshore entities entitled "Basic Prevention Guidelines for Correspondent Bank Services, Branches of National Banks Abroad and Subsidiaries". This corrects the provision set out in the AML Regulations, stating that "*regulated institutions must direct and ensure that their branches and subsidiaries abroad observe and <u>comply with measures</u> against money laundering and terrorist financing (due diligence, enhanced due diligence, programmes of prevention, monitoring, auditing, etc) <u>in</u>*

accordance with the laws and regulations against laundering of money or other assets and to prevent and suppress the financing of terrorism" (Section 2.2. of the Guidelines).

456. These Guidelines also stipulate that Regulated Persons must give particular attention to ensuring that their branches and subsidiaries abroad comply with Guatemala's AML/CFT measures, when they are located in non-cooperative countries or jurisdictions, pursuant to FATF criterion 22.1.1 for Banks and Offshore Institutions. However, this instruction has not been issued to stock brokerage firms that might establish branches and subsidiaries abroad. In this regard it should be noted that the opening of branches or offices abroad must have prior authorization by the SIB, and that this license is issued only when the host country has a supervision regime in keeping with international standards permitting consolidated supervision. At the time of the visit only one bank had a foreign branch. This makes it practically impossible for establishment of branches or subsidiaries in non-compliant countries to be licensed, but the status of the host country might change from compliant (at the moment of licensing of the branch or subsidiary) to non-compliant. It is therefore considered advisable that regulated persons capable of establishing this kind of entity be required to comply with this principle which would be complied with through the above mentioned Guideline.

457. The Basic Prevention Guidelines on Corresponding Banking Services, Branches of National Banks Abroad and Subsidiaries instructs banks and offshore entities to instruct their branches and foreign subsidiaries to apply the highest standards when the minimum AML/CFT requirements of Guatemala and the country in which the branch or subsidiary is based differ, insofar as the laws and regulations of the foreign country permit. This guidance has not been given to the other institutions which might establish branches or subsidiaries abroad, such a the case of stock exchange brokerage firms only.

458. (c.22.2) The Basic Prevention Guidelines for Correspondent Bank Services, Branches of National Banks Abroad and Subsidiaries informs banks and offshore entities that they must inform the supervisory body (Superintendency of Banks through the IVE), when it happens that a branch or subsidiary abroad is unable to meet the appropriate AML/CFT requirements, because this is prohibited by the laws, regulations and other local measures of the host country.

Recommendations and Comments

459. R.15. Recommend to financial institutions that they verify the criminal record of the employees to be hired.

460. R.22. Require in addition to national and off-shore banks to make sure that their branches and subsidiaries abroad comply with AML/CFT measures in accordance with the requirements of Guatemala and the FATF recommendations, insofar as the laws and regulations of the foreign country allow, particularly with regard to branches and subsidiaries located in countries which do not apply FATF recommendations or do so insufficiently. It is also recommended that the wording of Article 6 of the AML Regulations be changed for consistency between the law and the Guidelines for Branches and Subsidiaries as well as other criteria included in the mentioned Guideline.

Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**C**	
R.22	**PC**	Regulated entities other tan Banks and offshore entities are instructed to ensure that their branches and subsidiaries comply with the AML regime of the host country, which is the opposite principle to that of the FATF. Furthermore, these establishments are not required to apply Guatemalan rules especially when the host country is a non-cooperative country.

		Financial institutions other than banks and offshore companies are not required to instruct their branches and subsidiaries abroad to apply the higher standard when there are differences between the requirements of Guatemala and those of the foreign country. Financial institutions other than banks and offshore entities are not required to inform the SIB of difficulties encountered by their branches or subsidiaries abroad in attempting to comply with AML/CFT measures, owing to obstacles in the foreign country. Although it is not possible to open a banking account without authorization from SIB the Specific Guideline on on Branches that applies to banks is very recent and it was not possible to verify its effective application (it was issued at the end of the visit of the evaluation team).

Shell Banks (R.18)

Description and Analysis

461. (c.18.1) The procedure for authorisation of national banks and branches of foreign banks, set out in the Banks and Financial Groups Act (Act 19-2002) includes guidelines that may be useful in the prevention of the establishment of shell banks. Article 7 of the Act states that the Monetary Board is responsible for granting or refusing licenses to set up national banks or branches of foreign banks. It also provides that the Monetary Board may not authorise the creation of a national bank or the establishment of branches of foreign banks without previous approval by the Superintendency of Banks, adding that to issue this approval the Superintendency must carry out investigations to prove the existence of an adequate feasibility study, an appropriate origin and volume of capital, economic solvency, seriousness, honesty and responsibility of the founding partners, of the members of the Board of Directors and the proposed managers, and that the relations of the institution do not represent risks for the institution nor for its supervision. The Act states that in licensing the establishment of branches of foreign banks, in addition to the approval of the Superintendency of Banks, the Monetary Board must take into consideration "*that in the country of the head office of the bank there is supervision in accordance with international standards; that the supervisor of the head office gives his consent for the establishment in the country of the branch in question, and that institutional information exchange may take place between the supervisors of both countries"*.

462. Article 9 of this Act states that national banks and branches of foreign banks licensed by the Monetary Board must begin operations within six months following the issue of this licence, a period that may be extended, upon well-founded application, for an equal length of time. The Article also states that failure to initiate operations within the fixed period shall automatically invalidate the licence.

463. All the above leads to the conclusion that to achieve establishment of national banks or branches of foreign banks, there is a procedure subject to the good judgement of the Superintendency of Banks, which must carry out an analysis of the documentation submitted by the institution in order to verify its suitability. It may be noted that there are guidelines to ensure that these banks or subsidiaries once licensed operate within a grace period for organisation.

464. During the visit, the authorities and the Superintendency of Banks stated that no shell banks operate in Guatemala and that the creation of such banks would in practice be prevented by the licensing procedures.

465. Article 96 of the Financial Groups and Banks Act provides: "*Financial intermediation crime. Every individual or company whether local or foreign that without express authorization in accordance with these law or specific law to accomplish such nature operations habitually and*

publicly or privately, whether directly or indirectly, by itself or in combination with other individuals or legal persons for own benefit or for benefit of third parties, activities that consists of or related with capture from money of the public or any money representative instrument whether through the receipt of monetary species, checks, deposits, advance payments, mutual placement of bonds, securities and other obligations commits financial intermediation crime, including contingent operations destine such captures to credit of finance business of any nature regardless of the legal formalization from, instrumentation or accounting record of operations, IN the case of legal persons the managers, administrators, directors and legal representatives are liable for these offense. The responsible parties of this offense shall be punished with imprisonment from five to ten incommutable years which excludes the application of any of the substitution measures contained in the criminal Procedural Code and with a penalty of not lesser than ten thousand nor exceeding one hundred thousand penalty units "which shall also be imposed by the competent criminal court. Simultaneously to the imposition of the indicated penalty such court shall order the cancellation of the Trade Patent of the individual persons as well as the liquidation of legal persons referred to in this article in accordance with the procedure provided in the law. IN this latter case, once the liquidation has been concluded it shall order the Trade Registry to cancel the relevant inscription. The above also contributes to consider Shell Banks or banks without express legal authorization as forbidden.

466. (c.18.2) Section 3.6 of the Guidelines on Correspondent Banking, Branches and Subsidiaries, issued to banks and offshore entities in IVE *Oficio* No. 837-2009, on 17th June 2009, requires these financial institutions to "*refrain from relations with shell banks"*. This is in keeping with the guidelines of FATF Recommendation 18 which states that financial institutions should not be allowed to enter into, or pursue, corresponding bank relationships with shell banks. Owing to the fact that the Guidelines has only recently been issued, it was not possible to check its implementation by the regulated institutions. As mentioned above, the Guidelines are addresses only to Banks and offshore entities, so this instruction has not been given to stock brokerage firms, which could have correspondent relations with overseas banks. Other categories of enforced subjects would not have the possibility according to the Law to provide correspondent banking service upon not being authorized thereto in specific regulations.

467. (c.18.3) Section 3.6 of the Guidelines on Correspondent Banking, Branches and Subsidiaries states that banks and offshore entities "*shall confirm that the customer corresponding bank (responsal) shall not use its products and services to carry on operations with shell banks"*. This is in keeping with the gist of FATF essential criterion 18.3 which states that financial institutions should be required to ensure that the ordering financial institutions in another country do not allow their accounts to be used by shell banks. Since the Guidelines has only recently been issued, its implementation by the regulated institutions could not be checked..

3.9.2. Recommendations and Comments

468. R.18 Regulate the topic with stock exchange brokerage firms although currently there are no corresponded relations but in case this happens they would be subject to the same correspondent requirements demanded from Banks.

Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**LC**	Stock exchange brokerage firms are not forbidden to have correspondent relations with abroad Shell Banks, The Guidelines on Correspondent Banks, Branches and Subsidiaries was issued during the period of the visit and it was therefore not possible to assess its implementation by enquiry in the financial sector.

Regulation, supervision, monitoring and sanctions

The supervisory and oversight system (R.23, 29, 17 & 25)

Description and Analysis

469. Summary: The IVE is responsible for ALM/CFT supervision of financial institutions. However, because of shortage of staff, the on site verification tasks has been only partially accomplished, since it is no idea frequency supervision to all of the entities that form part of the regulated entities. The IVE does not inform the regulated entities in writing of the results of the audit, and does not follow up on the recommendations issued until the recent implementation of the new Supervision Methodology Based on Risk.

Recommendation 23- Regulation and Supervision of financial institutions

470. (c.23.1 , 23.2) The IVE is responsible for ALM/CFT supervision. For this purpose the IVE has an LM/FT Risk Supervision Department (hereinafter "Supervision Department") which reports to the Intendente and consists of an IVE Director, an Area Supervisor, 10 Inspectors and a Technician, a total staff of 12. This staff seems insufficient to cover the with presential verifications 400 registered financial institutions. The problem will be worsened when the DNFBPs are incorporated into the audit programme. 429 of these had been registered at the time of the evaluation visit. The majority of audits performed took place in Guatemala City, owing to shortage of staff. The logistical resources at the disposal of the present staff, however, are considered adequate. Another factor that has influenced the number of audits performed, especially in 2006-2007, was the use of Supervision Department staff in the work of replying to requests from the Ministerio Público, topic which has been resolved as of 2008 with the functional restructuring of IVE..

471. The following statistical table shows the audits carried out by the supervision department during the period 2003-2007. It shows that the department carried out a total of 127 audits, of which 30.7% were of banks, 19.7% of offshore banks, 12.6% of stock broking companies, 11% money transfer companies and of the remaining 26%, bonding companies, warehousing companies, insurance companies, bureaux de change, cooperatives, finance companies and credit card companies. It is noticeable that several regulated institutions were not audited during this period and that during 2007 audits were performed only in banks and one stock broking agency.

	INSTITUTIONS		YEARS				
Code	TYPE	2003	2004	2005	2006	2007	TOTALS
AF	BONDING		3		1		**4**
AL	WAREHOUSING		1	2			**3**
AR	RENTAL						**0**
AS	INSURANCE		3	1	1		**5**
BA	BANKS	5	2	6	5	21	**39**
CB	STOCK BROKING	6	1	5	3	1	**16**
CC	BUREAUX DE CHANGE	3	3	1			**7**
CE	PAWNSHOPS						**0**
CH	CHEQUE CHANGING						**0**
CP	COOPERATIVES		3	1	1		**5**
FI	FINANCE COMPANIES		1	4	1		**6**
FN	FINANCING INSTITUTIONS						**0**
FP	PENSION FUND MANAGERS						**0**
FT	FACTORING						**0**
OP	CREDIT CARD OPERATORS						**0**
OS	OFFSHORE BANKS	13	8	3	1		**25**
OT	OTHER INSTITUTIONS						**0**
TF	MONEY TRANSFER AGENCIES		6	6	2		**14**
TJ	CREDIT CARDS			1	2		**3**
	TOTALS BY YEAR	**27**	**31**	**30**	**17**	**22**	**127**

472. During the year 2008 and the first half of 2009 35 audits based on a ML/FT risk approach were performed. Of these only 5 were done in 2008. 60% of the audits were carried out in banks, for a total of 21 audits in this sector. Others evaluated were insurance companies, cooperatives, finance companies, offshore banks, money transfer businesses and credit cards. It is noted that during this period several types of institutions were not audited and that presential audits were discontinued in sectors which had been included in programmes in previous years, such as bonding companies, warehousing companies, stock broking agencies and bureaux de change. The following statistical chart shows the audits carried out during this period.

	INSTITUTIONS			
Code	TYPE	2008	2009	TOTALS
AF	BONDING		3	**0**
AL	WAREHOUSING			**0**
AR	RENTAL			**0**
AS	INSURANCE		2	**2**
BA	BANKS	5	16	**21**
CB	STOCK BROKING			**0**
CC	BUREAUX DE CHANGE			**0**
CE	PAWNSHOPS			**0**
CH	CHEQUE CHANGING			**0**
CP	COOPERATIVES		2	**2**
FI	FINANCE COMPANIES		4	**4**
FN	FINANCIADORAS			**0**
FP	PENSION FUND MANAGERS			**0**
FT	FACTORING			**0**
OP	CREDIT CARD OPERATORS			**0**
OS	OFFSHORE BANKS		4	**4**
OT	OTHER INSTITUTIONS			**0**
TF	MONEY TRANSFER AGENCIES		1	**1**
TJ	CREDIT CARDS		1	**1**
	TOTALS BY YEAR	**5**	**30**	**35**

473. It is noteworthy that, from 2003 up to the time of the visit (June 2009) and although some entities of this type are registered (as can be seen from the chart below)no presential audits were performed on rental companies, cheque changing companies, pension fund managers, factoring, credit card operators, which are directly obligated by Article 18 of the ALM Act. Other institutions, for which on site presential supervisions have been reported and which are regulated persons because they are supervised by the SIB (under Article 18 of the ALM Act And Article 1 of the Financial Supervision Act), are credit institutions (among which may be included pawnbrokers and financing institutions) the following ones regulated by the AML Act: credit institutions, financial groups and businesses controlling financial groups. The following chart gives a summary of the presential audits carried out and gives data on the number of institutions registered at 16th June 2009. It may be noted that the number of audits carried out in some sectors is low in comparison to the number of institutions registered, which is particularly the case with the cooperatives.

INSTITUTIONS		AUDITS		
TYPE	NUMBER BY 16/06/2009	2003 - 2007	2008 - 2009	TOTAL
BONDING	11	4	0	4
WAREHOUSING	13	3	0	3
RENTAL	8	0	0	0
INSURANCE	17	5	2	7
BANKS	19	39	21	60
STOCK BROKING	22	16	0	16
BUREAUX DE CHANGE	1	7	0	7

PAWNSHOPS	1	0	0	0
CHEQUE CHANGING	1	0	0	0
COOPERATIVES	254	5	2	7
FINANCE COMPANIES	16	6	4	10
FINANCING INSTITUTIONS	1	0	0	0
PENSION FUND MANAGERS	-	0	0	0
FACTORING	1	0	0	0
CREDIT CARD OPERATORS	2	0	0	0
OFFSHORE BANKS	8	25	4	29
OTHER INSTITUTIONS	1	0	0	0
MONEY TRANSFER AGENCIES	14	14	1	15
CREDIT CARDS	10	3	1	4
TOTALS	**400**	**127**	**35**	**162**

474. The audits carried out by the Supervision Department as of mid 2008 are based on the New Supervision Methodology Based on Risks with international standards, and upon evaluation nine complete processes has been concluded in system banks before the supervision was based on compliance with Guatemalan AML/CFT legislation and not international standards.

475. During the visit files of audits carried out on financial institutions were reviewed, and it was observed that these contain working papers in which certain aspects concerned with involvement of the administration, know your customer policy, monitoring programme, management of compliance officer, staff training, programmes of internal audit and ML/FT Risk Management are reviewed. The on-site inspections carried out by IVE have specific guidelines for the verification of certain controls. For example, procedures and systems ensuring integrity, security and updating of the customer transactions and correspondence, including the question of wire transfers.

476. The Methodology procedure used includes to require the entity to:

a) Products: assets and liability products (integration, quantity, balance sheet, balance and share percentage thereof)

b) Services: type and quantity of operations and amount during certain term

c) Clients: type, integration and quantity

d) Distribution channels: distribution channels and quantity

e) Location and geographic location; department, municipality, number of agencies, number of ATMS other

477. As second point the ML/FT risk evaluation matrix is being prepared which contemplates among it is establishment stages the inherent risks stag, all information provided by the bank in relation with risk factors and related variables is entered in a specific form; in addition, each variable is added with an initial weighing from one to five depending on the risk level which represents the weighing is accomplished based on the following premises: Recommendations of the International Financial Action Task Force (GAFI), background is being used in money laundering or financing of terrorism cases and vulnerabilities to be used in the commission of such offenses.

478. Further, the information referring to risk levels inherent of the different risk factors and the risk level inherent to the bank is transferred to the general vision stage of the ML/FT risk evaluation matrix to be compared with information of risk mitigators established by the banks residual or the banks risks.

479. In order to verify compliance with ML/FT regulations procedures to evaluate areas descreibed herein below were developed:

a) Involvement of management

b) Know your client policy

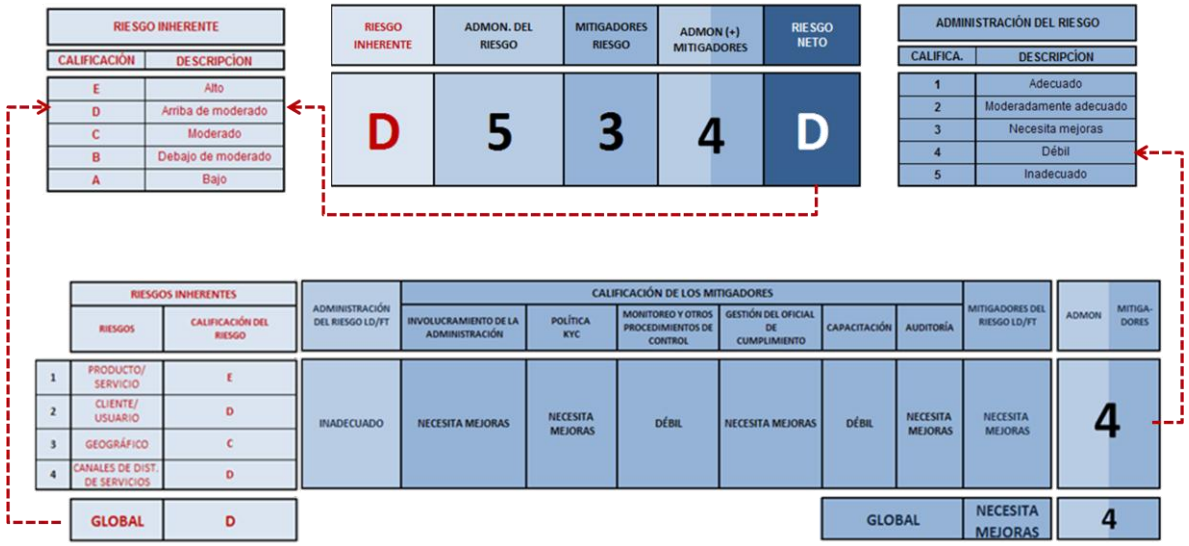
c) Monitoring programs

d) Compliance officer management

e) Personnel training

f) Audit programs

480. The product of the supervision based on risk allows to obtain a global rating such as the one of the following example:



481. Upon the evaluation visit to Guatemala regulated institutions do not receive from the IVE written reports of the outcome of the audit or of the recommendations for improvements that they should make. Such communications are made orally and then the IVE requests a plan of action to be submitted for implementation of the corrective measures. The IVE explained that this practice shall not apply with the new risk based supervision model since it is foreseen to deliver a results card and based on weaknesses encountered require an immediate plan to improve enforced parties since it is considered that it contributed in a better manner to the overall improvement of the ML and FT prevention systems through a dialogue with the regulated institutions is more productive.[8] Besides, according to some financial institutions, there is delay in receipt of notices, feedback or instructions from the supervisor on the occasion of inspection, and the findings of the inspections.

482. In such sense both the regulated institutions and the IVE stated that the latter does not follow up the recommendations given when the audit is complete. The practice of holding meetings with the boards of directors at the end of on-site inspections, to present findings and weaknesses requiring attention, began only in 2009.

[8] After the evaluation visit, IVE reported that it has given the Board of Directors of banking entities thath were audited so far, a presentation on inherent risks found in their institutions based on extra-situ supervision, and mitigators found during on-site inspections, the later ones related with compliance with AML/CFT requirements. Shortly after the evaluation visit IVE also started the practice of sending to supervised entities the summary of findings (cédulas de resultado) and the financial institutions are given a thirty day period to submit to IVE an improvement plan which shall be completed within the subsequent six months (except in exceptional circumstances).

483. (c.23.2) The IVE is the authority responsible for ensuring that financial institutions comply adequately with ML/FT requirements. Article 32 of the AML Act creates the IVE as part of the SIB and states that it "*shall be responsible for overseeing the objectives and compliance with the law herein and its regulations, with functions and duties as are conferred by the Act". Article 20 of CFT Act establishes that IVE "will be the entity charged with overseeing, strictly within an administrative framework, the compliance with this law; for this purpose it shall have the same powers, functions and duties as are conferred by the Act against Laundering of Money and other Assets, its Regulations, and other provisions on the matter".* Among these provisions are Superintendent of Banks *Acuerdo* No.15-2008 of 16 May 2008 which states that the function of the ML/FT Risk Supervision Department is to perform effective supervision of the regulated persons in order to verify efficient ML/FT prevention, in compliance with the AML and CFT Acts and their Regulations.

484. In addition to these specific ML/FT supervision provisions, there are other general regulations ones that assign to the SIB responsibility to ensure that financial institutions comply adequately with the laws. Article 1 of the Financial Supervision Act (Act 18-2002) states that "*the SIB exercises monitoring and inspection over the Bank of Guatemala, banks, companies, finance companies, credit institutions, bonding companies, insurance companies, general deposit warehouses, bureaux de change, financial groups and businesses controlling financial groups and all such other entities as other Acts may require."* Article 2 of this Act indicates that the purpose of the SIB's supervision over these institutions is to ensure that they adapt their activities and functioning to legal, regulatory and other norms, dispositions and provisions that apply to them, such as AML and CFT Acts.

485. In order to comply with the above indicated provisions there are verification mechanisms beyond presential or on site visits, such is the case of extra site verification means or "Cabinet" in this sense IVE has developed analysis methodologies on information required from enforced persons related with their clients, products and services, distribution channels and geographic location with which risk inherent of the enforced entities is determined and mitigating mechanisms are considered; likewise through objective information that entities monthly submit to IVE such as cash operations, purchase-sale of foreign currency, sale of cashier or management checks and other mandatory nature reports it is possible to determine the quality of the information sent timeliness on the date delivery and therefore this allows to consider optimum management of the Compliance Officer added to the quality and timeliness verification of the suspicious transaction reports sent to the intendency through which efficiency in the application of monitoring and detection models is verified concerning that each entity applies according to its own Compliance Programs. In addition, internal audit programs of each entity are another instrument for IVE to maintain control of overall management of controls and compliance programs. There has also been reference that in accordance with the instructions on prevention measures against ML issued thorough Official Letter IVE 43-2002 auditors are enforced to inform any deficiency encountered in evaluations made to the compliance area within a ten day term counted as of the delivery date of the relevant report and as additional control alternative, this obligation is extended to external auditors contracted by the enforced person who shall issue opinion about compliance with AML/CFT regulations

486. (c.23.3) There are legal provisions to impede criminals or their associates having majority holdings or management functions in banks, finance companies, insurance companies and bureaux de change and in general all institutions under SIB supervision according to the relevant law for each sector. Further all enforced subjects even those which are not under SIB´s competition are enforced to register before IVE (article 7 of AML Regulation) using a form which includes all information related with shareholding ownership conformance of management bodies, economic activities, financial information, statement of results, trade and tax registration inscription, utility vouchers which confirm reported address and additional data of individuals and legal persons conforming the entity in IVeE to accomplish to accomplish a verification task of such information prior formal registration.

487. Regarding banks, Article 7 of the Banks and Financial Groups Act states that in order to license a bank, the SIB must issue a report taking into account the honesty of the founding partners, the Board of Directors and the intended managers. Article 8 adds that those interested in establishing a bank "*must provide the Superintendency of Banks with the list of the individual shareholders holding more than 5% of the capital*". Article 19 provides for future identification of the shareholders, stating that "*persons who acquire directly or indirectly shares equal to or in excess of 5% of the paid up capital of a bank must be authorized by the Superintendency of Banks, which shall verify compliance with the requirements for shareholders in new banking institutions"* adding that this applies to shareholders who wish to increase their shareholding up to the percentage mentioned. It also states that "*banks shall present to the Superintendency of Banks, in the month of January of every year, information including the composition of its group of shareholders"* and that "*the names of the members of the Boards of Directors and management councils of the banking institutions shall be published by them on publicly available media"* and goes on to state that "*the banking institutions shall keep a register of nominative shares that enables the shareholders of the institution to be identified at all times"*. Finally, Article 20 stipulates that members of the Board of directors and General Managers must be persons who are solvent, honest and with knowledge and experience in the sector, and that the SIB must be notified of changes to enable it to assess these appointments and verify that the new board members or managers meet the abovementioned standards and that if they do not, the SIB must order the bank to make new appointments.

488. Regarding finance companies, Article 3 of the Private Finance Companies Act states that "*for the establishment of finance companies the requirements set out in the Banks and Financial Groups Act shall be complied with, and for their licensing the procedures indicated in that Act for the creation of new banks shall be followed"*. Although this Act does not contain any provisions to be aware of all times shareholders with less than 5% interest all the identification requirements assigned to banks must be complied with.

489. With regard to insurance companies, Article 6 of the Insurance Companies Act states that persons who wish to establish one of these businesses must provide the SIB with *"the draft Articles of Association and Statutes; list of founding shareholders and promoters of the enterprise"*. Concerning managers and responsible parties from the insurance entity regulation of the Constitution and Organization Act of Insurance companies provides in Article 20: "*Change of directors and executive officers which takes place after the starting of operations must be communicated to the Banking Superintendence within 30 days following the appointment date in order to verify whether the appointed persons meet demanded capacities… the Banking Superintendence [may] order the company the substitution of the relevant director or officers"*. Concerning the shareholders the current law does not contain special provisions to enforce ownership change notice of the securities below 5% interest.

490. The Regulations for licensing and functioning of Bureaux de Change are contained in Resolution JM-131-2001 of the Monetary Board. Aticle 5 refers to the application for a license to operate as a Bureaux de Change, stating that this "*shall be submitted to the Superintendency of Banks, accompanied by information regarding the honesty, solvency and experience of each of the shareholders, organizers, members of the Board of Directors and executive officers"*. This Resolution does not require that the Bureaux de Change report the same information to the SIB with respect to persons who aquire an interst in it after it has been authorized.

491. With respect to all types of reporting institutions, and apart from the sector-specific laws mentioned above, it is worth noting that Article 7 of the AML Regulations states that reporting institutions must submit to the IVE the general information that it requires, and that they must notify it of any later modifications in that information. Form IVE-R-01 was designed for this purpose. Sections 4 and 5 request information on the Board of Directors and managers, but not on

the shareholders. Also, the AML Regulations do not clearly indicate that these persons must be assessed, but only asks that the IVE be informed of the completed appointments.

492. (c.23.4) Regarding financial institutions subject to the Core Principles, it is to be noted that they comply with the FATF guidelines with regard to their having to obtain a licence. Banks, insurance companies and stock market agencies must be licensed under Article 7 of the Banks and Financial Groups Act, Article 12 of the Insurance Companies Act and Article 23 of the Securities and Commodities Act. Notwithstanding for the case of entities controlled by BSI acquisition requirements for shares and change of officers and directors are clear concerning suitability requirements that must be complied with.

493. As was mentioned above regarding ongoing supervision of institutions subject to the Core Principles, audits have been performed in the banking, insurance and securities sectors. The sector most audited is banking, in which the number of audits carried out exceeds the number of registered banks, which is the opposite of the case of insurance companies and stock market agencies, which shows that some of these institutions (insurance and securities) have not been supervised through on site visits.

494. There are provisions for this supervision to be carried out in an overall consolidated manner. Article 27 of the Banks and Financial Groups Act states that "*each and every one of the members of the financial groups shall be subject to consolidated supervision by the Superintendency of Banks"*.

495. It is once again emphasized that insurance brokers are not ALM/CFT obligated entities under the law, although they are defined as financial institutions in the FATF Methodology. The IVE is therefore not empowered to monitor, inspect, and request information from them.

496. (c.23.5, c.23.7) There are provisions requiring regulated institutions to register with the IVE. This Intendencia keeps records of persons who engage in money changing or foreign exchange, and money or value transfer. Other financial institutions are registered that are not subject to the Core Principles. As was mentioned above, the supervision of the latter has on occasion been slight.

497. Natural or legal persons who provide money or value transfer services, or exchange money or foreign currency, as well as others not subject to the Core Principles, are required to register with the authorities. Sub-paragraph 5 of Article 18 of the AML Act stipulates that individual or legal persons who engage in systematic or substantial transfers or funds and/or mobilization of capital and those who engage in trade in foreign currency are governed by this Act. In addition, the Act includes among regulated entities financial institutions not subject to the Core Principles. Article 7 of the AML Act's Regulations requires regulated institutions to submit to the SIB, through the IVE, "*on a single occasion, the overall information on them which the SIB requires, on the forms to be designed by it for the purpose. The regulated entities shall have one calendar month from the coming into effect of the Regulations to submit the information concerned"*. It also states that when there are modifications the regulated institutions must notify the IVE of them.

498. For regulated institutions created after the issue of the Regulations, sub-paragraph 1a) of IVE *Oficio* No.247-2003 requires them to submit the information within 15 days following the start of operations. It should be mentioned that this *Oficio* is not addressed to persons who engage in money transfer.

499. During the visit, it was learned that the IVE maintains a register of regulated persons, which in June 2009 included one Bureau de Change and 14 money transfer businesses. It is important to mention that in Guatemala trade in foreign exchange is unrestricted, under the Free Negotiation of Foreign Currency Act (Act 94-2000). For money exchangers, IVE *Oficio No.* 911-2007 of 19th June 2007 sets out Form IVE-BA-07 Monthly Register Of Exchange Operators and the Total Of Their Operations of Purchase of Foreign Currency in Negotiable Instruments and Cash. The

purpose of this form is to create a register of information on persons whose profile has been defined by the regulated person as an exchange operator with whom they carry on trade in foreign currency.

500. The register of regulated persons of the IVE includes financial institutions not subject to the Core Principles. The numbers of regulated persons registered by type of institution is shown below. Some of these sectors have not been inspected by the IVE and in others the number of audits carried out is much smaller than the number of registered institutions.

INSTITUTIONS	
TYPE	NUMBER AT 16/06/2009
BONDING	11
WAREHOUSING	13
RENTAL	8
BUREAUX DE CHANGE	1
PAWNSHOPS	1
CHEQUE CASHING	1
COOPERATIVES	254
FINANCE COMPANIES	16
FINANCIING INSTITUTIONS	1
PENSION FUND MANAGERS	-
FACTORING	1
CREDIT CARD OPERATORS	2
OTHER INSTITUTIONS	1
MONEY TRANSFER BUSINESSES	14
CREDIT CARDS	10
TOTALS	**334**

501. (c.23.6) Natural and legal persons who provide money or value transfer services, or money or foreign currency changing services, since they are regulated persons under the AML and CFT Acts, have been subject to IVE supervision in these fields. The IVE stated that during the period from 2000 to June 2009 it had carried out 7 AML and/or CFT audits on Bureaux de Change and 15 on Money Transfer businesses. The number of audits carried out shows that a significant part of the registered institutions has been audited. It is not possible to determine if there are remittance companies that offer services and are not recorded at IVE

Recommendation 25 – Guidelines and Feedback

502. (c.25.1 and c.25.2) Article 25 of the Regulations to the AML Act requires the IVE to inform the regulated entities of new forms of operating in ML. This supports the implementation of FATF Recommendation 25, which states that the authorities should lay down guidelines on ML/FT techniques and methods to help the financial institutions and DNFBPs to implement and comply with AML/CFT requirements. During the visit, the IVE stated that it had provided training on typologies to the regulated institutions, specifically to DNFBPs (stating that during 2009 six training courses were held including typologies and cases, 300 people from DNFBPs being trained. Reports on dissemination of typologies were requested, hoever up to now a Bulletin issued by IVE referering to the BSI site in which international tipologies are encountered were submitted but a document with national tipologies was not provided.

503. To that respect IVE stated that its Information Analysis Unit has developed an initial information bulletin that was sent by email to all the compliance officers and that this will be done on a quarterly basis. This first bulletin urges regulated persons to visit the SIB webpage on which they will find typology reports issued by CFATF and GAFISUD. The IVE took part, as a member of the CFATF, in the preparation of the CFATF Typologies Report, supplying three typologies. The Intendencia stated that these typologies had been communicated to the regulated institutions in the bulletin mentioned earlier, which is available on the SIB web page. During the interviews the financial institutions put forward various points of view regarding feedback from the IVE on ML/FT typologies, some of them stating that the IVE had provided them with training on this

subject and others that they had received no guidelines from the IVE with regard to ML/FT methods.

504. Regarding the provision of statistics to regulated persons, the abovementioned bulletin (March 2009) brings together some figures on STRs submitted. It is therefore useful for this practice to continue in order to give regulated persons statistics on STRs and other relevant subjects.

505. With regard to the establishment of other measures to ensure efficacy in the AML/CFT systems installed by the regulated entities (criterion 25. ii) Guatemala has put in place the following: 1. Article 25 of the AML Act Regulations empowers the IVE to instruct regulated institutions about new measures that they must implement to prevent them being used in ML. Guatemala stated that "financial institutions were provided with a document entitled "Instructions on Prevention Measures against Laundering of Money or Other Assets", by means of IVE *Oficio* No.247-2003 of 19th May 2003" and that "this document is provided to all regulated persons when they register at the Intendencia". This document brings together various requirements embodied in the AML Act and its Regulations and adds additional guidelines for compliance. Nevertheless, it does not include any material concerning FT. In addition, it was stated that "in IVE *Oficio* 424-2009 institutions in the Special Regime, the majority of whom may be considered DNFBPs, are being informed of their obligations for compliance with anti-ML/FT laws (registration with the IVE, cash operations in excess of US$10,000, suspicious transaction reports, etc.)". 2) The IVE has sent to regulated entities guidelines, instructions, directives and bulletins on specific subjects to enable them to fulfill their obligations, among which is the abovementioned Oficio IVE No. 247-2003, the Accountancy Guidelines for Companies and other entities in the process of formation, the Instructions for Development of the electronic Data Base for Monthly Reporting of Entry and Exit of National Currency in Cash, among others. The IVE stated that for implementation of each one of these guidelines, instructions and directives, 10 training courses were held, at which about 400 representatives of the regulated entities were trained.

Recommendation 29 – Powers of the Supervisor

506. (c.29.1) The Intendencia de Verificación Especial (IVE), in addition to being the FIU of Guatemala, is the authority responsible for monitoring and assessing compliance with ML/FT prevention programmes (Article 19 of the AML Act and Article 9 of its Regulations and Article 20 of the CFT Act) in financial institutions and other regulated entities.

507. The IVE has explicit powers to require submission of any information and/or obtain access to it, and to impose pecuniary administrative penalties for non-compliance. The legal basis of these powers is the following: Articles 19 (final part of the last paragraph), 25, 28, 29, 32 and 33 (sub-paragraphs g and h) of the AML Act; Articles 9, 13, 14, 16, 17, 18 and 19 of the Regulations of the AML Act; Articles 18 (first paragraph) and 20 of the CFT Act; Articles 5 and 11 (final paragraph) of the Regulations of the CFT Act; Article 3 (sub-paragraph d) of the Financial Supervision Act.

EVALUATION OF COMPLIANCE WITH THE LEGISLATION
CONSOLIDATED TABLE OF YEARS 2003-2008

INSTITUTIONS			YEARS						TOTALS BY INSTITUTION
			2003	2004	2005	2006	2007	2008	
AF	A	BONDING		3		1			**4**
AL	A	WAREHOUSING		1	2				**3**
AR	A	RENTAL							**0**
AS	A	INSURANCE		3	1	1			**5**
BA	B	BANKS	5	2	6	5	21	5	**44**
CB	C	STOCKBROKERS	6	1	5	3	1		**16**
CC	C	BUREAUX DE CHANGE	3	3	1				**7**
CE	C	PAWNBROKERS							**0**
CH	E	CHEQUE CHANGING							**0**
CP	C	COOPERATIVES		3	1	1			**5**
FI	F	FINANCE COMPANIES		1	4	1			**6**
FN	F	FINANCING INSTITUTIONS							**0**
FP	A	PENSION FUND MANAGERS							**0**
FT	F	FACTORING							**0**
OP	C	CREDIT CARD OPERATORS							**0**
OS	B	OFFSHORE BANKS	13	8	3	1			**25**
OT	C	OTHER INSTITUTIONS							**0**
TF	E	MONEY TRANSFER		6	6	2			**14**
TJ	T	CREDIT CARD			1	2			**3**
TOTALS BY YEAR			**27**	**31**	**30**	**17**	**22**	**5**	**132**

Power of on-site inspection

508. (29.2) The IVE's power to conduct onsite inspections is not explicitly mentioned in the abovementioned laws and regulations. It derives from the Financial Supervision Act (Act 18 of 2002), article 2 of which defines the purpose of the supervision exercised by the SIB as "monitoring and inspection of the entities referred to in the previous article, carried out by the Superintendency of Banks, to ensure that the said entities adapt their activities and functioning to the laws, regulations and other provisions applicable to them". Also, Article 3 gives the SIB clear authority to conduct on-site inspections.

"to achieve its objectives the Superintendency of Banks shall exercise, with regard to the persons subject to its monitoring and inspection, the following functions:
e)Exercise supervision and inspection with the broadest powers of investigation and free access to all sources and systems of information of the supervised entities, including books, records, reports, contracts, documents and any other information, as well as items substantiating the operations of the supervised entities".

509. Since the IVE is an integral part of the Superintendency (Article 32 of the AML Act), the Superintendency's power to conduct on-site inspections extends to the IVE. In addition, the *Acuerdo* of the Superintendent of Banks defining the organic structure of the Superintendency and the functions of its various Intendencias, states that the IVE is the one responsible for "supervising" compliance with all AML/CFT Acts and regulations.

510. Concernig the supervision power of IVE over enforced entities which are not under BSI jurisdiction we refer to Article 19 of AML Act whixh refers to the obligations that enforced persons hold on programs, regulations and suitable procedures to avoid undue use of products and services in money laundering activities as well as that in its last paragraph indicated that BSI

through IVE shall be who seeks for the compliance with such obligations, logically the supervision is the means to seek such compliance, however evaluator considers that this supervision power could more specific.

Power to compel production of documents

511. (c. 29.3) One of the main supervisory powers of the IVE is to have access to and/or compel financial institutions and other regulated institutions, with no need for a court order, to submit, all records and documents related to accounts, business relations and transactions, and all information that may be relevant for monitoring compliance with their respective ML/FT prevention programmes. Among the main legal provisions are the following:

"ARTICLE 28. Duty to inform:
Regulated institutions shall provide the Intendencia de Verificación Especial with the information requested by it in the form and within the time limit set out in the regulations, regarding data and documentation referred to in previous articles for the purpose of this Act.

When the institutions required to produce the information are unable to do so within the period stipulated by the Intendencia de Verificación Especial they may, with due notice, request an extension, explaining the reasons, and this request must be decided upon before the end of the originally stipulated time period.

No violation of confidentiality of any kind, imposed by law or by contract, of the information which the regulated institutions are required to submit to the competent authorities in compliance with this law or the provisions governing them may be invoked."

"ARTICLE 29. Copies of records.
The regulated institutions shall send a copy of the records referred to in Articles 21, 22 and 24 of this Act, in the form and within the time limit indicated in the regulation, to the Intendencia de Verificación Especial, when it so requests."

"ARTICLE 33. FUNCTIONS.
The following are the functions of the Intendencia de Verificación Especial:
a) To request and/or receive from regulated institutions all the information relating to financial, commercial or business transactions which may have a bearing on the crime of laundering of money or other assets."

512. To the above must be added all the information presented in the form of Suspicious Transaction Reports (STRs) under Article 26 of the AML Act, Articles 15, 16 and 17 of its Regulations, Article 16 of the CFT Act and Articles 7 and 8 of its Regulations.

513. It is not expressly provided in the legislation that the IVE shall have access to the files of analysis of cases discovered to be unusual, whether or not they have been submitted as such, in accordance with Article 15 of the Regulations to the AML Act and Article 16 (second paragraph) of the CFT Act. Nevertheless, the general provisions quoted above may be interpreted to mean that this subject is indeed covered within the broad powers of access to information from the regulated institutions. In practice, it was noted that the IVE is in fact able to obtain this information during its inspection visits.

514. The IVE operates a mechanism to obtain urgent information, in the form of the so-called urgen requirements or "motorized" requests. IVE officers go in person to the financial institution, request the information they need and wait until it is given to them (sometimes for a whole day or more). Although the IVE considers this to be a useful device for urgent cases, the evaluation team considers that the fact of needing to apply this type of on the financial institution pressure (and the

waste of resources) raises doubts of the effectiveness of the powers that the IVE has to request and demand release of any information that may be needed within the specified time period.

Powers of sanction (c.29.4):

515. The IVE has the power to apply administrative sanctions (disciplinary and pecuniary) on the financial institutions for instances of non-compliance discovered in on-site inspections or off-site follow-ups of the ML/FT prevention programmes, under Articles 19, 31, 32 and 33 g) of the AML Act and Article 3 d) of the Financial Supervision Act. However, the only sanctions that have been applied up to the time of the visit of the evaluation team: 8 fines in 6 years (between 2003 and 2008), were not the result of on-site inspections but for shortcomings in supplying requested information.

"ARTICLE 33. FUNCTIONS.

The following are functions of the Intendencia de Verificación Especial (...):

a) To impose upon regulated institutions the relevant pecuniary administrative penalties for omissions in compliance with the obligations imposed by this Act".

Recommendation 17 – Availability of Sanctions

516. Guatemalan AML/CFT legislation provides for broad sanctions both criminal (main and accessory) and civil and administrative, for instances of non-compliance with specific obligations in the area, including aggravating circumstances, and the authorities responsible for imposing them, according to the nature of the rule to which the non-compliance applies, are designated in the law. In general, among types of sanction, whether criminal, civil or administrative, are the following: imprisonment, fine, confiscation of goods, payment of court costs, publication of verdicts, deportation, and special disbarment. However, the real enforcement of these penalties has not been dissuasive or adequate, and in scale it has been disproportionate and its implementation ineffective.

517. In Guatemala there is a wide range of sanctions available. The following provisions are to be found in the AML Act:

- Article 4. INDIVIDUAL PERSONS
- Article 5. LEGAL PERSONS
- Article 6. OTHER LIABLE PERSONS
- Article 7. SPECIFIC AGGRAVATING CIRCUMSTANCES
- Article 8. CONFISCATION OF GOODS
- Article 31. PROCEDURE AND PENALTIES

518. The following provisions are included in the CFT Act:

- Article 4. The offence of financing of terrorism
- Article 5. Special aggravating circumstances
- Article 7. Criminal liability of legal persons.
- Article 8. Transport of money
- Article 9. Confiscation of goods
- Article 10. Civil confiscation of goods
- Article 11. Other grades of offence
- Article 19. Penalties

519. The penalty referred to in the first and last paragraph of Article 5 of the AML Act has not been applied in any case.

520. The sanctioning procedure is contained in Article 31 of the AML Act, and in Articles 33, 34 and 35 of its Regulations and in Article 12 of the CFT Act Regulations.

521. The authority to impose sanctions for non-compliance with AML/CFT requirements is conferred on the Superintendency of Banks in some cases (Articles 32 and 33 of the AML Regulations), and in others on the IVE (AML Act Article 33, paragraph g) and Regulation Law 33. It would be advisable to eliminate this apparent contradiction to avoid legal risks. However, it was noted that for the authorities and the regulated institutions there is no doubt whatever, since Article 32 of the AML Act and Article 34 of its Regulations state clearly that the IVE "*shall be responsible for ensuring (velar) the objectives of and compliance with this Act and its Regulations"* and that "*it is part of the organic structure of the Superintendency of Banks"*.

522. According to the abovementioned Article 32 of the AML Regulations, which requires that parameters of gravity of the offence be defined to determine what sanctions shall be applied, the Superintendent of Banks issued *Executive order* No. 43-2002, which sets out the following scale:

SCALE FOR AML SANCTIONS REGIME

No.	Infraction	Sanction US$
1.	Non-compliance with provisions of sub-paragraph a) of Article 19 of the Act	10,000
2.	Non-compliance with provisions of sub-paragraph b) of Article 19 of the Act	10,000
3.	Non-compliance with provisions of sub-paragraph c) of Article 19 of the Act	10,000
4.	Non-compliance with Article 20 of the Act	10,000
5.	Non-compliance with updating of records referred to in Article 23 of the Act	10,000
6.	Non-compliance with any information request from the Superintendency of Banks, through the IVE, whether occasional or periodic, in accordance with Article 28 of the Act	10,000
7.	Non-compliance with the first paragraph of Article 21 of the Act, for not keeping the required records	20,000
8.	Non-compliance with Article 23 of the Act for not retaining records as required	20,000
9.	Non-compliance with the daily record referred to in Article 24 of the Act	20,000
10.	Non-compliance with notification of transactions which should be reported as suspicious, in accordance with Article 26 of the Act	20.000
11.	Non-compliance with any of the measures for knowing and identifying customers referred to in Articles 19 d) and 21, second paragraph and 22 of the Act	25,000
12.	For not appointing the compliance officer or someone to perform his duties, in accordance with the last paragraph of Article 19 of the Act	25,000
13.	Any other instance of non-compliance not herein listed	10,000

523. Evaluating tea observed that penaly sanctions have been really low: 10 fines in 6 years (between 2003 and 2008); and they have been applied solely in the banking sector and to one bureau de change;

524. It must be noted that the IVE considers that the schedule of sanctions indicated above sets a minimum amount for fines that can be imposed in each case, and not an upper limit. According to the IVE, the maximum fine is the $50,000.00 stipulated in the AML Act. However, the evaluation team considers that the wording of Acuerdo no. 43-2003 of the Superintendent in fact prevents the imposition of fines to the maximum set by the Act.

525. Guatemalan legislation does not provide for AML/CFT administrative sanctions for Directors and senior management of the financial institutions.

526. The IVE has no authority to withdraw, restrict or suspend licences for AML/CFT reasons, from the regulated institutions that are not financial institutions.

Recommendations and Comments

527. R23. Improve the quantity and quality of the AML/CFT on site audits carried out by the Supervision Department of the IVE. For this it is of vital importance to provide better support to this department in order to enable it to have more staff to audit financial institutions and other regulated entities.

528. R23. It is suggested that cooperation agreements be concluded with sectoral bodies that carry out audits, so that these may contribute to the IVE's AML/CFT supervision of regulated entities. In this regard the General Cooperatives Inspectorate (INGECOOP) stated that this body carries out AML/CFT supervisions in the cooperative sector ,and that in 2008 it performed 108 ML/FT audits . Such agreements could reduce the workload of the IVE or at least provide it with useful information to facilitate its supervisory work.

529. R23. Extend the application of the risk-based supervision model to all regulated sectors.

530. R23. Inform regulated entities, in a timely manner, of the results of the AML/CFT audits carried out by the supervision department.

531. R23. Follow up on the correction of deficiencies identified in AML/CFT inspection reports.

532. R.23. Give the SIB the necessary powers to review at any time, and not only at the time of authorizing the operations of a financial institution, that the persons who aquire an ownership or managerial interest are fit and proper. This recommendation is refered to institutions other than banks, insurance comp\anies and entities that are part of a financial conglomerate for whom the necessary requirements are already in place. Especial priority should be given to financial cooperatives and remittance services.

533. R23. Provide ML/FT risk management guidelines for the insurance and securities sectors.

534. Provide all regulated entities with feedback on ML and FT techniques and methods in Guatemala.

535. R. 29 It is suggested to specify explicitly in the rules the power and role of the IVE to make on-site AML/CFT inspections of financial institutions, which operate outside the area of supervision of the SIB.

536. R17. Establish in the legislation:

- ML/FT prevention of administrative sanctions for Directors and senior management of financial institutions

- Withdrawal, suspension or restriction of licences for all regulated entities as ML/FT prevention sanctions.

537. R17. Review and update , according to gravity of instances of non-compliance, the scale of pecuniary sanctions in accordance with the minimum and maximum amounts provided in the Act.

538. Include insurance brokers/agents (*intermediarios*) as Regulated Entities in the legislation.

Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relating to s.3.10 underlying the overall Rating
R.17	**PC**	Only 20 fines in 6 years (2003 to 2008) all concentrated in Banls, except for one bureaur of change. The scale of fines established by the Superintendence limited the maximum fine quite below that provided for in the Act which could prevent BIS to impose exemplary fines or provide them the gravity of certain violations. The range of AML/CFT fines is limited. Nofines/penalties are forseen for directors and senior management. There is no power to withdraw restrict or suspend licences for ML/FT noncompliance to regulated subjects which are not financial institutions
R.23	**PC**	Insufficient staff in order to control all enforced subjects of the country. A modern supervision scheme based on risk was implemented short time before the vist. Before that IVE did not submit written reports the supervised institutions, and did make routine follow-ups of improvement recommendations and was delayed in its inspection conclusions verabally to the financial institution. There have been no sufficient inspections on site visits to institutions of the insurance and securities sector even less institutins not subject to Central principles such as remittancecompanies
R.25	**LC**	Limited and recent feedback to financial institutions. Only 2% of STRs are submitted by non-bank institutions, such as finance companies, insurance companies, leasing companies, stockbrokers, bureaux de change, warehousing companies and cheque changing businesses. This denotes lack of adequate guidelines and awareness-raising in these sectors. There are guidelines to indicate that financial institutions should receive information on ML methods and techniques. However, it was not possible to determine whether the authorities provide this information to regulated entities.
R.29	**LC**	Neither the IVE nor the SIB has express power to sanction directors or senior management of financial institutions for non-compliance with the AML/CFT regime. Only may do it indirectly issuing instruction to the financial institution.

Money or value transfer services (SR.VI):

Description and Analysis

539. Summary: Individuals or legal persons engaged in money transfer and/or mobilisation of capital are considered to be regulated institutions, which means that they are required to comply with the

AML/CFT Acts. They are also required to register with the IVE, which is the body empowered to supervise them.

540. (c.VI.1): In Guatemala there is no specific licensing regime for persons engaged in systematic money transfer and/or mobilisation of capital (remesadoras – remittance houses). However, sub-paragraph 5-c) of Article 18 of the AML Act stipulates that persons engaged in this activity are regulated persons, and are subject to the controls provided for in the Act, as well as the CFT Act (as indicated in its Article 15).

541. To comply with the provisions in the previous paragraph, regulated institutions involved in money or value transfer services must provide general information on themselves to the IVE in order to be registered as regulated entities. In addition , Article 7 of the AML Act Regulations states:

*"**General data on regulated persons.** The regulated persons must submit to the Superintendency of Banks, through the Intendencia, on a single occasion, such general information on themselves as the Superintendency may request, on the forms designed by it for the purpose. The regulated persons shall have one (1) calendar month from the date of coming into force of the regulation to submit this information. When there are modifications in the general data reported, the regulated persons shall inform the Superintendency of Banks, through the Intendencia, of the modifications within a time limit of fifteen (15) days following the modification in question."*

542. This form shall be sent in by the regulated person together with the supporting documentation, and this shall be entered into the IVE database, and the IVE shall later assign to it a file code, to indicate that it is registered with the IVE.

543. Registration of this type of Money transfer firms with the IVE began in 2002. The following table dhows those which have registered since then.

List of Remittance Houses and Registration Date	
Code	Registration Date
TF-2	24/05/2002
TF-3	03/06/2002
TF-4	09/06/2002
TF-5	29/08/2002
TF-6	31/10/2002
TF-7	05/11/2002
TF-1	07/11/2002
TF-13	08/11/2002
TF-8	07/01/2003
TF-11	10/01/2003
TF-10	14/01/2003
TF-9	14/01/2003
TF-12	23/01/2003
TF-15	12/03/2003
TF-16	16/03/2003
TF-14	19/03/2003
TF-17	17/07/2003
TF-19	19/09/2003
TF-18	06/10/2003
TF-20	15/10/2003

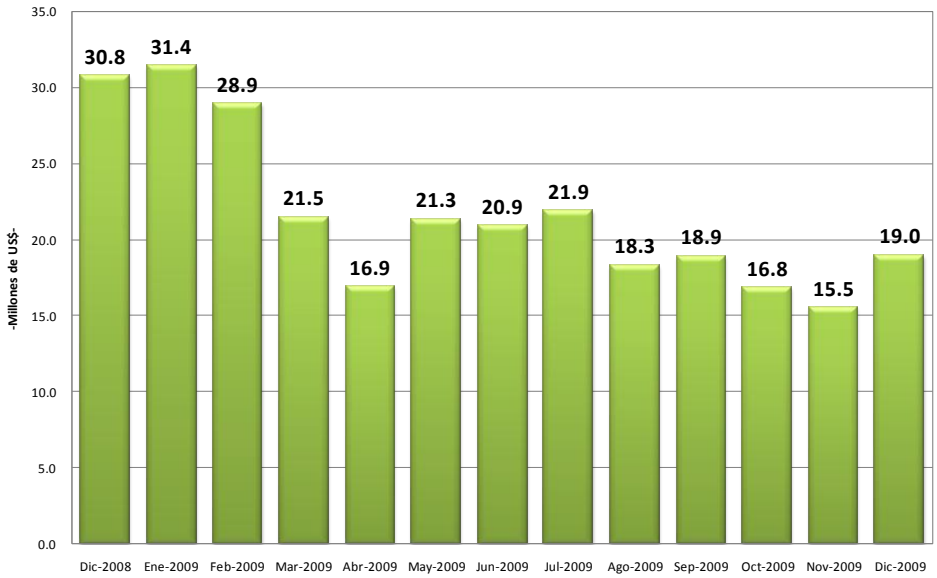
List of Remittance Houses and Registration Date	
Code	Registration Date
TF-21	31/03/2004
TF-22	20/04/2004
TF-24	24/05/2004
TF-25	07/09/2004
TF-26	22/09/2004
TF-27	23/09/2004
TF-28	14/10/2004
TF-29	22/12/2004
TF-30	11/08/2005
TF-31	31/08/2005
TF-32	05/09/2005
TF-33	07/11/2005
TF-34	21/02/2006
TF-35	22/06/2006
TF-36	13/10/2006
TF-37	09/11/2006
TF-38	09/11/2006
TF-39	11/06/2009
TF-40	02/07/2009
TF-41	15/12/2009

It can be seen that since 2002 only 41 money transfer businesses have registered with the IVE, some of which are no longer in operation. They reported that they had mobilized US$93.5 million in operations of $2,000.00 or above during the year 2009, that represent a number of the total received during the year. It is possible that there are several remittance companies operating without having being recorded at IVE. However Centrla Bank data on transfer for family remittance received from abroad indicate that most of the money is entering the country through banks. The IVE has recently increased its efforts to educate the money changing firms about their obligation to register, and largest of them have been already registered. This strategy was implemented in cooperation with the National business Register and in accordance with an analysis of the mission statements given by the registered entities.

544. (cVI.2): Since they are subject to the Act, remittance houses have the legal obligation to register with the IVE as regulated entities, and must comply with the provisions of the country's ML/FT provisions. This legislation covers the FATF 40 + 9 Recommendations there are quality RTSs sent by remittance entities which evidences that these acknowledged the responsibility concerning monitoring and identification of unusual operations and reporting suspicious transactions.

545. Despite the above, even the IVE has not issued any instructions for remittance houses that includes all the controls included in FATF SR.VI . Meetings on training have been held about identification of unusual operations and sending of RTSs but concerning prudential complementary regulations the only guidelines applicable to them are IVE *Oficio* No.1585-2008 on record keeping and informing the IVE of transfers of funds equal to or in excess of US$2,000 (this form replaced Forms IVE-TF-09 and IVE-TF-10 on the same subject).

REMITTANCES RECEIVED EXCEEDING US$2,000.00 BY MONTH
FROM 01/12/2007 to 31/12/2009



Monthly Remittances exceeding US$2,000, from 01/12/2008 to 31/12/2009

546. In the abovementioned report the regulated institutions give information on the money transfers sent or received for the indicated amount, as well as multiple transactions which in aggregate equal or exceed the established sum, carried out by a single originator or received by a single beneficiary located on national territory. As this measure was taken very recently the IVE has not carried out any supervisory visits regarding it, and it is therefore not possible to evaluate its effectiveness. Notwithstanding they have complied with punctually sending the electronic transfer report which is received thorugh a validator that determines the quality of the information sent by the enforced party.

547. (c.VI.3): In addition, the IVE has a department responsible for ensuring compliance with anti-money laundering and financing of terrorism rules. This department is required to carry out on-site visits and cabinet evlauations to each one of the regulated institutions to review the level of compliance with the applicable legislation. At the time of the evaluation IVE had conducted 15 audits of money transmitters, out of 39 registered. Only 14 of them were active, since this activity has decreased much due to the bankarization of this service in Guatemala (see paragraph 496 of the same report). Also there is extra-situ verification of the requirement to comply with all transfers based on the $2,000 threshold were conducted.

548. (c.VI.4): In conformity with Article 28 of the AML Act an updated list of money transfer agents registered as regulated persons may be requested, and these institutions have the duty to send it to the IVE. In fact, information of this kind was requested, for example in January 2006 in IVE *Oficio* No.86-2006, in which the IVE requested information on money remittance businesses with which they have contracts to provide services, and the country from which the remittances come and whether the service they provide through them is the receiving or the sending of money.

549. (c.VI.5): Likewise, Article 33 g) of the AML Act on the functions of the IVE empowers this institution to impose on regulated entities administrative fines for omissions in compliance with the duties imposed on them by the Act.

550. (c.VI.6): The majority of the best practices on SR.VI applied to banks and cooperative have started to tbe implemented in the Guatemalan system recently in 2008.

Recommendations

551. Send out a mandatory instruction to remittance companies to enable them to put into practice all the controls demanded by the Act.

552. An awareness-raising campaign should be launched on the responsibilities of remittance operators regarding compliance with the reporting regulations and the AML/CFT Acts.

Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	The IVE has not issued instructions for remittance houses to enable them to put in practice all the controls demanded by the Act.

4. PREVENTIVE MEASURES – DNFBPs

Customer due diligence; recordkeeping (R.12) (R.5, 6, 8 to 11 & 17)

Description and Analysis:

553. Summary: FATF Recommendation 12 stipulates that ML/FT prevention measures shall apply not only to institutions in the financial sector but also to non-financial businesses and professions; in this regard Article 18 of the CFT Act, in addition to regulated persons established in the AML Act, creates a special regime for regulated persons composed of a) real estate promoters or dealers; b) automobile dealers; c) dealers in jewellery, precious metals and stones; d) dealers in art and antiques; e) notaries, certified public accountants and auditors and accountants; and f) any other business that by the nature of its operations may be used for the financing of terrorism. However, there are businesses which are regarded as DNFBPs by international standards, which however are not regarded as regulated institutions in Guatemalan law; this is the case for company service providers, and casinos.

554. DNFBPs in Guatemala are only regulated entities in the framework of FT prevention and not in that of ML prevention, nor are they required by law to implement know your customer policy, measures regarding politically exposed persons (PEPs), or record keeping; nor are they required to submit STRs on ML or to monitor contractural relations to detect unusual trends and determine ML patterns. Up to the present the DNFBP sector has had no ML/FT prevention programmes including internal policies and controls to monitor risk, training and audits. In addition, since the process of registering and the first contacts with certain of the DNFBP sectors are just beginning, the IVE cannot yet ascertain the degree of implementation and effectiveness of ML/FT prevention policies, or carry out supervision and follow-up in this area. Lawyers, notaries, accountants and auditors have not yet been registered in the IVE for ML/FT prevention purposes. Lawyers and company service providers are not regulated entities in Guatemala.

555. Regulated institutions in Guatemala can be grouped as in the following table:

Regulated Entities in Guatemala			
For Money Laundering		**For Financing of Terrorism**	
2001 AML Act		**2005 CFT Act**	
Article 18	**ARTICLE 18. ON REGULATED PERSONS** For the purposes of the present Act the following shall be considered regulated persons: 1) Entities subject to supervision and inspection by the Superintendency of Banks. 2) Individual or legal persons engaged in brokerage or intermediation in the negotiation of securities. 3) Credit card issuers and operators. 4) Offshore entities operating in Guatemala, defined as entities engaged in financial intermediation constituted or registered under the laws of another country, and which carry on their activities mainly outside the jurisdiction of that country. 5) Individual or legal persons engaged in any of the following activities: a) Systematic or substantial operations of changing of cheques. b) Systematic or substantial issuance, purchase or sale of travellers' cheques or bank drafts.	**Article 15**	**ARTICLE 15. Regime of regulated persons** For the purposes of the present Act, regulated persons shall be considered to be those set out in the Act Against Laundering of Money or Other Assets, its Regulations and other provisions relating to the subject. For this purpose the same regime, duties, obligations, policies for knowledge of customers and prohibitions set out in that legislation shall be applicable to them. The regulated persons referred to in this Act, who are already registered as such, and have appointed compliance officers and have customer and employee records, in accordance with the anti-money laundering legislation, are only required to extend the same control, prevention and other duties established in that Act to the prevention of the financing of terrorism. The compliance officers appointed by the regulated persons in accordance with the anti-money laundering legislation shall extend their functions and duties to compliance with the anti-financing of terrorism

	c) Systematic or substantial transfer of funds and/or mobilization of capital. d) Factoring. e) Financial leasing. f) Foreign exchange trading. g) Any other activity which by the nature of its operations may be used for the laundering of money or other assets, as laid down in the Regulations.		legislation. The disposal of the fines imposed by the enforcement of the present Act or other applicable provisions shall be governed by the provisions of the anti-money laundering legislation.
		Article 18	**ARTICLE 18. Special regime** A regime is created of persons who by the nature of their activities shall be required to provide the Superintendency of Banks through the Intendencia de Verificación Especial with the information and reports that the Superintendency requests of them for the fulfillment of its duties. In addition, they shall allow the said Superintendency free access to their sources and systems of information for the verification or amplification of the information supplied by them or when this may be necessary for the analysis of cases relating to financing of terrorism. This special regime shall apply to individual or legal persons who are engaged in the following activities: Real estate promotion or trading; Trading in automobiles; Trading in jewellery, precious metals and stones; Trade in art and antiques; Notaries, certified public accountants and auditors and accountants; and Any other activity which by the nature of its operations may be used for the financing of terrorism, for which purpose the President of the Republic shall extend the special regime established by the present Article to any other type of activities. In all other activities the obligation set out in Article 16 of the present Act and 28 of the Anti-Money Laundering Act shall be applicable, except for the persons indicated in sub-paragraph c) of the present Article, who shall not be required to comply with the provisions of Article 16 of this Act.

Regulations of the 2002 AML Act		**Regulations of the 2006 CFT Act**	
Article 5	**ARTICLE 5. Regulated persons** For the purpose of the Act and these Regulations, and depending on the volume of operations, and according to the nature of their activities, the regulated persons shall be sub-divided into: I. Group A. This group includes: a) Bank of Guatemala; b) Banks of the system; c) Financial companies; d) Bureaux de Change; e) Individual or legal persons engaged in brokerage or intermediation in the negotiation of securities; f) Credit card issuers and operators; and, g) Offshore entities II. Group B. This group includes: a) Businesses engaged in systematic or substantial money transfer and/or mobilisation	**Article 10**	**ARTICLE 10. Special regime of regulated persons** For compliance with the provisions of Article 18 of the Act, regulated persons indicated in the said Article shall submit their general information to the Superintendency of Banks through the Intendencia de Verificación Especial, when they are so required by the Superintendency, in writing and within the designated period of time, using for the purpose the special forms designed to that end. When there are changes in the data submitted, the said regulated persons shall inform the Superintendency of Banks through the Intendencia de Verificación Especial of the changes within twenty (20) days after the change in question takes place.

	of capital; b) Insurance and bonding companies; c) Businesses engaged in systematic or substantial operations of changing cheques; d) Instituto de Fomento de Hipotecas Aseguradas (Institute for the Promotion of Insured Mortgages); e) Factoring businesses; f) Financial leasing businesses; g) General deposit warehouses; and, h) Other businesses which the legislation specifically places under the control and inspection of the Superintendency of Banks. i) Cooperatives engaged in savings and loan operations, regardless of their designation j) Entities authorised by the Ministerio de Gobernación to conduct lotteries, raffles and similar operations, regardless of the designation they may use. Depending on the volume of their operations and in accordance with the nature of their activities, the Superintendency of Banks, through the Intendencia, may transfer the regulated persons from one group to another, according to the above paragraphs, and this shall be announced by means of notification of the Resolution or else publication of it on two occasions within a period of 15 days in the Official Gazette and in another organ of wide circulation in the country.		

556. At the present time 417 regulated persons are registered in the Intendencia de Verificación Especial (IVE) and it is expected that in the coming weeks approximately 560 regulated persons under the special regime, including DNFBPs, will be registered.

REGULATED PERSONS ACTIVE AT 30/03/2009

REGULATED PERSONS	
Bonding Companies	11
Warehousing Companies	15
Rental Companies	9
Insurance Companies	17
Banks	20
Stockbrokers	21
Bureaux de Change	1
Pawnshops	1
Cheque Changing Companies	1
Cooperatives	256
Finance Companies	16
Financing institutions	1
Factoring	2
Credit Card Operators	2
Offshore	8
Money Transfer	26
Credit Card	9
Other Institutions	1
TOTAL	**417**

557. DNFBPs were informed by IVE *Oficio* No.424-2009 of April 2009 (less than two months before the visit of the CFATF evaluation mission) about the requirements they must observe with regard to compliance with anti-ML/FT legislation (registering with the IVE, cash operations over US$10,000, suspicious transaction reporting, certain minimal controls as a first step, etc.) It should be pointed out that the DNFBPs have been regulated entities since the year 2005 under the CFT Act and its 2006 Regulations. The Lottery (as a DNFBP) was addressed through *Oficio* No.179-2009 of February 2009.

558. The DNFBPs must register with the IVE in accordance with the following provisions:

559. Article 7 of the Regulations of the AML Act:

> *"Article 7. General data of regulated persons. The regulated persons shall submit to the Superintendency of Banks, through the Intendencia, on a single occasion, such general information on themselves as shall be requested by the Superintendency, on the forms it shall design for that purpose. The regulated persons shall have one (1) calendar month, from the date of coming into force of the Regulations, to submit this information.*
> *When modifications occur in the general information submitted, the regulated persons shall inform the Superintendency of Banks, through the Intendencia, of the changes within fifteen (15) days after the coming into effect of the changes in question."*

560. The Instructions on anti-money laundering prevention methods sent to regulated persons in IVE *Oficio* No.274-2003; this however predates the CFT Act and its Regulations, which are the instruments which include DNFBPs. These instructions provide for:

"- Inscription and/or registration of regulated persons. For purposes of compliance with the requirement for regulated persons to be registered with the Superintendency of Banks, through the Intendencia de Verificación Especial (the Intendencia), in accordance with Articles 18 of the Anti-Money Laundering Act (the Act) and 7 of the Regulations of the Anti-Money Laundering Act (the Regulations), the following time limits and procedures shall be applied:

- New regulated persons. Those who in accordance with the Act and the Regulations are regulated persons, and have been created or authorised subsequent to the coming into force of the abovementioned legislation, shall take the necessary steps for inscription and/or registration within a period of fifteen (15) days from the start of their operations.

- For purposes of the above, it is imperative that the inscription and/or registration shall be done by the use of IVE FORM R-01 GENERAL INFORMATION OF REGULATED PERSONS, accompanied at least by the following documentation: copy of the document attesting to the creation, licensing and registration (Articles of Association, statutes, licence to trade, executive order gubernativo, etc.) copy of the cédula de vecindad and the Letter of Appointment of the duly registered legal representative; in cases where the latter is a foreigner, a copy of his passport, or of the personal identification document attesting to his immigrant status, shall be presented. The documents indicated above shall be submitted in duly notarised photocopies."

561. The most important of the DNFBPs' activities is real estate, and it is concentrated mainly in urban areas. Real estate companies apply policies for knowing the developers and their customers and in general do not receive cash for the risks involved.

562. There are entities licensed to engage in activities such as lotteries, raffles and games of chance, in accordance with *Executive order Gubernativo* of the President of the Republic issued on 18th May 1956, which contains the regulations for lotteries, raffles and games of chance carried on by private individuals, and their respective rights. These regulations delegate to governors of Departments in their respective jurisdictions, and the Ministerio de Gobernación for the entire Republic, the power to license lotteries, raffles and games of chance, setting out the necessary measures for safeguarding the interests of the public, based on the provisions of Articles 2137 to 2144 of the Civil Code,. In practice, the lottery is constituted as an NGO and is subject to reviews by the Ministerio de Gobernación, which are applied to their respective drawings. The lottery issues non-negotiable cheques to winners and the winners are duly identified. According to the lottery, their ML/FT prevention programme is in the course of preparation.

563. Casinos are an undeniable reality in the country despite the fact that they are prohibited by law (under the broad interpretation of Article 477 of the Criminal Code enunciated by the local authorities); which in practice means that the prohibition is not applied to this sector (of recognised vulnerability to ML). Authorities of the Ministerio de Gobernación stated that they have attempted to apply measures to the casino businesses, but the casinos invoke their constitutional rights (recurren de amparo).

564. In the DNFBP sector the business structure of *sociedad anónima* is predominant and some of these have their capital in the form of bearer shares, for which reason, when they are customers of financial institutions, the latter find it difficult to collect information on the beneficial owners. The information carried in this regard by the Business Register is not very conducive to effective ML/FT prevention control, and there is no system of central registration in which the required details on property and ownership and control for all companies and other registered legal persons is entered. It should be pointed out that the use of *sociedades anónimas* and bearer shares for ML/FT operations is an internationally recognised pattern, which in the opinion of the law

enforcement and justice authorities has an impact in Guatemala, especially in the commercial sphere. The evolution of the financial sector towards greater modernisation and geographical coverage also implies greater facilities for DNFBPs to possibly carry out ML/FT transactions. An important risk-mitigating factor is the fact that the capital of banks and enterprises controlling financial groups must, by law, use nominative shares.

565. The evaluation mission learned that studies and specific proposals are being developed with regard to the following aspects: 1) a legal mechanism to reduce the use of these legal instruments; 2) development of a project for amendment to the Code of Commerce of the Republic to abolish bearer shares; 3) follow-up to the project for amendment to the Code of Commerce developed by the Superintendency of Banks in 2003 and sent to the Congress in May of the same year, which would establish the mandatory creation of a Register of Bearer Shares in *sociedades anónimas* and would amend Article 21 of the AML Act to confer on the regulated persons the power to require the customer to provide the information contained in the said Register.

CDD for DNFBPs

566. (c. 12.1 y c.12.2) The special regime requires those who engage in these activities and professions to provide the Superintendency of Banks, through the IVE, with information and reports when they so request in the course of their duties. Nevertheless the DNFBPs are only regulated within the FT prevention framework and not that of ML prevention, nor are they required by law to institute customer due diligence policies, nor measures concerning PEPs, nor record keeping.

567. So far the DNFBPs have no ML/FT prevention programmes that might include internal risk monitoring policies and controls, training and audits. On the other hand, a process of registration and initial contacts with certain DNFBP sectors is being initiated, but the IVE cannot yet ascertain the level of implementation and effectiveness of ML/FT prevention policies nor exercise supervision and follow-up in that sphere. Notaries and accountants have not yet been registered with the IVE for ML/FT prevention purposes.

Recommendations and Comments

568. Establish expressly and unequivocally in the legislation the following requirements for all DNFBPs:

- To maintain prevention programmes to prevent both ML and FT, including ongoing training.
- Submit STRs on ML.
- Develop Know your Customer policies.
- Develop enhanced CDD policies for high-risk customers, for example PEPs.
- Monitor contractual relations to detect unusual trends and identify ML patterns.
- Retain records of information for at least five years.
- Include as regulated persons required to prevent ML and FT all company and trust service providers, and casinos.

569. Streamline and strengthen the process of rapprochement and ML/FT prevention awareness building in all DNFBP sectors.

Compliance with Recommendation 12

	Rating	Summary of factors relating to s.4.1 underlying the overall rating
R.12	**NC**	There are no explicit legal provisions making DNFBPs responsible for ML prevention or for developing specific policies such as Know your Customer, special measures for high-risk customers such as PEPs, keeping records of information, nor submitting STRs on ML, nor to monitoring contractual relations to detect unusual trends and identify ML patterns.

		The DNFBP sector has no ML/FT prevention programmes that might include internal policies and controls to monitor risks, training and audits. The CFT Act (which sets out the list of the DNFBPs) dates from August 2005; however, it was only on 24th April 2009 (less than two months before the CFATF evaluation mission visit) that the Superintendency of Banks issued *Oficio* No.424-2009 which informs the DNFBPs that they are required to comply with ML/FT legislation. The Lottery (as a DNFBP) was addressed in *Oficio* No.179-2009 of February 2009. At the time of the evaluation visit, the IVE was just starting the process of registration and initial familiarisation meetings with certain DNFBP sectors, and therefore it is not possible to judge the implementation and effectiveness of ML/FT prevention policies nor of the supervision and follow-up in that area. Notaries, accountants and auditors have still not been registered with the IVE for ML/FT prevention purposes. Lawyers and company and trust service providers are not regarded in the relevant laws and regulations as subject to ML/FT prevention requirements. The Business Register does not contain relevant information on company and trust service providers. Casinos are an undeniable reality in the country despite the fact that they are prohibited by law. The prohibition has not been able to be enforced, but they are also not subject to AML/CFT obligations.

Suspicious Transaction Reporting (R.16) (R.13 to 15, 17 and 21)

Description and Analysis

570. Summary: Within the DNFBP sector only Lotteries are required to present STRs both for ML (under with Article 26 of the AML Act) and for FT (under Article 16 of the CFT Act). The other DNFBPS are only required to present STRs related to FT under Article 16 of the CFT Act and Article 7 of its Regulations. In the case of lawyers, notaries and accountants there is no obligation to submit STRs of any kind. Up to the present time no DNFBP has submitted STRs, and there are no STRs on FT. There are DNFBPs which the international standards recommend should be included, but in Guatemala they are not considered as such, for example company and trust service providers, and casinos. The DNFBPs are under no explicit duty to have ML/FT prevention programmes. The IVE has only just begun to register DNFBPs and to initiate the first approaches to them, and therefore no supervision or inspection has been imposed. No sanction has been imposed on DNFBPs, far less for non-submission of STRs.

571. The most relevant provisions regarding the submission of STRs are the following:

572. In the AML Act:

"Article 26. Notification of suspicious or unusual financial transactions. Regulated persons shall give particular attention to all transactions, concluded or not, that are complex, unusual, or large; and to all patterns of transactions that are not regular and transactions that are small but regular and have no apparent economic or legal basis, and shall immediately inform the Intendencia de Verificación Especial of them.

573. In the AML Act Regulations:

"Article 16. Notification of suspicious transactions. The regulated persons shall report to the Superintendency of Banks through the Intendencia transactions they discover to be suspicious, applying the procedures described below (...)"

"Article 17. Quarterly report of non-detection of suspicious transactions. Regulated persons who in a period of three calendar months detect no suspicious transactions must inform the Superintendency of Banks to this effect, through the compliance officer or whoever performs such duties, within the month following the end of the three month period in question".

574. In the CFT Act:

"Article 16. Reporting of Suspicious Transactions – STRs-. Regulated persons shall report promptly and with due diligence to the Superintendency of Banks, through the Intendencia de Verificación Especial, any transaction which has no apparent and clearly licit purpose, or when it is suspected or there is reasonable evidence to suspect that there are funds linked to, or which might be used for, financing of terrorism.

For this purpose the regulated institutions shall apply the procedures set out in the Regulations of this Act, and failing that, in the legislation against the laundering of money and other assets, including recording of unusual transactions which are not communicated to the competent authority."

575. In the CFT Act Regulations:

"Article 7. Reporting of Suspicious Transactions of Financing of Terrorism - STR/FT -. For purposes of compliance with the provisions of Article 16 of the Act, regulated institutions indicated in Articles 15 and 18 must use the form designed by the Superintendency of Banks, through the Intendencia de Verificación Especial, and abide by the time limits and procedures laid down in Article 16 of the Regulations of the Act Against Laundering of Money and Other Assets (...)"

"Article 8. Amplification. In cases in which the information contained in Financing of Terrorism Suspicious Transaction Report is incomplete, confused, ambiguous or contradictory, the Superintendency of Banks, through the Intendencia de Verificación Especial, may request the regulated person in question to provide the relevant amplifications to the report and whatever documents may be necessary."

576. There is a form issued by the IVE entitled IVE-RTS-LD/FT ***"REPORT OF MONEY LAUNDERING AND/OR FINANCING OF TERRORISM SUSPICIOUS TRANSACTION REPORTING – RTS LD/FT"***, used by regulated persons to report suspicious transactions, which includes the following aspects:

- Data on the regulated institution reporting
- Information on the persons linked to the suspicious transaction
- Information on the suspicious transaction
- Documentation that must be annexed to the suspicious transaction
- Description of the suspicious transaction and warning signals detected

577. In addition, the IVE, for the purpose of improving the quality of STRs and their analysis, issued in July 2008 an order requiring the implementation of a checklist for admissibility of STRs, and has strengthened its Department of specialized analysts. The checklist has resulted in a reduction in the number of STRs, but an improvement in their quality. Few STRS have been rejected by the IVE for failure to comply with the checklist requirements.

DNFBP STRs (c.13.1 and IV.1)

578. In Guatemala the only categories of DNFBPs expressly required to submit ML and FT STRs are Lotteries, raffles and similar concerns. The DNFBPs covered in Article 18 of the CFT Act are required only to submit STRs for FT, and these entities are: a) real estate promotion and dealing; b) dealing in motor vehicles; c) businesses dealing in jewellery and precious metals and stones; and d) trade in art and antiques. There is a DNFBP sector mentioned in Article 18 of the CFT Act, consisting of notaries, accountants and auditors, who are expressly exempted from the duty to submit STRs, either to the IVE or to any self- regulating authority; without any explanation of the reason, the limits or the context in which this exemption applies, for example legal professional privilege or legal professional secrecy. Lawyers and company and trust service providers are not regulated entities in Guatemala.

579. Casinos are an undeniable reality in the country although they are prohibited by law (according to a broad interpretation of the Criminal Code shared by the local authorities); this in practice means that this sector (recognised by vulnerable but not under legal control) is not subject to any obligation to have ML/FT prevention programmes or to submit STRs in accordance with international standards.

580. (c.13.2) The DNFBPs referred to Article 18 of the CFT Act are required present STRs only for FT. At the time of the evaluation visit, no STR related to FT had been submitted.

581. Article 26 of the AML Act requires STRs to be submitted on attempted operations:

*"Article 26. Notification of suspicious and unusual financial transactions. Regulated persons shall pay particular attention to all transactions, **concluded or not**, that are complex, unusual, or large, and to all patterns of unusual transactions and transactions that are small but regular, and without any apparent economic or legal basis, and shall report them immediately to the Intendencia de Verificación Especial."*

582. The abovementioned provision applies to the case of STRs for attempted FT operations, in accordance with Article 16 of the CFT Act:

"Article 16. Suspicious Transaction Reporting-STRs-. Regulated persons shall report promptly and with due diligence to the Superintendency of Banks through the Intendencia de Verificación Especial any transaction which appears to have no obvious lawful purpose, or when there is a suspicion or reasonable evidence to suspect that there are funds linked to or which may be used for financing of terrorism.

For this purpose, regulated persons shall apply the procedures laid down for the purpose in the Regulations of this Act, and failing that, in the legislation against laundering of money and other assets, including recording of unusual transactions of which the competent authority is not informed."

583. (c. 13.4) There is no express provision to submit RTS whether for ML or FT regardless if there is a belief or not that Fiscal or Taxation matter are involved since tax evasion is an offense in Guatemala and constitutes preceeding crime of ML.

584. Additional Element (c.13.5) There is no explicit requirement for DNFBPs to submit STRs on suspicion that the funds are linked to criminal acts other than ML or FT, which might be predicate offences of ML or FT. However Article 16 of the CFT Act provides obligation to report IVE every transaction that seemingly does not have a lawful obvious purpose extreme which could be interpreted in the ample sense as related with any preceding crime.

585. (c. 14.1) DNFBPs have no express legal protection against liability when STRs are submitted, since the CFT Act and its Regulations do not state that the protection provided for financial institutions in Article 30 of the AML Act is extended to them. However if there is protection concerning it may not be argued confidentiality violation against it for the fact of submitting RTS given that Article 28 of AML Act on provision of any information to IVE is applied.

586. (c.14.2) There are no provisions in Guatemalan legislation to prohibit the DNFBPs and their employees from disclosing the fact that an STR is being submitted, and therefore there are no sanctions provided for this.

587. Additional element (c.14.3). The AML Act provides for the confidentiality that the IVE must maintain, including not disclosing the identity of officers and employees of the regulated institutions who submit STRs.

"Article 27. Confidentiality of Information Requested. The regulated institutions may not inform any person, except a Court or the Ministerio Público, that information has been requested or that it has been provided to another court or competent authority."

"Article 36. Confidentiality. For the purpose of ensuring confidentiality of financial operations, the members of the Intendencia de Verificación Especial or any other person who in the course of their duties comes to know or has access to information covered in this Act, are required to keep it confidential, even after they no longer occupy the post."

Internal Controls for DNFBPs

588. (c.15.1) DNFBPs are not expressly required to have ML/FT prevention programmes including ML/FT prevention policies and procedures; and they do not implement any such programmes on their own initiative.

589. (c.15.2) DNFBPs are not expressly required to have ML/FT prevention programmes including ML/FT prevention policies and procedures; and they do not implement any such programmes on their own initiative.

590. (c.15.3) The DNFBPs are just beginning the process of registering with the IVE, and the first meetings for contact with them and familiarisation with the subject are in progress. The training they have received is minimal.

591. (c.15.4) DNFBPs are not expressly required to have ML/FT prevention programmes that include policies and procedures for applying high standards in hiring of employees.

592. (c.15.5) DNFBPs are not expressly required to have ML/FT prevention programmes including the question of the compliance officer and his independence in his work; and they do not implement any such programme on their own initiative.

Attention to high-risk countries

593. (c.21.1) DNFBPs are not expressly required to have ML/FT prevention programmes that include special monitoring of countries that do not apply FATF recommendations, and they do not implement any such programme on their own initiative.

594. (c.21.2) DNFBPs are not expressly required to have ML/FT prevention programmes that include the question of special monitoring for transactions relating to countries that do not apply FATF recommendations; and so far they do not implement such programmes on their own initiative.

595. (c.21.3) DNFBPs are not expressly required to have ML/FT prevention programmes that include countermeasures with regard to countries not applying FATF recommendations, and they do not implement any such programme on their own initiative.

Recommendations and Comments

596. Include expressly in the legislation for all DNFBPs, including lawyers, notaries, accountants and casinos:

- The requirement to have prevention programmes for both ML and FT, including ongoing training in these subjects
- The requirement to submit STRs on ML and FT
- Legal protection against liability when STRs are submitted
- Sanctions contravention of the prohibition on tipping-off when an STR is submitted

597. Speed up and strengthen the process of contact and awareness building on ML/FT prevention in all DNFBP sectors.

598. Put in place an effective system of feedback from the IVE to the DNFBPs on decisions and results concerning STRs.

599. Strengthen the IVE's supervision of DNFBPs.

Compliance with Recommendations 16

	Rating	Summary of factors relative to s.4.2 underlying the overall rating
R.16	**NC**	There is no express direct legal provision requiring DNFBPs (except for lotteries, raffles and similar activities) to submit ML STRs under Article 26 of the AML Act; they are only required to present STRs on FT under Article 16 of the CFT Act and Article 7 of its Regulations. There is a DNFBP sector composed of lawyers, notaries and accountants which the CFT Act expressly exempts from the requirement to present STRs on FT; and as pointed out under the previous rating factor, they are also not required to submit STRs on ML, either to the IVE or to any self-regulatory authority. In neither situation are the motive, the limits or the context in which the exemption applies specified, for example legal professional privilege or legal professional secrecy. Compliance with as regards STR in the DNFBP sector is zero. The IVE is beginning the work of registration and the initial meetings for rapprochement with this registered sector are taking place. There is no express obligation directing that STRs be formulated and presented regardless of whether or not they are thought to involve fiscal or tax matters. There is no feedback from the IVE to DNFBPs on decisions and results arising out of an STR: for example, whether it merits further investigation and/or prosecution; or if it was concluded from the analysis that the reported transaction was lawful. DNFBPs are not expressly required in the law to develop ML/FT prevention programmes that include internal risk-monitoring policies and controls, training and audits; and the majority of DNFBPs have not developed ML/FT prevention programmes on their own initiative. Company and trust service providers are not included in the laws and regulations in this area as regulated entities for purposes of ML/FT

		prevention, and therefore are not required to submit STRs. The casino business is an undeniable reality in the country despite being prohibited by law (according to the broad interpretation of the Criminal Code shared by the local authorities); which in practice means that this sector (recognised as vulnerable but not governed by law) is not subject to any obligation to possess ML/FT prevention programmes or to submit STRs in accordance with international standards. DNFBPs have no express legal protection against liability on submitting STRs, since the CFT Act and its Regulations do not stipulate that the protection provided for financial institutions in Article 30 of the AML Act is applicable to these businesses as well. There are no provisions in Guatemalan law to prohibit DNFBPs and their employees from disclosing the fact that an STR is being submitted, and there are therefore no sanctions for this.

Regulation, supervision and monitoring (R.24-25)

Description and Analysis

600. In Guatemala the IVE is the authority responsible for supervising, monitoring and imposing sanctions in the area of AML/CFT to all regulated institutions; however, in the case of DNFBPs, the process of registration is only beginning and there is still no manual for effective supervision in this sector. Casinos are excluded from it, although they do operate in the country, and without any type of control, and are therefore even more vulnerable to ML/FT.

Casinos

601. (c.24.1) The casino business is an undeniable reality in Guatemala despite being prohibited by law according to the interpretation of the Criminal Code shared by local authorities. This should be a point of maximum concern for the country, because it means that in practice this sector, recognised by international standards as being highly vulnerable: 1) operates without any licensing; 2) is not included under the AML and CFT Acts as regulated entities required to have ML/FT prevention programmes; 3) is not required to submit STRs; 4) is not subject to an effective regime of regulation and overall supervision as regards AML/CFT policies; 5) has no State authority to monitor and sanction it in AML/CFT matters; 6) it is not possible to ascertain whether on its own initiative or by self-regulation it is effectively applying any AML/CFT measures; 7) it takes no precautions to prevent criminals controlling, participating in, managing, or profiting from the business; and 8) for these reasons it is completely open to infiltration by organized crime.

Other DNFBPs

602. (c.24.2) In Guatemala the category of DNFPBs is established in the 2005 CFT Act, Articles 18 and 7 of which respectively provide as follows:

"Article 18. Special Regime. A regime is created of persons who, by the nature of their activities, shall be obliged to provide the Superintendency of Banks, through the Intendencia de Verificación Especial, the information and reports required by them in the course of their duties. In addition they shall allow the Superintendency free access to all their sources and

systems of information for verification or amplification of the information provided by them, or when this may be necessary for this analysis of cases related to financing of terrorism.

This special regime shall be applied to individual or legal persons engaged in the following activities:

a) Real estate promotion or trading
b) Trade in automotive vehicles
c) Trade in jewels, precious metals and precious stones
d) Trade in art and antiques
e) Notaries, certified public accountants and auditors and accountants; and
f) Any other business which by the nature of its operations may be used for financing of terrorism; therefore the President of the Republic may extend the special regime established in this Article to any other type of business.

For all other purposes the requirements laid down in Article 16 of the present Act and Article 28 of the Act Against Laundering of Money and other activities shall be applicable to them, except in the case of persons indicated in sub-paragraph e) of this Article, who shall not be required to comply with the provisions of Article 16 of the present Act."

"Article 7. Suspicious Transaction Reports Regarding Financing of Terrorism –STR/FT- For purposes of compliance with the provisions of Article 16 of the Act, regulated persons indicated in Articles 15 and 18 of it shall apply the form designed by the Superintendency of Banks, through the Intendencia de Verificación Especial, and shall abide by the time limits and procedures laid down in Article 16 of the Regulations of the Act against Laundering of Money and Other Assets (...)

(...) without prejudice to the provisions of the final paragraph of Article 18 of the Act, regulated persons indicated in sub-paragraph e) of the said Article, may submit reports of suspicious transactions regarding financing of terrorism, or else submit criminal denuncias to a competent authority, when they become aware of the possible commission of any of the crimes covered by the Act…."

603. All regulated institutions designated in the anti-ML/FT legislation, regardless of whether or not they are subject to supervision and direct inspection by the Superintendency of Banks, may be supervised on-site by the IVE for the purpose of verifying compliance with the relevant anti-ML/FT laws. The IVE is the competent authority to supervise, monitor and sanction DNFBPs in AML/CFT matters, under Articles 18, 19 and 20 of the CFT Act; and at present it has (within reason) the staff and technical resources necessary to carry out these duties.

604. The IVE has no procedures and/or manual for effective AML/CFT supervision of DNFBPs, and this has an impact on the effective exercise of this authority.

605. The CFT Act dates from August 2005, but it was only on the 24th April 2009 (less than two months before the visit of the evaluation mission) that the Superintendency of Banks, through the IVE, issued IVE Oficio No.424-2009, to inform the DNFBPs that they are required to comply with the laws and regulations on ML and FT prevention, and call upon them to register with the IVE.

606. At the time of the CFATF evaluation visit, the IVE is just beginning the process of registering DNFBPs and is holding the first familiarisation visits with this sector; for this reason it is not yet possible to speak of work in progress as regards effective supervision, monitoring and adoption of a regime of sanctions by the IVE; nor are there any studies to indicate that the DNFBP sector represents a proven lesser risk, such as to justify any diminution of AML/CFT measures.

607. The authorities themselves recognise the need for greater georeferential control of cash operations and national and international transfers on the part of regulated persons under this special regime (DNFBPs), and for directions to be issued to the financial institutions to pay particular attention to the accounts of these entities (DNFBPs) for the purpose of early identification of suspicious operations.

Guidelines for DNFBPs

608. (c.25.1) The procedure for feedback that the regulated institutions should receive from the competent authorities, particularly the IVE in its role as an FIU, appears in Article 25 of the AML Act Regulations.

"Article 25. Notification of new patterns of laundering of money or other assets. In cases in which, on the basis of the analysis of information obtained, of internationally known patterns, and communications received from specialized institutions, the existence is determined of patterns of laundering of money or other assets, the Superintendency of Banks, through the Intendencia, shall inform the regulated institutions, by whatever means it deems convenient, of the new ways of operating in money laundering, so that they may take the relevant preventive measures.

In addition, the Superintendency of Banks, through the Intendencia, may instruct the regulated institutions, in the form it deems relevant, of new measures that they must implement, within the framework of the relevant legislation, to prevent their institutions from being used for laundering of money or other assets".

609. At the moment of the evaluation visit, the IVE is just in the process of registering the DNFBPs, although they have been regulated entities under the CFT Act since 2005. The IVE is in the first phase of familiarisation meetings with this sector, summoned by IVE *Oficio* No.424-2009, and it is therefore not yet possible to talk in terms of any work in process regarding feedback, guidelines or directives in the area of AML/CFT for DNFBPs in keeping with Article 25 of the AML Act Regulations, nor can it be confirmed whether the DNFBPs are effectively implementing AML/CFT measures.

610. Despite the above, the IVE authorities stated that efforts are being made among the DNFBPs, for example: 1) they are being informed of the main requirements they must observe in this area: registration with the IVE, cash transaction reporting, suspicious transaction reporting, among others; 2) at the moment of registration they are being provided with a document entitled "Instructions on Preventive Measures against Laundering of Money or Other Assets" approved by IVE Oficio No.247-2003 of 19th May 2003; and 3) they are receiving a quarterly electronic information bulletin from the IVE, which provides information on, inter alia, sources of information on typology reports issued by CFATF and GAFISUD.

611. It should be pointed out that AML/CFT guidelines and directives which the IVE has recently been putting into effect through Guidelines No. SBR 01/09 entitled *"MANAGEMENT OF RISK OF LAUNDERING OF MONEY OR OTHER ASSETS AND FINANCING OF TERRORISM – LD/FT-",* distributed in IVE *Oficio* No.434-2009 of April 2009 (less than two months before the evaluation mission visit), do not apply to the DNFBP sector, but only to one sector of the financial institutions, banks, finance companies and offshore banks.

612. No State authority other than the IVE, and no business and/or self-regulation association in the DNFBP sector, has formulated ML/FT guidelines.

Recommendations and Comments

613. R.24 Include among regulated entities required to prevent ML and FT company, and casinos.

614. Make specific provision in the legislation subjecting DNFBPs to special regulation, and to effective ongoing ML/FT prevention supervision and monitoring.

615. The IVE should have a manual for effective ML/FT prevention supervision of DNFBPs.

616. R 25. Streamline and strengthen the IVE's ML/FT prevention familiarisation and awareness building process in all DNFBP sectors, and initiate an effective policy of feedback and guidelines in the area.

617. The IVE should issue ML/FT Risk Management Guidelines for DNFBPs, as is done for banks, finance companies and offshore banks.

618. Foster association level self-regulation for DNFBPs in the area of ML/FT prevention.

Compliance with Recommendations 24 and 25 (criterion 24.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying the overall rating
R.24	**NC**	The casino business is an undeniable reality in Guatemala, despite being prohibited by law Although the prohibition on casinos has not been enforced, they are also not subject to ML/FT prevention, nor is there any State authority or self-regulation to monitor them and impose AML/CFT sanctions. The IVE is in the process of registering DNFBPs and the first familiarisation meetings with this sector are taking place. There is therefore no effective supervision, monitoring or adoption of punitive measures by the IVE. The IVE does not yet have procedures and/or a manual for effective AML/CFT supervision of DNFBPs .
R.25 (c.25.1) – DNFBPs	**LC**	**(c.25.1)** [NC with regard to DNFBPs] There is as yet no effective AML/CFT feedback, guidelines or directives for DNFBPs. The IVE is still in the initial phase of familiarisation meetings with this sector, initiated by the recent IVE Oficio No.424-2009 No association level and/or self-regulatory authority in the DNFBP sector has developed AML/CFT guidelines.

Other non-financial businesses and professions; Modern secure transactions (R.20)

Description and Analysis

Other non-financial activities

619. The list of regulated entities, especially those of the "special regime" in Article 18 of the CFT Act, includes various categories of businesses other than DNFBPs as contained in the FATF recommendations, among them motor vehicle dealers and dealers in art and antiques. In addition, sub-paragraph f) of Article 18 of the CFT Act and sub-paragraph g) of Article 18 of the AML Act allow for the possibility of including other businesses as regulated entities.

620. The Guatemalan authorities possess information on the vulnerabilities and trends in money laundering and terrorist financing, the types of predicate offences that are generating illegal assets (either in terms of domestic crime or crimes committed abroad), calculations of the sums of money moved by organized crime internally, as well as its methods and techniques. These studies are grouped around three main criteria: 1) SOURCE (Criterion = Underlying Offence): a) Drug traffic; b) Corruption; c) Kidnapping; d) Robbery; e) Extortion; f) Sale of arms; g) Smuggling; h) Organized Crime; i) Tax Evasion. 2) LOCATION (Criterion = Geographic): a) Capital city; b) Guatemala Department; c) Frontier Regions; d) Eastern Zone; e) Northern Zone. 3) CONCENTRATION (Criterion = Economic Activity): a) Financial system; b) DNFBP sector; c) Remittances; d) Physical movement of cash; e) Informal economy, which although very much present and of great weight at the national level, is not governed by any ML/FT prevention regulations.

621. According to studies quoted by the authorities, real estate and other commercial activities carried on by non-profit entities or associations, such as casinos, betting and football teams, as well as trading in cattle (mainly in the frontier area with Honduras and El Salvador) and in addition a great number of small and medium enterprises developed by individual business people (many of which operate informally) handle a high volume of cash and are highly vulnerable to ML/FT. The betting houses, pawnshops and investment advisors are not yet expressly considered as regulated entities.

622. The same shortcomings pointed out regarding DNFPBs apply to motor vehicle dealers and dealers in art and antiques. However, under previous FATF decisions on this question, the fact that the law includes a new category of regulated entities is sufficient for Recommendation 20 to be considered complied with, since it only requires countries to "consider" the broadening of the list of regulated institutions. In this regard, unlike what happens with the DNFBPs, which are in fact mandatory in the FATF recommendations, the lack of supervision and practical implementation of anti-money laundering requirements by the motor vehicle dealers and art and antique dealers in Guatemala do not affect the rating of this recommendation.

Modern payment methods to reduce cash

623. Financial institutions and banking are not yet very deeply embedded in Guatemalan society, but in recent years the financial system has been growing in geographical coverage ,with service points in urban areas throughout the Republic, in an effort to improve service to customers, with a high concentration in the metropolitan area. Added to the traditional system of payment through credit and debit cards it is important to emphasise that at present some banks are offering the use of electronic means of payment via cellular telephones, which will help to reduce the use of cash.

624. Aware of the fact that the greater the use of cash the greater are the probabilities of contracts of a criminal nature, the authorities stated that they will concentrate their efforts on large and medium enterprises to establish flexible and simple procedures to reduce the use of cash in large transactions.

625. Regarding the interbank monetary payment system, the responsibility for this lies with the monetary board of the Bank of Guatemala, under Article 132 of the Constitution.

626. The Bank of Guatemala, in Monetary Board Resolution JM-51-2003 of the year 2003, is making efforts to modernise the system of payments for the purpose of introducing a system of clearance among banks, which, among other purposes, seeks to assist the management of risk inherent in liquidity in banking institutions. In addition, some fundamental aspects of modernisation are: the operation of the Real-Time Gross Settlement System (LBTR) in accordance with the international trends and principles in the field; the approval of the regulations of the Banking Clearance Chamber (Cámara de Compensación Bancaria); the hiring of a private manager to administer the process of cheque clearance, through the acquisition, by public tender, of a Real-Time Gross Settlement System; and the hiring of a private communication network for clearance operations at the national level.

Recommendations and Comments

627. Take the necessary measures to start imposing compliance on new regulated entities: motor vehicle dealers and art and antiques dealers.

628. Develop effective work on the basis of the studies of ML/FT vulnerabilities among DNFBPs other than those recommended by the FATF.

629. Continue efforts to deepen the level of banking in the country, modernise payment systems and simplify payment by electronic means, taking care to avoid the ML/FT risk inherent in these new technologies.

Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

Legal Persons – Access to beneficial ownership and control information (R.33)

Description and Analysis

630. The Business Register is the public institution in which companies and other national and foreign legal persons are registered, in accordance with the standards and precepts laid down in the Commercial Code and Act 2-70, which created this Body.

631. In Guatemala the following are subject to registration in the Business Register: individual business people, companies, enterprises and establishments, trade auxiliaries, the legal facts and relations specified in the law, and amendments made to the recorded facts. The following are the types of company structure authorised:

1. Sociedad colectiva. (Company in collective name).

2. Sociedad en comandita simple. (Company in simple silent partnership, also known as Limited Partnership). This means the partners respond jointly and in a subsidiary manner beyond their individual capital ownership).
3. Sociedad de responsabilidad limitada. (Limited liability company).
4. Sociedad anónima (Limited liability stock company, or Corporation).
5. Sociedad en comandita por acciones. (Company in silent partnership by stock, also known as Limited Partnership with Shares). The partners are liable up to the amount of their investments.

632. (c.33.1) The Business Register keeps information on the legal representatives of companies and the changes that take place in them; nevertheless these data do not allow information to be obtained on the beneficial owner or the natural persons who control the company, specifically in relation to bearer shares, the issue of which is permitted by the countries legislation.

633. The legal facts and relations concerning companies that are entered in the Register are: annulment of enterprises, dissolution of companies, annulment of mandates, replacement and dismissal of legal representatives, increase of capital in companies with shares, amendments to statutes of companies and notice of share issues.

634. According to the Guatemalan authorities themselves, at this time the country does not possess a system of central registry of shareholders of companies in which ownership and control of the companies and other legal persons in the country are entered.

635. During the on-site visit, the team of examiners was informed by the Business Register of the existence of a draft law to amend the Commercial Code, and that this draft considers, among other provisions, the following: abolition of bearer shares in all types of companies constituted after the amendment of the legislation, regulation of public service providers with mixed capital (51% of State investment, 49% of private investment and nominative shares).

636. (c.33.2) The competent authorities of the country can obtain access only to the data on the constitution and modification of legal persons entered in the Business Register; however this information does not indicate the beneficial owner or the persons or individuals exercising control over legal persons, as required by the mandate laid down in the relevant FATF recommendations.

637. The Business Register informed the evaluating team that it provides collaboration to various competent authorities, through an average of 185 daily reports requested by public institutions such as the Procuraduría General de la Nación, the Ministerio Público, the Courts and others.

638. (c.33.3) In general there are no specific AML/CFT guidelines issued by the Business Register or any other authority; in consequence there is no established policy involving measures to prevent the illicit use of legal persons by money launderers or organisations engaged in financing terrorist acts provided by this entity, notwithstanding this tpic is covered with the previously described regulations.

639. Additional Element (c.33.4): The Act to prevent and repress financing of terrorism (Act 67-2001) stipulates that legal persons shall keep records of individual or legal persons with whom they establish business relations or relations in the normal or apparent course of their business, whether these be occasional or permanent customers; and of the operations performed with them, the opening of new accounts, the performance of trust transactions, rental of safe deposit boxes, etc.

640. Despite the due diligence requirements set out in the AML-CFT legislation of the country for business relations of financial institutions with legal persons, in practice these rules are difficult to follow since the information available to the public in the Business Register only enables this information to be obtained on registered legal persons, but not the necessary data to enable the identification of the beneficial owners or controllers of legal persons through ownership of the bearer shares.

641. There are no measures and/or practices of registration to assist authorities and financial institutions to obtain access to information on the beneficial owners or controllers of legal persons through ownership of bearer shares.

642. The authorities should apply measures for identification of the beneficial owners or controllers of legal persons, and other measures to prevent the improper use of legal persons in general, and in particular those which issue bearer shares, in illicit activities involving money laundering or financing or terrorism.

Recommendations and Comments

643. Train the staff of the Business Register and of Guatemalan declaring entities on AML/CFT measures.

644. Adopt laws to enforce adequate transparency regarding the identity of beneficial owners and controllers of legal persons.

645. Adopt the legal frameworks and guidelines related to prevention of money laundering and financing of terrorism through legal persons

Compliance with Recommendation 33

	Rating	Summary of factors underlying the rating
R.33	**NC**	National legislation permits the issue of bearer shares, and it is not possible for the authorities and regulated entities to obtain access to information enabling them to discover the identity of the beneficial owner or the controllers of legal persons. The competent authorities and declaring entities have no access to information on the beneficial owners of legal persons or their controllers. The AML/CFT Act and regulations contain no specific provisions for any mechanism to prevent and control the possible abuse of legal persons, particularly companies that may issue bearer shares, in money laundering and terrorist financing activities. The information available in the Business Register, although it is in the public domain, is not kept up to date, and at present there are no adequate mechanisms to enable it to be updated.

Legal arrangements – access to information on beneficial ownership and control (R.34)

Description and Analysis

646. The Commercial Code stipulates that only banks and credit institutions established on Guatemalan territory can become trustees, subject to licensing by the Monetary Board (Article 768 of the Commercial Code). Trusts may be of the following types: Guarantee Trusts, Investment Trusts, Management Trusts or Mixed Trusts. These trusts are under AML/CFT supervision and control by the Intendencia de Verificación Especial (IVE) of the Guatemalan Superintendency of Banks, since by virtue of the law only banks may be truste in a trust agreement.

647. As regards Public Trusts, from 2007 a specialized administrative unit or department was created within the organisational structure of the Contraloría General de Cuentas

(Accountant General's Office), entitled Directorate of Trusts, which is responsible for auditing the trust resources of the State.

(c.34.1):

648. The IVE, by virtue of the provisions of Article 28 of the Anti-Money Laundering Act, sets out the following requirement as regards the forms for opening relations for Trusts:

1. That the Trustee request the Settlors to complete the opening of business forms with their respective support documentation.

2. For cases in which the Trust contract entails management of any credit portfolio, the Trustee shall request the Settlor and/or Trust Commissioner, and each of the persons in that portfolio, to complete the relevant form.

649. The procedure established by the IVE stipulates that in cases where the nature of the trust makes it impossible to complete or document the forms, the Trustee shall request this information from the Settlor who is bringing the relevant portfolio the Trustee, for the purpose of applying, in part, the Know Your Customer policy.

650. In addition to the measures described, each Trustee is responsible for applying policies, programmes and procedures for compliance with national AML/CFT regulations.

651. (c.34.2): Pursuant to the provisions of the Anti-Money Laundering Act, all public or private entities are required to collaborate, when requested, with the Superintendency of Banks through the IVE in meeting the objectives of the Act under reference (Article 20).

652. Banks and credit institutions are required to provide adequate, precise and up to date information on beneficiary and control for persons intervening in a Trust contract: Settlor, Trustee and the beneficiaries of the Trust.

653. (c34.3) The authorities stated that from 21st April 2009, by virtue of the entry into force of the Freedom of Information Act, Act 57-2008, the purpose of which is to ensure the right to request and gain access to public information in possession of authorities and institutions regulated by this Act, Settlors and Trustees of the Trusts constituted or managed with public funds or funds derived from loans, convention or international treaties signed by the Republic of Guatemala, are subject to compliance with all the provisions embodied in that Act.

Recommendations and Comments

654. More AML/CFT training for staff of authorities responsible for controlling the trust sector, and financial institutions which offer these services, is advisable. In addition, it would be useful to publish guides on measures to prevent, detect and control the use of trust services for money laundering and terrorist financing purposes.

Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**LC**	Effectiveness: Even though only supervised credit institutions may be trust service providers and are subject to the same AML/CFT regulations, they

		should be provided with more specialized guidelines and instructions, and held to a higher compliance level for these services.

Non-profit organizations (SR.VIII)

Description and Analysis

655. Summary: Guatemalan legislation in general requires registration, licensing and accounting and tax controls for non-profit organisations (NPOs), information on which is available for the competent authorities, and for the general public under the Freedom of Information Act. The NGOs which are subject to greater monitoring are those which are registered as regulated entities with the IVE by virtue of their type of activity: loans, remittances and lotteries; and they are required to retain records of their transactions for a period of five years. There are other NPOs s which in addition are controlled by the General Comtprolership of Accounts of the Republic because they manage public funds to carry out social projects.

656. However, NPOs s are not effectively supervised or monitored, nor are there any effective measures to ensure investigation, collection and rapid exchange of information on NPOs in general, or any fluid communication among the state agencies that manage information on NPOs s, or any responses to international requests for information for the purpose of investigations into suspicions of terrorist activities, including financing. Nor are any studies known to exist on the vulnerability of this sector to ML/FT risks, or levels of corruption, or the sums of money they manage, or on their international activities. No NPOs in Guatemala has been sanctioned for non-compliance with AML/CFT requirements since they are not enforced persons; however there are denouncement submitted by IVE that involve these typo of aorganizations in money laundering acts.

657. Among the principal Guatemalan laws applicable to non-profit organisations (NPOs s) is the Non-Governmental Organisation Development Act (Act No.02-2003) which defines these bodies on the basis of their character and objectives.

"Article 2. Character. Non-governmental organisations (NGOs) are those constituted for cultural, educational, sporting, social service, assistance, beneficial, promotional and economic and social development purposes, without any profit motive. They shall have their own assets, from national or international sources, and their own legal personality, distinct from that of their members, when they are registered as such in the relevant civil municipal register. Their organisation and functioning is governed by their statutes, the provisions of the present Act, and other provisions of ordinary law"

"Article 3. Objectives. The objectives of the association shall be set out in its constitution as an NGO, but these must include, inter alia:

a) To be a non-profit association of social utility

b) Promote policies of social, economic, cultural and environmental development."

"Article 18. Prohibition on distribution of dividends. Non-governmental organisations are non-profit legal persons which are expressly forbidden to distribute dividends, utilities, surpluses, advantages or privileges in favour of their members. They may engage in all operations of legal business allowed by the laws and in that way may obtain resources which they must use solely for the achievement of their objectives".

658. In Guatemala NPOs s appear in the form of civil non-profit associations or foundations, but they are expressly not regarded as regulated entities for ML/FT prevention. However, they fall within that category solely because of their main business concern, such as, for example, that of foundations engaged in microfinance, remittances, or lotteries and video lotteries.

659. The only work of FT prevention awareness raising in the NGO sector is performed by the IVE; and this by virtue of and in accordance with its activity or business concern under the relevant legal regime. Up to the present time this task of the IVE applies solely to those NPOs s engaged in remittances (Article 18 c) of the AML Act, Article 5 Group B a) of the AML Act Regulations and Article 15 of the CFT Act) and very recently (three or four months before the evaluation team's visit) to those NPOs s operating lotteries and raffles (Article 5, Group B, j of the AML Act Regulations and Article 15 of the CFT Act).

660. With the Non-Governmental Organisations for Development Act, and other applicable instruments (for example Article 18 f) of the AML Act and Article 18 g) of the CFT Act, which streamlines the inclusion of other activities as regulated entities) various State authorities in Guatemala possess reasonable legal tools to enable them to request and/or obtain necessary information on NPOs s, for the purpose of periodic domestic reviews and re-evaluations , to determine the suitability of the legal regime applicable and the ML/FT risk profile.

661. There are several State agencies that handle information on NPOs s, depending on their type of business , and under the provisions of various laws. These agencies are therefore important sources of information for ML/FT prevention. Among them are: 1) Municipalities; 2) The Civil Register; 3) The Ministry of the Economy; 4) The Superintendency of Inland Revenue; 5) The Ministerio de Gobernación, when NPOs s engage in lotteries and video lotteries (electronic drawings); 6) The Contraloría General de la República (Office of the Accountant General), when the NPOs s receive public funds, through tender, for the execution of State or Municipal social projects; 7) the Intendencia de Verificación Especial, when they engage in businesses or activities which make them regulated entities (loans, remittances and lotteries); 8) The Superintendency of Banks, when the NPOs s manage accounts in the banks and/or figure as organisers or partners in them. However, there is no fluid communication among these entities, except between the Superintendency of Banks and the IVE, which are both part of the same organisational structure.

662. In accordance with the Non-Governmental Organisations for Development Act, for NPOs to obtain legal personality they must be entered in the Civil Register of the municipality of their domicile, and this Authority, together with the Ministry of the Economy and the Superintendency of Inland Revenue, are responsible for sharing and updating relevant information on NPOs s.

"Article 10. Registration. Non-governmental organisations, in order to obtain their legal personality, shall be entered in the Civil Registry of the municipality in which they are domiciled.

Municipal civil registrars should authorise a special ledger for registration of associations constituted as non-governmental organisations, in which shall be inscribed their constitution and any changes to it, dissolution and liquidation as the case may be; in addition, the registration of their legally appointed representatives and the minute books authorised for use in the general assemblies, or by the Boards of Directors, of legally constituted NGOs."

"Article 11. Notice of Registration. The municipal civil registrars, within a period of 30 days following their registration, shall send to the Ministry of the Economy a notice containing: the date of publication of their statutes, the number of their public registration certificate , the name of the legalising notary, the title, domicile, purposes, financial resources and the name of the legal representative of the NGO, the number, folio and ledger in which it is entered, the place and the date.

The Ministry of the Economy shall keep a register of non-governmental organisations registered throughout the country, and these shall be required to notify and update the information half yearly, and immediately when there are changes in the information supplied."

"Article 13. Accountancy. Non-governmental organisations have the duty to register with the Superintendency of Inland Revenue, for purposes of registration and control, and to maintain complete accounts in an organized manner as well as the necessary ledgers, in accordance with the double entry system, applying generally accepted accounting principles, and in full compliance with the relevant laws."

"Article 14. Books. The accounts of the non-governmental organisations shall consist of inventory, journal, general ledger, and balance sheet, and they may be kept in legally acceptable electronic form, approved by the Superintendency of Internal Revenue or its departments."

"Article 15. Donations. In cases in which they receive donations, whatever may be their purpose, non-governmental organisations shall issue, in the name of the donors, receipts which attest to the acceptance of the donations, on forms authorised by the tax authorities."

663. Banks themselves constitute an important source of information on NPOs for the respective State authorities, especially for the Superintendency of Banks and the IVE. Since, under the provisions of Article 17 of the Non-Governmental Organisations for Development Act, these bodies may deposit their funds "*in the Bank of Guatemala or in the banks of the national system duly authorised to operate in the country"*. It should be pointed out that the banks generally apply enhanced due diligence and special monitoring to their NPO customers. By way of reference, in only one of the offshore banks operating in Guatemala there are 25 accounts of NPOs s of a philanthropic nature, the members of which are foreigners. The Superintendency of Banks also has direct and up-to-date access to information on NPOs s, since these are organisers and/or partners in entities which are under its supervision; this is permitted by the Banks and Financial Groups Act.

ARTICLE 8. Procedures
"(…) Legal persons may participate as organisers and/or shareholders in banks, provided the ownership structure of the legal persons enables the identity of the individuals who are final owners of the shares in a succession of legal persons to be precisely determined. For the purposes of sub-paragraph c) of Article 7 of this Act, the persons involved must provide the Superintendency of Banks with the list of individual shareholders holding more than 5% of the paid-up capital of the said legal persons, as well as any other information which the Superintendency considers it necessary to request. For purposes of the previous computation, the shares of the spouse and minor children of the shareholder shall be added together (….)"

664. The Superintendency of Banks, pursuant to Article 4 of the Banks and Financial Groups Act, is also empowered to request information from NGOs that receive deposits or contributions from their associates and third parties:

ARTICLE 4. Exceptions.
Entities that receive deposits or contributions from their members and third parties, such as cooperatives, mutual societies, community development associations, community enterprise associations, non-governmental organisations and private development organisations, among others, and which are governed by a special law, shall be exempt from the provisions of this Act. In any case, such entities shall be required to submit such periodic or occasional information as the Superintendency of Banks may request."

(c.VII.2)

665. Of the State authorities that have access to information on NPOs s, only the IVE has initiated, and that recently, certain initiatives of familiarisation, awareness-building and dissemination of information to a part of this sector for FT prevention purposes. In February 2009 in IVE *Oficio* No.179-2009, enterprises engaged in lotteries and video lotteries were called upon to register with IVE, since the ones with the greatest presence at the national level were those constituted by NPOs s. However, it is not yet possible to talk about an effective programme of dissemination of ML/FT preventive information for NGOs. It should be pointed out that lottery businesses are authorised (on payament of a deposit) and inspected by the Ministerio de Gobernación, which is empowered to grant, deny and revoke licences, and to which financial reports must be rendered every six months., This Ministry always has a presence at the lottery drawings.

666. There is no information on internet betting, nor on NPOs that manage casinos. It should be pointed out that the casino business is an undeniable reality in the country despite being prohibited

by law (according to the broad interpretation of the Criminal Code shared by local authorities) which in practice means that this sector (recognised as vulnerable although not governed by law) is not subject to any AML/CFT requirements. Authorities of the Ministerio de Gobernación stated that they have attempted to apply measures to casino businesses, but these have invoked their constitutional rights wich are in progress.

667. One of these NPOs engaged in the lottery business stated to the CFATF mission that it receives few donations and that it is now laying the groundwork for a programme of ML/FT prevention. One of the specific means that it applies is that of issuing non-negotiable cheques to the winners of the draws, who are duly identified. They have for the moment no studies on geographical areas of greater incidence of large prize-winning.

668. There are also NPOs organized as foundations and engaged in microfinance and remittances, and as such are regulated entities under the AML and CFT Acts and are monitored by the IVE. However, they are not supervised by the Superintendency of Banks as their credit institution status requires under Article 1 of the Financial Supervision Act:

"*ARTICLE 1. Character and Objectives*
The Superintendency of Banks in an organ of the Central Bank organized under this Act. It is eminently technical,, acts under the overall direction of the Monetary Board, and exercises control and inspection of the Bank of Guatemala, banks, financial companies, ***credit institutions****, bonding companies, insurance companies, general deposit warehouses, bureaux de change, financial groups and enterprises controlling financial groups, and such other entities as other laws may provide.*

The Superintendency of Banks has full power to acquire rights and contract obligations, enjoys the functional independence necessary for the achievement of its aims, for ensuring that the persons subject to its control and inspection comply with their legal obligations and observe the legal provisions relative to liquidity, solvency and solidity of assets".

669. Despite the controls which are exercised respectively by the Superintendency of Internal Revenue and the Accountant General of the Republic (Accounts Tribunal) on the accounts and transparency of NPOs that manage public funds, via tender, for the purpose of social projects, this sector has been involved in corruption scandals. Some authorities, however, state that it is a question of perception influenced by the media. The State authorities affirmed that there is still much to be done in sensitive areas such as transparency, accountability, integrity and public confidence in the administration and management of NPOs, particularly in the sector linked to State and municipal organs and to which public works are entrusted.

670. Many of the STRs submitted by the banks relate to NPOs and PEPs (mayors). However policies on PEPs are a relatively new factor in Guatemala. The NPOs engaged in lotteries and video lotteries, and who are therefore regulated entities, have so far submitted no STRs.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c.VIII.3): [suggestion: describe here what parameters have been used and the efforts undertaken to identify relevant NPOs].

671. No evidence was obtained of effective supervision and monitoring of NPOs, nor were any studies discovered on ML/FT through NPOs, or on the levels of corruption in this sector, or on the financial resources managed by them or on their international activities.

(c.VIII.3.1)

672. The Non-Governmental Organisations for Development Act, and other administrative regulations issued by the Ministerio de Gobernación, require NPOs to keep at the disposal of the authorities information on the purpose and objectives of their activities, the identity of the person or persons

who own, control or manage them. These requirements are emphasised for those NPOs that are regulated institutions under the IVE because of the nature of their business (loans, remittances, lotteries). In addition, pursuant to sub-paragraph 29 of Article 6 of the Freedom of Information Act (2008) ,non-governmental organisations, foundations and associations that receive, manage or disburse public funds are regarded as regulated entities, by virtue of which and in accordance with Article 1 sub-paragraph 3 of the Act, "*Transparency of the public administration and the regulated entities and the right of all persons to have free access to public information must be guaranteed"*.

(c.VIII.3.2)

673. In addition to annulment or revocation of licence to operate and the loss of legal personality, no other sanctions for NPOs for violations of supervisory measures or rules are known. Solely in the case of NPOs which are regulated institutions for purposes of the IVE because of their type of activity (loans, remittances, lotteries) do the relevant laws contain provisions for pecuniary penalties for AML/CFT non-compliance. However in practice no penalties have been applied to this sector.

(c.VIII.3.3)

674. The Non-Governmental Organisations for Development Act, and also other administrative regulations issued by the Ministerio de Gobernación, require NPOs to be registered and licensed, and this information is permanently available.

(c.VIII.3.4)

675. Only for NPOs that are regulated institutions under the IVE because of their type of activity (loans, remittances, lotteries) is there a legal requirement to retain records for a period of five years and at the disposal of the competent authorities, on their domestic and international transactions.

(c.VIII.4)

676. Without underestimating the work of the IVE on NPOs that are regulated entities because of their type of activity (loans, remittances, lotteries), no other effective means for ensuring investigation and collection of information on NPOs in general are known. There is no fluid communication among the agencies that manage information on NPOs.

(c.VIII.4.1)

677. There is no fluid communication among the agencies that handle information on NPOs, apart from the efforts being initiated by the IVE.

Access to information on administration and management of NPOs during investigations (c.VIII.4.2): Sharing of information, preventative actions and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (c.VIII.4.3):

678. The legislation in force in Guatemala permits full access to information on the administration and management of NPOs during the course of an investigation; however in practice no mechanisms exist for rapid exchange of information among all the authorities holding data on NPOs. Guatemala does not yet have the investigative expertise to examine NPOs suspected of terrorist activities.

(c.VIII.5)

679. Nothing is known of the implementation of agreements and responses to international requests for information on NPOs for investigation of suspicion of terrorist activities, including financing.

Recommendations and Comments

680. Carry out studies and evaluations on ML/FT vulnerabilities and corruption among NPOs.

681. Conclude interagency and international collaboration conventions for exchange of information for the purposes of ML/FT investigations involving NPOs.

682. Confer on the IVE express powers and resources, including express power of sanction, to apply ML/FT prevention supervision to all NPOs, particularly those who hold a significant portion of financial resources or engage in international activities,.

Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying the rating
SR.VIII	**PC**	The pertinent state authorities do not carry out periodic re-evaluations to determine possible vulnerabilities of the NPOs to FT There is no collaboration agreement among State authorities for fluid exchange of information with regard to investigation of NPOs NPOs that do not qualify as regulated entities for the IVE are not subject to greater controls except for the fact that they are registered and licensed There is no effective AML/CFT supervision and monitoring in the NPO sector nor to any particular degree on those which manage a significant proportion of financial resources or international activities in that sector No studies have been done on corruption in the entire NPO sector nor in particular among those which receive State funds to carry out social projects, despite the fact that these types of NPO are also subject to control by the Accountant General of the Republic There are no responses to international requests for information relating to investigations of NPOs for suspected terrorist activities, including financing No NPOs in Guatemala have been penalised for non-compliance in AML/CFT matters.

6. NATIONAL AND INTERNATIONAL COOPERATION

National Cooperation and Coordination (R.31)

Description and Analysis

683. Summary: The draft executive order *(Decreto Gubernativo)* that the National Commission for Coordination of Efforts Against the Laundering of Money and Other Assets and Financing of Terrorism in Guatemala is a good beginning to Guatemala's efforts at interagency AML/CFT coordination. However, until this Governative Agreement becomes law and is implemented by the creation of interagency investigation groups at the operational level, there will continue to be a great gap in the AML-CFT system of Guatemala. The authorities responsible for detection, prevention and repression of ML and FT are not making use of or sharing the investigative and operational skills of each of them, because of lack of communication. There is no effective

cooperation between the IVE, the Analysis Unit and the *Fiscalías* of the section of the Ministerio Público concerned with ML/FT cases.[10]

684. (c.31.1): Article 20 of the CFT Act states that the IVE shall have the same powers, functions and duties as under the AML Act, its Regulations and other relevant provisions. It also indicates that public and private entities are required to provide any collaboration requested by the Superintendency of Banks through the IVE, for the achievement of the purposes of that Act.

685. When the public agencies get data bases, a mechanism will be able to be se up with the Superintendency of Banks, through the IVE, to enable the latter to consult them.

686. On the basis of this legal possibility, and collaboration with public agencies, the numbers of requests to the Superintendency of Revenue and the Directorate General of Immigration are as follows:

	2005	2006	2007	2008	2009	2010	Total
Inland Revenue	2	5	17	20	18	1	63
Immigration	0	0	14	3	3	0	20

687. Along the same lines, the collaboration of other government agencies has been requested, for example the Municipal Development Institute, the Municipality of Guatemala, the Property Registry, the of Guatemala, the Ministry of External Affairs, the Executive Secretariat of the Commission Against Drug Addiction and Trafficking.

688. The IVE has signed the following inter-agency cooperation agreements, to enable cooperation, coordination and development of support mechanisms to prevent and combat ML and FT:

No.	Agency	Date of signing
1	Superintendency of Inland Revenue	26/11/2004
2	General Property Registry	17/03/2009
3	Ministerio Público	16/11/2009

689. Following the signing of the cooperation agreement with the General Property Registry, the IVE has been part of an inter-agency commission with one titular member and one substitute in 20 working sessions, with the participation of the following government agencies: Ministerio Publico, National Forensic Sciences Institute INACF, Secretariat of Agriculture, the General Archive of Protocols, the National civil Police, the Specialized Criminal Investigation Directorate, Procuraduria General, Nationali Register of Persons, General Property Registry, Land Survey Registry, National council for Protected Areas, Project JADE, Ministry of Nationall Defence, , National Landed Property Fund of the Ministry of Finance,State Office for Control of Territorial Reserve and the Second Property Registry.

690. With the implementation of the Administrative Convention for Inter-agency Cooperation between the IVE and the Ministerio Publico, The IVE and the Anti-Money Laundering Fiscalia of the Ministerio Publico have been holding periodic meetings to analyse caes from the IVE, and there has been frequent communication regarding response to requests from the Ministerio Publico. These meetings can include other Fiscalias which in the course of their duties investigate Money laundering, terrorism or terrorist financing cases.

[9] Some months after the evaluation visit Guatemala confirmed that this Governative Agreement was approved with Number 132-2010.

691. As a result of the inter-agency coordination, the digital information exchange project which will streamline information transfer by the IVE in response to requests from the Ministerio Publico. is about to be implemented.

YEAR	REQUESTS FROM MINISTERIO PUBLICO TO IVE (31/12/2009)			
	Pendings	Partially	Completely	Total
2005	0	0	167	167
2006	0	0	166	166
2007	0	0	207	207
2008	0	0	216	216
2009	4	4	219	227
TOTAL	**4**	**4**	**975**	**983**

692. Also, Article 31 of the AML Act Regulations stipulate that public or private entities must provide the Superintendency of Banks, through the Intendencia, with the collaboration that the Superintendency may request, in accordance with the final paragraph of Article 34 of the Act. There is also a draft *Executive order Gubernativo* creating the National Commission for Coordination of Efforts Against the Laundering of Money and Other Assets and the Financing of Terrorism in Guatemala, promoted by the Superintendency of Banks through the IVE. This *Executive order* has already been discussed and approved by the State entities that will participate. Its purpose is to coordinate inter-agency cooperation among participating state agencies within the legal structure of prevention, control, monitoring and sanctioning of Money laundering and terrorist financing, for the purpose of assisting in effective compliance with the law in a national system of prevention and repression of these offences, in full respect of the legal field of competence and autonomy of each agency.

693. For the purpose of raising awareness of the national ML/FT prevention Project, from 27 to3 0 April 2009 a workshop entitled "The Integral Plan for Coordination among Guatemalan AML/CFT Agencies" was held at the Superintendency of Banks. It was attended by compliance officers of Banks, insurance companies and cooperatives, as well as officials of the Superintendency of Internal Revenue, the Contraloria General de Cuentas, Ministerio Público, Judicial Branch, National Institute of Cooperatives, Inspectorate General of Cooperatives, National Federation of Credit and Load Cooperatives, Registry General of Real Property, and others. However, at the time of the evaluation there were not yet any effective internal cooperation measures to combat AML/CFT among the law enforcement agencies and those which are part of the AML/CFT system of Guatemala. For example, there was no official or de facto entity or group that brought together all the actors in the AML/CFT regime at intervals to exchange information and collaborate in the setting of priorities and investigation of specific cases of particular impact, importance, or common interest. The main national agencies responsible for detection, prevention and repression of ML and FT are not making proper use of the investigative and operational skills of each of them, because of the lack of effectiveness in their various communication styles.

694. Except for UNILAT (described in Section 2.6 of this report) ,which only handles and investigates specific cases related to the drug traffic, tax fraud and related money laundering there are no interdisciplinary working groups at the operational level to coordinate the combat against AML/CFT. Nor is there any spontaneous and effective exchange of intelligence between the IVE, the Analysis Unit, and the *Fiscalías* of the Ministerio Público that handle ML/FT cases. Communication between the MP and the IVE is limited to the transmission of denuncias from the IVE to the Anti-Money Laundering *Fiscalía*, responses from the IVE to requests for elaboration of information from the MP, and in some cases to spontaneous dissemination from the IVE to the above mentioned *Fiscalía* of information from the media on ML, except for recent efforts that have lead to hold periodical meetings with the Money Laundering Prosecutor's Unit.

695. In addition to receiving denuncias from the IVE through the Anti-Money Laundering *Fiscalía*, the different *Fiscalías* put their requirements for elaboration of information to the IVE, and internally request advice from its Analysis Unit. The IVE carries out its investigations and responds to the requests of the various *Fiscalías*, without having timely access to information that has already been collected by the Ministerio Público through the application of mutual legal assistance treaties and the collection of other data to which the IVE does not have access. In some cases in which the IVE was not able to obtain financial information by means of requests through the Egmont Group to counterpart agencies in other countries, the Ministerio Público was able to obtain it through other channels. In some cases, however, the IVE, not having received feedback from the Analysis Unit of the Ministerio Público, continued to wait to receive the same information that the MP already possessed.

Recommendations

696. The promulgation of the *Executive order Gubernativo* being drafted by the National Commission for Coordination of Efforts Against Laundering of Money and Other Assets and Financing of Terrorism in Guatemala should be accelerated.

697. Create interagency cooperation mechanisms among the main anti-ML/FT actors, especially the security agencies, the Ministerio Público and the Financial Intelligence Unit (the IVE), that will facilitate high-impact cases, prosecutions and convictions, as well as identification and tracing of property subject to confiscation.

698. Create working groups at the operational level to increase the effectiveness of AML/CFT investigations carried out by the Ministerio Público and the law enforcement agencies.

699. Create spaces for greater cooperation between the IVE and the Analysis Unit of the Ministerio Público.

Compliance with Recommendation 31

	Rating	Summary of factors underlying the rating
R.31	**PC**	At the time of the visit there were no mechanisms for good coordination and collaboration among the agencies empowered to investigate, prevent and repress the crimes of ML-FT.

The Conventions and US Special Resolutions (R.35 and SR.I)

Description and Analysis

700. Guatemala ratified the 1988 Vienna Convention on the Illicit Traffic in Narcotics on the 28th February 1991 (see UNO). It also ratified the United Nations Convention Against Organized Crime or "Palermo Convention" on 25th September 2003 (see UNO) and the 1999 International Convention for the Suppression of the Financing of Terrorism on the 12th February 2002 (see UNO). The form and scope with which these Conventions have been incorporated in domestic law has been analysed throughout this report and their formal ratification by the country was verified in the database of the Secretariat General of the United Nations: http://treaties.un.org/Pages/CNs.aspx.

701. The following table shows the laws that incorporate these three Conventions into Guatemala's domestic legislation>

1988 Vienna Convention (Narcotics)	Guatemalan Domestic Legislation
3 (Crimes and Sanctions)	Act No.48-92, the Law against Narcotics, Chapter VIII: Offences and penalties; Articles 35-53.
4 (Jurisdiction) Competencies	Chapter XI of Act No.48-92 establishes the Commission Against Addiction and Illicit Traffic in Drugs, to consider and decide (Article 71. Competence) national policies for prevention […] Article 77 of the same Chapter of this Act also stipulates that the Commission shall appoint sub-Commissions within itself […], whose purpose will be to develop and supervise the implementation of strategies and measures adopted by the Commission […]
5 (Confiscation) Trust	Act No.48-92, Anti-Narcotics Act, Chapter III Article 18 lays down the necessary measures for authorisation of seizing or confiscating the instrumentalities of the crime […]
6 (Extradition)	Chapter X, Article 68 of Act No.48-92, the Anti-Narcotics Act establishes that extradition is governed by international treaties or conventions, and that failing such treaties or conventions, the country shall proceed in accordance with the principle of reciprocity and international custom.
7 (Mutual Legal Assistance) Reciprocal Judicial Assistance	Chapter IX, Article 63 of Act No.48-92, the Anti-Narcotics Act, empowers the Ministerio Público and the competent judicial authorities to request and provide international legal assistance in cases related to offences criminalised in accordance with the provisions of the first paragraph of Article 3 of the Act (Crimes and Penalties).
8 (Transfer of Judicial Decisions)	Article 66 of Act No.48-92 states that all requests for assistance from other States that are made through diplomatic channels or directly to the Ministerio Público shall be considered, and that the Ministerio Público shall foster their rapid implementation before the competent tribunals.
9 (Other forms of cooperation and training)	Act No.48-92, the Anti-Narcotics Act, stipulates in Article 7 the duty of the State, through its competence organs, to foster international cooperation […] in order to strengthen and coordinate strategies among states and programmes of investigations, prevention, punishment and rehabilitation […]; and in Article of the same Act stipulates that State agencies and bodies may assist the Commission (against addiction and illicit traffic in drugs) as the Commission may request.
10 (International Cooperation and Assistance to countries) Internal Cooperation and International Assistance to transit stages	Act No.48-92, the Anti-Narcotics Act, lays down in its Article 7 the duty of the State, through its competent organs to foster international cooperation […] to strengthen and coordinate strategies among states and programmes of investigations, prevention, punishment and rehabilitation […]
11 (Controlled Delivery) Controlled Delivery	Decree 21- 2006 Title III of the Anti-Organized Crime Act refers to Special Investigative Methods. These are: Undercover Operations (Articles 21 to 34); Controlled Delivery (Articles 35 to 47); and Tapping of Telephones and Other Media of Communication (Articles 48 to 71). However, no agency in Guatemala has so far made use of the first two of the above mentioned methods.
15 (Commercial Transport Companies) Commercial	Article 38 of Act No.48-92, the Anti-Narcotics Act, stipulates that anyone who without legal authority acquires […] imports,

Transporters	exports, stores, transports, distributes […] substances or products classified as drugs, narcotics, psychotropics or precursors, shall be punished with imprisonment of from 12 to 20 years and a fine […]
17 (Illegal Maritime Traffic)	Criminal Code, Act No. 17-73, articles 299, 307, 308 (4) Note: Article 307 invoked by Articles 35 and 38 of Decree 48-92 Law Agianst Drug Trafficking activities. Article 308 revoked by Article 25 Decree 48-92. For the case of trafficking in cash, arts. 25 of the AML Act and 37 of its Regulations and 8 of the CFT Act. Act no. 39-2003 approving the convention between Guatemala and the Government of the USA to cooperate in the suppression of the illicit maritime and air traffic innarcotics and psychotropic substances, signed in Guatemala City on 19 June 2003, and it Regulations in givrenment Acuerdo no. 367-2004. Convention on Cooperation for the suppression of the illicit maritime and air traffic innarcotics and psychotropic substances in the Caribbean Area, ratified 26 June 2006. Convenant has Number 660 executed on 10-04-2002 in San Jose de Costa Rica. It has a reference Decree 64-2005 of the Congress of the Republic of Guatemala.
19 (Use of Postal Services) Use of Postal Services	Article 24 of the Constitution of the Republic of Guatemala, which establishes the inviolability of correspondence, documents and books, and states that they can only be consulted by a compeatent authority.
2003 Palermo Convention (Organized Crime)	**Guatemalan Domestic Legislation**
5 (Criminalisation of participation in an organized criminal group) Tipification of the participation in an organized crime group of organized delinquency	Act 21-2006, Law against Organized Crime: Third Chapter
6 (Criminalisation of laundering of proceeds of crime) Criminalization of money laundering with proceeds from crime	Act 67-2001, Anti-Money Laundering Act, Section I: Article 2
7 (Measures to combat money laundering)	Act 67-2001, Anti-Money Laundering Act, Section n I: Article 2
10 (Liability of legal persons) Liability of legal persons	Act 21-2006, Law against Organized Crime: Article 82
11 (Prosecution, Verdict and Penalty) Proceeding ruling and fines	Act 21-2006, Law against Organized Crime: Third Chapter.
12 (Seizure and Confiscation) Confiscation and seizure	Act 21-2006, Law against Organized Crime: First Chapter
13 (International cooperation for confiscation)	Act 21-2006, Law against Organized Crime: Articles 78 to 80
14 (Disposal of proceeds of crime or confiscated property) Disposal of the crime product of seized goods	Act 21-2006, Law against Organized Crime: Articles 78 to 80
15 (Jurisdiction)	Decree 17-73. Criminal Code: Articles 4 and 5 provides Territoriality and Extraterritoriality of criminal laws
16 (Extradition)	Decree 28-2008. Regulating Law of Extradition Procedure provides extradition principles, guarantees and procedures
18 (Mutual Legal Assistance) Reciprocal Judicial assistance	Anti-Money Laundering Act: Article 21
19 (Joint Investigations)	Mutual Legal Assistance INternamerican Convention and

	Mutual Legal Assistance Central American Convention of which Guatemala is party. Allos joint investigation.
20 (Special Investigative Techniques)	Act 21-2006, Law against Organized Crime: Second and Third Chapters
24 (Assistance and protection of victims) Protection of witnesses	Decree 21-2006, Law Against Organized Crime, Article 104 Decree 70-96 Law for the Protection of Proceeding Subjects and Persons Related with Criminal Justice Management
25 (Assistance and protection of victims) Assistance and protection of victims	Decree 40-94 Organic Law of the Public Ministry, Articles 8 and 26 Decree 70.96: Law for the Protection of Procedural Subjects and persons linked to criminal justice admninistration
26 (Measures to improve cooperation with law enforcement agencies)	Act 21-2006, Law against Organized Crime: Fourth Chapter
27 (Cooperation – law enforcement agencies) Cooperation in terms of law compliance	Act 21-2006, Law against Organized Crime: Fourth Chapter
29 (Training and technical assistance)	Decree 40-94. Organic Law of the Public Ministry Article 81 Decree 41-99 Judicial Career Law. Chapter 5
30 (Other measures) Application of convention through economic development and technical assistance	There are additional measures concerning special aggravating circumstances such as accessory penalties for those who administer, manage or supervise, who are public officials, or who make use of minors in the commission of the crime referred to in Act 21-2006, Law against Organized Crime: Article 12
31 (Prevention)	Decree 48-92, Law Against Drug Trafficking Activity, Article 1 Decree 67-2001, Law Against MOey Laundering and Other Assets Article 2 and Chapter Iv and V. Decree 21.2006. Law Agasint Organized Crime, Article 1
34 (Implementation of the Convention) Application of the Convention	Decree 48-92, Law Against Drug Trafficking Activities, Chapter VII Decree 67-2001, Law Agasint Money Laundering and Other Assets, Chapter II Decree 21-2006, Law Against Organized Crime Chapter III
1999 Convention (Financing of Terrorism)	**Guatemalan Domestic Legislation**
2 (Crimes)	Act 58-2005, Law to Prevent and Repress the Financing of Terrorism: Chapter II, Article 4 – on crimes, liability and penalties
4 (Penalisation) Tipification of criminal violation and sanction of crimes	Act 58-2005, Law to Prevent and Repress the Financing of Terrorism: Chapter II, Articles 7 to 11 – on crimes, liability and penalties
5 (Liability of legal persons)	Decree 58-2005 Law to Prevent and Punish Financing of Terrorism ; Article 7
6 (Justification of perpetration of crime)	Decree 58-2005. Law to Prevent and Punish Financing of Terrorism ; Article 6, Non applicable Justifications
7 (Jurisdiction)	Decree 17-73, Criminal Code, Article 4 and 5, Territoriality and Extraterritoriality of the Law
8 (Measures for identification, detection, freezing and confiscation of funds)	Regulations of the CFT Act, Article 2 extends the definition and scope of the concept of "property".
9 (Investigations and the rights of accused persons)	Decree 51-92, Criminal Prodecural Code Chapter II first section. Accused Party rights. Chapter IV. Reparatory procedure Decree 21-200, Law Against Organized Deliquency Second

	and Third Title menas to investigate organized crime groups and serious social impact crimes, Speicla Investigation Methods. Controlled deliveries, Telephone Interceptions and Other Communication Methods
10 (Extradition of nationals)	Decree 58- 2005, Lay to Prevent and Punish Financing of Terrorism Article 13 Decree 28-2008, Law Regulating Extradition Procedure provides estadiction principles, guarantees and procedures
11 (Extraditable offences)	Decree 58-2005, Law to Prevent and Punish Financing of Terrirosm Article 13 Ofenses: Finacing of Terrorism, Decanting of Money and Conspiration to the above offenses.
12 (Assistance to other States)	Decree 67- 2001 Anti-Money Laundering Act: Article 21 b). The competent authorities may also offer and request assistance from competent authorities of other countries […] and the activities of persons with regard to whom there is reasonable suspicion that they are involved in the crime of financing of terrorism
13 (No provision of assistance in the case of a fiscal offence)	Political Constitution of the Republic of Guatemala: Article 24
14 (No provision of assistance in the case of a political offence)	Ratified Convention, Article 27 of the Political Constitution of the Republic of Guatemala.
15 (No obligation if it is believed that the judicial decision is based on reasons of race, nationality, political opinion, etc.)	Ratified Convention Article 27 of the Political Constitution of the Republic of Guatemala
16 (Transfer of prisoners)	Decree 58- 2005: Law to Prevent and Punish Financing of Terrorism, Article 22, Trasnfer of Detained persons or persons complying with lifesentenses for investigations or criminalization of crimes satated in international Agreements of which Guatemala is a party.
17 (Guarantee of just treatment for persons in custody)	Political Constitution of the Republic of Guatemala, Article 7, 11 and 19
18 (Measures to prohibit incitement to, organisation of or commission of crimes. Financial institutions and others that engage in financial operations to apply STR and record keeping and CDD measures. Exchange of information among agencies to be facilitated)	Decree 58-2005 Law to Prevent and Punish Financing of Terrorism, Chapter V, Regime of Enforced Persons and Administrative Measures Chaoter VI Article 23, Administrative Assistance and Information Exchange Decree 67-2001: Law Aginst Money Laundering and Other Assets Chapter IV. Enfornced Persons and Obligations Article 35 Administrative Assistance.

Resolution 1267:

702. The procedures for provisional measures established in the Act to Prevent and Repress the Financing of Terrorism are not sufficiently flexible, and no alternative mechanism has been created for compliance with Resolution 1267 with the speed required by it.

703. In accordance with the glossary of Evaluation Methodology, the expression "without delay" "for purposes of S/RES/1267(1999) ideally means within a matter of hours of designation by the Committee for Sanctions against Al-Qaida and the Taliban". … However, Guatemalan law permits a criminal judge, at the request of the Ministerio Público, at any moment during the trial and without prior notice to the person affected, to issue any order or guarantee measure existing in the laws. Although Article 11 of the AML Act states that these requests must be resolved by the judge immediately, the law assumes the existence of a criminal trial in progress. This could cause

unnecessary delays, which is contrary to the spirit of Resolution 1267 (see Section 2.4 of the report).

Resolution 1373:

704. In Guatemala no procedure has been established to guide the authorities has to how to act in case another country notifies them that it has designated a person as a terrorist on the basis of UN Resolution 1373. Designations in the framework of Resolution 1373 do not necessarily assume the character of mutual legal assistance, and since there is no clear internal procedure to enable the reasonableness of the designation made by another country to be assessed, the Guatemalan authorities would not know how to proceed as a result of such designation (see Section 2.4 of the report).

Additional element

705. Guatemala has adopted other international instruments, such as:

1. Convention on Offences and Certain Other Acts Committed Aboard Aircraft
2. Convention for the suppression of Unlawful Seizure of Aircraft
3. Convention against Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance.
4. Convention for the Repression of Unlawful Acts against the Safety of Civil Aviation
5. Convention for the Prevention and Punishment of Crimes against internationally protected Persons, including Diplomatic Agents
6. International Convention against the Taking of Hostages
7. Convention on the Physical Protection of Nuclear Materials
8. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
9. International Convention for the Suppression of Terrorist Bombings
10. International Convention for the Suppression of the Financing of Terrorism
11. United Nations Convention against Transnational Organized Crime
12. Accession of Government of Guatemala to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime
13. Inter-American convention against Terrorism
14. Memorandum of Understanding between the Secretariat for Administrative Affairs and Security of the Presidency of the Republic of Guatemala and the Administrative Department of Security of the Republic of Colombia on Cooperation for Training and Exchange of Information on Security of Presidents and Senior Officials in the sphere of Protective Intelligence, Counterintelligence, Terrorism, Kidnapping and Related Matters.
15. Assistance and Cooperation Agreement on Public Security between the Government of the Republic of Guatemala and the Government of the Republic of Argentina
16. Mutual Cooperation Treaty between the Government of the Republic of Guatemala and the Government of the United Mexican States for Exchange of Information on Financial Operations to Prevent, Detect and Combat Operations of Illicit Origin or Money Laundering
17. Central American Convention for Prevention and Repression of the Crimes of Laundering of Money and Assets Related to the Illicit Traffic in Drugs and Related Crimes.

Recommendations and Comments

706. Lay down procedures and mechanisms to enable Resolutions 1267 and 1373 to be implemented with the necessary speed (see SR.III).

Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**C**	
SR.I	**PC**	• Existing mechanisms are not fast enough to allow to take measures in compliance with Resolutions 1267 and 1373

Mutual Legal Assistance (R.36-38, SR.V)

Description and Analysis

707. There are a series of mutual legal assistance treaties (MLAT) and other multilateral legal instruments signed and ratified by the Republic of Guatemala which enable the country to offer wide international legal cooperation in criminal investigations and prosecutions for the presumed commission of the crimes of money laundering and financing of terrorism.

708. c.36.1) The Anti-Money Laundering Act stipulates that with regard to mutual legal assistance and for the purpose of facilitating judicial acts and investigations concerning the crimes to which the Act refers, the Ministerio Público, the IVE and any other competent authority may offer and request assistance to the competent authorities of other countries for:

a) Receiving testimony or taking statements.
b) Presenting legal documents
c) Carrying out inspections or seizures
d) Examining objects and places
e) Providing information and evidence
f) Handing over originals or authenticated copies of documents and files relating to the case, including bank, financial and commercial documentation
g) Identifying or detecting the proceeds, instrumentalities and other elements for purposes of evidence.
h) Any other form of reciprocal legal assistance authorised by domestic legislation (Article 21)

709. The cooperation described is also applicable to investigations and trials for terrorist financing.

710. Regarding transfer of persons (Article 22), persons who are detained or are serving a sentence in the national territory may be transferred to another State on judicial authority and provided that it is for the purpose of giving evidence or identification, or in order that the person may help to obtain the necessary evidence for investigation or prosecution of the crimes set out in international instruments to which Guatemala is signatory.

711. Other international legal instruments that facilitate judicial cooperation and that Guatemala may use in order to offer assistance to other countries are the following:

- The Inter-American Convention on Mutual Legal Assistance in Criminal Matters;
- The Treaty for Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama;
- The Cooperation Treaty on Mutual Legal Assistance between the government of the Republic of Guatemala and the government of the United Mexican States;
- The United Nations Convention against the Illicit Traffic in Narcotics and Psychotropic Substances;
- The United Nations Convention against Transnational Organized Crime;
- The Inter-American Convention against Corruption;
- The United Nations Convention against Corruption;
- The International Convention for the Repression of the Financing of Terrorism; and
- The Inter-American Convention against Terrorism.

712. (c.36.1.1)Guatemalan law fixes a time limit for legal assistance to be dealt with by its competent authorities. According to Instruction 1-2007 of the Fiscal General de la República and the Head of the Ministerio Público, number III, section 9, the time limit for response to international requirements should be a maximum of thirty (30) days, a time period which may be extended with reasonable justification.

713. (c.36.2) From interviews with the Ministerio Público and study of the relevant Guatemalan criminal law, it is apparent that there are no disproportionate restrictive measures on international legal assistance. The only requirements are compliance with the principles of the Constitution of Guatemala and the ordinary legislation of the country, which lays down reasonable procedures and limits for cooperation.

714. c.36.3) From review of the criminal and judicial legislation in force, and the interview held with officials of the Ministerio Público, it was learned that there are procedures conducive to guaranteeing effective judicial cooperation offered by Guatemalan legal authorities to other countries, as was indicated in paragraph 338 of this report, on compliance with criterion 36.1.1.1.

715. (c.36.4): In Guatemalan legislation there are no provisions affecting or hindering the provision of mutual legal assistance purely on the basis of the involvement of fiscal matters in the crime. The crime of money laundering is not restricted or limited to a list of predicate offences, and therefore funds derived from this criminal activity, as stated in the criminal code, would fall within the scope of laundering of money and other assets, and therefore it would be possible to provide international legal assistance in such cases.

716. (c.36.5) In the case of criminal investigations or trials for presumed money laundering or terrorist financing. the law does not forbid authorities to lend mutual legal assistance to judicial authorities of other States on grounds of the existence and application in Guatemala of provisions concerning secrecy or confidentiality of financial institutions with regard to their customers, or rules protecting professional secrecy.

717. (c.36.6)The same power to apply provisional measures and judicial procedures conferred by domestic law on the law enforcement agencies of Guatemala apply also to legal assistance that these authorities may be providing with regard to investigation and trials for money laundering and financing of terrorism in other States.

718. (c.36.7)Pursuant to the provisions of Article 22 of the Anti-Money Laundering Act, persons who are detained or who are serving a sentence in the national territory may be transferred to another State, on judicial authority, and provided it is for purposes of giving evidence or in order that they may assist in obtaining the necessary evidence for investigation or prosecution of the crimes set out in the international instruments to which Guatemala is signatory.

719. **Additional Element** c.36.8)Requests for mutual legal assistance must be governed by the procedures and formalities set out in the Legal Mutual Assistance Treaties (MLAT) and the multilateral cooperation agreements on which the assistance is based.

720. (c.V.1)International legal cooperation in cases relating to financing of terrorism is possible, since the Guatemalan state is signatory to bilateral and multilateral treaties for Mutual Legal Assistance in criminal matters with other countries, and is also party to the application of international instruments in this sphere, such as the Convention for the Repression of the Financing of Terrorism and the Inter-American Convention against Terrorism respectively.

721. These international cooperation instruments empower the country to offer a wide range of legal assistance in procedures such as: collection of documents (financial registers or others), collection of evidence, taking of witness statements, etc.

722. Additional Element (c.V.6)In this section Article 22 of the Anti-Money Laundering Act is extended to Financing of Terrorism. The latter Act assumes that the persons detained or serving a sentence on the national territory may be transferred to another state, on judicial authority, and provided that it is for purposes of giving evidence or identification or so that it may help in obtaining the necessary evidence for the investigation or prosecution of the crimes laid down in the international instruments to which Guatemala is signatory.

723. Dual Criminality and Mutual Assistance (c.37.1 & 37.2) The principle of dual criminality is part of the requirements for mutual legal assistance, but it does not constitute a hindrance to the provision of legal assistance, because of the broad terms in which the basic crime of money laundering is conceived, which do not restrict the origin of the funds to a closed list of illegal activities predetermined by the criminal law. This situation is a definite advantage to legal cooperation between Guatemala and all other countries.

724. International Cooperation under SR.V (c.V.2) Under the terms of the Criminal Code and the Code of Criminal Procedure, Guatemala can offer international cooperation in cases related to financing of terrorism, terrorist acts or participation in a terrorist organisation. In addition, as a state party to the abovementioned instruments of international cooperation, the country possesses the necessary legal mechanisms and procedures to be able to handle legal procedures or practices regarding evidence needed for mutual legal assistance relating to these offences.

725. Timeliness in Requests for Provisional Measures and Confiscation (c.38.1) In its Positive Law Guatemala has the appropriate statutes and procedures to provide efficient and timely responses to requests for mutual legal assistance from other countries concerning identification, freezing, confiscation of laundered property derived from illegal activities or the instrumentalities used or intended for use in the commission of the crimes of money laundering and financing of terrorism.

726. Regarding ***Confiscation*** the Guatemalan Criminal Code stipulates that "*Confiscation consists of the loss, in favour of the State, of the objects derived from crime or misdemeanour, and the instruments with which it may have been committed, unless they belong to a third person not responsible for the act. When the use of these objects is prohibited or they are not part of legitimate trade, the confiscation shall be authorised even though the existence of the crime or the guilt of the accused is not declared. Confiscated objects that are in legitimate trade shall be sold and the proceeds of the sale shall become part of the exclusive funds of the judicial branch".*

727. Property of Corresponding Value (c.38.2) The procedure followed by the country for mutual legal assistance covers the value of property or goods acquired with economic resources that are the proceeds of the illegal activity preceding money laundering.

728. Regarding domestic law, the Anti-Money Laundering Act sets out the following provisions concerning provisional measures:

*"**ARTICLE 11. Provisional measures.** The judge or tribunal seized of the matter is empowered to order at any time, at the request of the Ministerio Público, without prior notification or hearing, any provisional or cautionary measure established in the Act conducive to preservation of the availability of the property, products or instruments derived from or related to the crime of laundering of money or other assets. This request must be heard and resolved by the judge or tribunal immediately."*

*"**ARTICLE 12. Danger of delay.** In the case of danger of delay, the Ministerio Público shall have the power to order the seizure, embargo or blockage of property, documents and bank accounts, but must request judicial confirmation immediately, accompanied by the relevant inventory of the property and indicating the place where it is to be found. If the judge or tribunal does not confirm the cautionary measure, he shall order, in the same decision, the return of the property, documents or bank accounts that are the object of the order".*

ARTICLE 13. Custody. *The property, products or instruments that are the subject of cautionary measures shall remain in the custody of the Ministerio Público or the person to be designated by that Ministry, who shall be responsible for their safeguarding for their inclusion in the trial. Incorporation of legislation.*

729. (c.38.3)Coordination of actions for confiscation and seizure is only such as is provided for in the various international cooperation instruments, i.e. Mutual Legal Assistance Treaties (MLAT) and Cooperation Conventions on the subject, to which the Guatemalan state is party.

730. (c.V.3) Implementation of seizure and confiscation measures applies also to the offence of financing of terrorism, without any limit or conditioning factor beyond those laid down in the Criminal Law and procedure of Guatemala, similar to those governing the crime of money laundering.

731. Asset Forfeiture Fund (c.38.4) The property that is the proceeds of the crimes of money laundering and terrorist financing, during the stage or phase in which they are the subject of cautionary measures, are assigned to the management and custody of the judicial branch, which, once the sentence is passed and the confiscation of the property is ordered, shall order the incorporation of such property into its institutional funds.

732. It should be mentioned that up to the present time no asset forfeiture fund has been set up in Guatemala which might assist the work of authorities responsible for prevention of money laundering and terrorist financing, i.e. the law enforcement authorities and the criminal investigation agencies respectively.

733. In practice, although the legislation allows provisional assignment of seized assets to other institutions, they have not in practice been assigned for transitory use on the part of authorities responsible for preventing and repressing money laundering and financing of terrorism.

734. (c.38.5) The sharing of goods and other assets derived from money laundering between Guatemala and other States is governed by the terms of the MLATs ratified by Guatemala and the international conventions to which it is a State Party. In this regard there are no figures available to show how these measures have been applied by the country and no legal procedure in the domestic legislation on how the property must be shared.

735. Additional Element (c.38.6): Guatemalan legal authorities only recognise confiscation orders from abroad provided they are issued by a competent legal authority in the requesting State within a criminal prosecution for money laundering and/or financing of terrorism.

736. Additional Element (c.V.7): Guatemala only provides for the setting up of an asset forfeiture fund for proceeds of money laundering, not financing of terrorism.

737. Statistics: Guatemala provided only aggregated statistics on mutual legal assistance, for a total of 1,482 requests made by Guatemala and 251 provided by them. It also provided the list of countries involved and indicated that these numbers include any type of assistance, from information requests, to witness interview, etc. It was not possible to discriminate the number of requests related to ML or TF, the response times, the type of assistance or other elements to evaluate the effectiveness of their mutual legal assistance framework.

Recommendations and Comments

738. R 36. Set up a system to collect useful statistics on MLA

739. R 38. Guatemala has no specific regulation to govern the custody and property linked to financing of terrorism. The country should evaluate the possibility of:

740. Crear a custody fund for seized goods in order to aid strengthening of preventive and investigation authorities as well as public order.

741. Regulate matters concerning the distribution of assets related with the accomplishment of joint investigations with authorities from other countries.

742. Make efficient use of legal existing means to termporary use assets product of precautelary measures for benefit of the different authorities in chanrge of preventing and punishing ML/FT

Compliance with Recommendations 36, 37, 38 and SR.V:

	Rating	Summary of factors underlying the rating
R.36	**MC**	• Lack of of detailed statistics prevented a proper evaluation of effectiveness
R.37	**C**	[compliant]
R.38	**PC**	• The distribution of assets related to money laundering and financing of terrorism has not been considered when accomplishing joint investigations with other countries. • There has not been a consideration to create an asset forfeiture fund that might help work done by the competent authorities, such as the law enforcement and criminal investigation authorities.
SR.V	**LC**	• Although there is legislation to enable cooperation to take place, the lack of cases clearly allow to establish the level of effectiveness and speed in the application thereof by judicial authorities

Extradition (R.37, 39, SR.V):

Description and Analysis

743. Extradition is permitted by Guatemalan legislation, provided the procedures conform to the terms laid down in the Constitution and the laws. The Ministry of External Relations is the State body responsible for receiving requests for extradition from other countries, which are then passed to the judicial branch for processing.

744. In this regard, the Guatemalan Constitution states that extradition is governed by the terms of international treaties (Article 3).

745. In the same excerpt it is stated that Guatemalans shall not be extradited for political offences, and that they shall in no case be surrendered to a foreign government, except as provided in treaties and conventions concerning crimes against humanity or against international law.

Dual Criminality – AML and Extradition

746. (c.37.1 & 37.2): In practice the principle of dual criminality is not a hindrance or obstacle to response to requests to extradition This is because of the open nature of the criminalisation of money laundering in Guatemalan law and the criminalisation of financing of terrorism in the Criminal Code.

747. (c.39.1): Article 3 of the Anti-Money Laundering Act states that the offences embodied in the Act may give rise to active or passive extradition, in accordance with the legislation in force.

748. Likewise, Article 13 of the Act for Prevention and Repression of the Financing of Terrorism (Act No.48-2005), stipulates that the offences embodied in the Act may give rise to active or passive

extradition in accordance with the Constitution of the Republic, international treaties to which Guatemala is a party and the legislation in force.

749. Along these lines, extradition applies also to provisions of the Anti-Narcotics Act (Act No.43-929), which stipulates as follows:

*"**Article 68. Extradition and its procedures.** For the purposes of this Act extradition, whether active or passive, shall be governed by the following rules:*

a) Supremacy of international treaties or conventions. If there exist international extradition treaties or conventions, extradition shall be requested and granted by diplomatic channels in accordance with the procedures laid down in such treaties or conventions; and failing these, as regards any aspects not so regulated, in accordance with the provisions of this Article.
b) In the absence of treaties or conventions, the principle of reciprocity and international custom shall prevail.
c) Extradition shall be proceeded with provided the requesting country accords equal treatment to the Republic of Guatemala in similar cases.
d) The evidence produced abroad shall be assessed in accordance with the norms of assessment of the country that produced it, provided that such assessment conforms to the procedures governed by Judiciary Act, as regards verification of the applicability of foreign laws, and that the country producing it accords equal treatment to the Republic of Guatemala in similar cases.
e) When a foreign country requests the extradition of an accused person who is located in Guatemala, the Supreme Court of Justice shall examine the request, and if it is found to be in conformity with the law, shall appoint the judge who shall process it, and such judge shall necessarily be one of the jueces de primera instancia de sentencia (Lower Court Judges) of the Guatemala Department. The procedure shall be in en la vía de los incidentes and the decision on merits that is handed down shall be reviewed by a higher court. In any case, this decision shall be subject to appeal.
f) If a person is claimed by more than one state at the same time, the request of the state in whose territory the crime subject to the most serious punishment was committed shall be given preference; and if there are two or more crimes of seemingly equal gravity, the request of the country that submitted the first application. If an accused person is requested for the same crime by different states, extradition shall be granted to the country in which the crime was committed.
g) If the extradition is declared admissible, and the requesting state does not make provision for the requested person within thirty days after that person has been placed at the disposal of that country, the person shall be immediately freed, on the day after the abovementioned period elapses, and no new extradition request for that person may be made for the same crime.
h) When the final judicial decision is handed down, the file shall be transmitted to the Executive Branch by the Office of the President of the Judicial Branch, and if the extradition is denied, the Executive may not grant it; if on the other hand, it is decided that the requested person shall be surrendered, the Executive is free to comply with the court decision or not. In all cases the records and background documents shall be returned to the initial tribunal, for filing or, if necessary, continuation of the prosecution in Guatemala.
i) If extradition is denied, because the courts so resolve or because the Executive so disposes, Guatemala is obliged to prosecute the person who is not extradited and, in addition, provide the requesting state with a certified copy of the verdict.

This Article shall apply to all crimes embodied in the Act".

*"**Article 69. Waiver of extradition.** The State of Guatemala may surrender the person claimed to the requesting state without formal extradition proceedings, provided the person claimed consents to such surrender before a competent judicial authority."*

Extradition of Nationals

750. (c.39.2) The Guatemalan Constitution forbids extradition of nationals of Guatemala; however, in such cases the judicial authorities have the power to take cognizance of the crimes indicated in the request, and to apply criminal and procedural provisions of Guatemalan law.

751. In this regard, the Guatemalan Criminal Code lays down the principle of EXTRATERRITORIALITY OF CRIMINAL LAW, indicating that the provisions of this body of law shall be applied:

"1. For a crime committed abroad by an official in the service of the Republic, when such person has not been tried in the country in which the offence was committed.
2. For a crime committed on a ship, aircraft or any other Guatemalan means of transport, if it was not tried in the country in which the crime was committed.
3. For a crime committed by a Guatemalan abroad when the extradition of such Guatemalan national was denied.
4.For a crime committed abroad against a Guatemalan, when it was not tried in the country where it was committed, provided a charge is laid by a party or by the Ministerio Público, and the accused is in Guatemala.
5. For a crime which by treaty or convention must be punished in Guatemala, even though it was not committed on Guatemalan territory.
6. For a crime committed abroad against the security of the State, constitutional order, the integrity of the national territory, as well as forging of the signature of the President of the Republic, counterfeiting of coins or bank notes of legal tender, bonds and other titles and credit documents". (Article 5)

When in the case of a FOREIGN VERDICT, Article 6 of the Criminal Code stipulates that *"In the case embodied in sub-paragraphs 1 and 6 of the previous Article, the accused shall be tried under Guatemalan law, even though he has been acquitted or convicted abroad. The penalty or any part of it which he may have served, as well as the time during which he has been detained, shall be credited to the defendant.*

In all other cases, if there has been a conviction, the least severe law shall apply. The foreign verdict shall be considered res judicata".

752. (c.39.3): Guatemala may provide cooperation to other states in procedural and evidential matters, to ensure the efficiency of trials for money laundering, in cases where a requesting State asks for extradition of a national.

753. (c.39.4): The Criminal Code and the Code of Criminal Procedure of Guatemala set out the substantive provisions of and the procedures applicable to extradition. In addition, the subject is governed by extradition treaties and conventions signed by Guatemala , viz:

- Treaty on Extradition of Criminals between Guatemala and Belgium, signed on 20th November 1897.
- Convention additional to the Extradition Treaty between Guatemala and Belgium, signed on 26th April 1934.
- Additional Protocol to the Convention on Extradition between Guatemala and Belgium, signed on 21st October 1959.
- Extradition Treaty between Guatemala and the United Kingdom of Spain, signed on 7th November 1895.
- Additional Protocol to the Treaty for Extradition between Guatemala and the United Kingdom of Spain, signed on 23rd February 1897.
- Extradition Treaty between Guatemala and the United States of America, signed 20th February 1940.
- Extradition Treaty between Guatemala and Great Britain, signed on 4th July 1885.
- Additional Protocol to the Extradition Treaty between Guatemala and Great Britain, signed 30th May 1914.

- Exchange of Notes to extend the provisions of the Extradition Treaty to certain territories under the Mandate of Great Britain, the date of exchange being 21st May 1929.
- Extradition Treaty between the government of the Republic of Guatemala and the United Mexican States, signed on 17th March 1997.
- Extradition Treaty between the Republic of Guatemala and the Republic of Korea, signed on 12th December 2003.
- Central American Convention on Extradition, signed 7th February 1923.
- Central American Convention on Extradition, signed 26 December 1933.

Recommendations and Comments

754. R. 39 Guatemala has provisions to enable extradition in cases of money laundering, as well as terrorist financing. Nevertheless, the number of extradition requests and the process followed internally by that country should more clearly reflect efficiency in the present implementation of existing treaties and conventions on extradition in ML cases.

Compliance with Recommendations 37 and 39 and SR.V

	Rating	Summary of factors underlying rating
R.39	**LC**	• The number of extradition requests and the process followed internally by Guatemala should give a clearer picture of the efficiency of present implementation of the existing Treaties and Conventions regarding extradition for cases of money laundering.
R.37	**C**	
SR.V	**LC**	• The number of extradition requests and the process followed internally by Guatemala should give a clearer picture of the efficiency of present implementation of the existing Treaties and Conventions regarding extradition for cases of terrorism financing.

Other Forms of International Cooperation (R.40 SR.V)

Description and Analysis

755. (c.40.1); (c.40.5): Article 34 of the AML Act and Article 21 of the CFT Act authorise the Ministerio Público, the Intendencia de Verificación Especial, and any other competent authority to provide and request assistance from competent authorities of other countries in relation to judicial activities and investigations concerning crimes referred to in the said Acts in order to: a) receive evidence or take statements from persons; b) present legal documents; c) carry out inspections and confiscations; d) examine objects and places; e) provide information and evidence; f) hand over originals or true copies of documents and files related to the case, including banking, financial and commercial documentation; g) identify or detect the product, the instruments and other elements for evidential purposes; and h) any other form of reciprocal legal assistance permitted by domestic legislation.

756. As explained in the analysis of SR III, domestic law provides for a wide range of provisional measures that may be used for dealing with the requests of other states, although there are minor limitations such as not being able to freeze property directly used by an individual terrorist. To facilitate freezing of funds requested by other states, Guatemala can rely on article 21 of the FT Act, which stipulates "*for the purpose of facilitating judicial procedures or investigations concerning offences referred to in this Act, the Ministerio Público and the competent judicial authorities may provide and*

request assistance from the competent authorities of other countries to…h) any other form of reciprocal judicial assistance authorised by domestic law".

757. (c.40.1.1): The User Satisfaction Survey carried out among countries whose requests were dealt with in the course of 2008 showed, for response to requests, Very Satisfactory 80%, Satisfactory 20%; for reliability and quality of information, Very Satisfactory 60%, Satisfactory 40%; and for attention received, Very Satisfactory 80%, Satisfactory 20%.

758. (c.40.2): Article 21 d) of the Anti-Money Laundering Act, Articles 27 and 30 of its Regulations, and Articles 23 and 25 of the Anti-Terrorist Financing Act empower the Superintendency of Banks, through the Intendencia de Verificación Especial, to sign memoranda of understanding or cooperation agreements with counterpart agencies in other countries.

759. Pursuant to this, 38 Memoranda of Understanding have been signed in the field of money laundering with counterpart units, 23 of which include financing of terrorism. In addition, the IVE has provided information in certain circumstances, despite the absence of a Memorandum of Understanding (MOU).

760. Furthermore, the Superintendency of Banks has signed 16 Cooperation Agreements with foreign supervisory agencies. The SIB does not require an MOU to provide assistance to a counterpart agency in another country.

761. The Intendencia de Verificación Especial of the Superintendency of Banks has been a member of the Egmont Group of Financial Intelligence Units since 23rd July 2003, and therefore applies the Principles for Information Exchange between Financial Intelligence Units, and the model Memorandum of Understanding of that body, always provided they do not contravene domestic legislation.

762. (c.40.3): Information has been exchanged with counterpart agencies with other countries:

	International Information Requests	
Year	**Responded to**	**Requested by the IVE**
2006	18	14
2007	36	72
2008	31	19

763. (c.40.4): In addition to the power to offer and request assistance to competent authorities of other countries, as mentioned above, the competent authorities of Guatemala may also, subject to Guatemalan law, provide and request information on the identity, location and activities of persons about whom there are reasonable suspicions of involvement in the crime of FT.

764. (c.40.4.1): The IVE of the Superintendency of Banks applies the Principles for Information Exchange between Units and uses as a basis the model Memorandum of Understanding of the Egmont Group, always provided they do not contravenedomestic legislation. Therefore responses to information requests from foreign counterparts of the IVE include results of searches in databases, including information related to Suspicious Transaction Reports, despite the absence of an MOU.

765. Furthermore, information submitted by regulated entities is exchanged, under Memoranda of Understanding or other cooperation agreements.

766. (c.40.6, 40.7, 40.8): The only prohibition regarding access to and exchange of information is that set out in the Constitution of the Republic of Guatemala concerning the "inviolability of correspondence, documents and books", described in Section 3.4 of this report. However, the Customs service does not have an established mechanism to communicate with other countries when someone is discovered hiding precious metals.

767. (c.40.9): Article 36 of the AML Act states:

*"**Confidentiality**. For the purpose of ensuring confidentiality of financial operations, persons who are part of the Intendencia de Verificación Especial and any other person who in the course of his duties obtains or has access to information covered by this Act, are required to keep it confidential, even after having quitted the post."*

Recommendations

768. Strengthen the mechanisms of cooperation between the Customs authorities and their foreign counterparts, particularly in order to improve detection of illegal consignments of cash and precious metals.

769. Gather useful and reliable statistics on the result of customs controls as they apply to combating ML and FT.

770. Supplement the responses of the IVE to requests from foreign FIUs, with information on police records of persons under investigation and other external data bases as needed.

771. Continue the periodic measurement by the IVE of satisfaction of its foreign counterparts with the speed and quality of its responses.

Compliance with Recommendation 4 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying the overall rating
R.40	**LC**	• The Customs service does not have an established mechanism for communicating with other countries when it finds someone hiding precious metals. • The IVE does not make sufficient use of its power to consult information from third sources (such as police records of persons) when replying to information requests. • Despite the existence of a customs cooperation agreement with El Salvador on transit of persons, goods and cash, at the time of the visit no figures were available on the cooperation between the two countries.
SR.V	**LC**	[See sections 6.3.3 and 6.4.3]

7. OTHER ISSUES

Resources and Statistics (R.30 and R.32)

	Rating	Summary of factors relevant to Recommendations 30 and 32 underlying the overall rating
R.30	**PC**	• The judicial branch has not received sufficient specialized training in ML-FT. • The police do not have sufficient resources or training to deal with crimes of this nature. • The Criminological Investigation Division (DICRI) of the Ministerio Público is composed mainly of university students who are also not adequately equipped or technically trained in investigating ML/FT offences.

		• The Civil Intelligence Directorate (DIGISI) of the Ministerio de Gobernación DICRI is not sufficiently well trained and does not have the necessary resources to collaborate with other actors in combating ML/CFT. • The IVE lacks sufficient human resources for AML/CFT supervision on site of the 400 financial institutions registered. This is exacerbated when the DNFBPs are taken into consideration. 429 of these had registered at the time of the visit.
R.32	**PC**	• Although the IVE collects adequate statistics for its job as FIU and supervisor, there is no system of collection and analysis of data in other institutions to enable the authorities to prioritise needs, plan an overall national strategy, or review the efficiency of their AML/CFT system. • The Ministerio Público does not have an established statistical system for following up the effectiveness of investigations and convictions for ML/FT. • The exact number of DNFBPs is unknown, (only one estimate). • There are no available figures on cooperation with customs authorities in other countries for detection of money or securities at the frontiers.

Other relevant measures or AML/CFT issues

*****Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report*

General framework for AML/CFT system (see also section 1.1)

*****Assessors may use this section to comment on any aspect of the general legal and institutional framework within which the AML/CFT measures are set, and particularly with respect to any structural elements set out in section 1.1, where they believe that these elements of the general framework significantly impair or inhibit the effectiveness of the AML/CFT system*.

772. The great difficulties of the legal and institutional apparatus of Guatemala regarding investigation of complex ML crimes, pinpointing and punishing the biggest offenders and corrupt officials involved in money laundering operations, and relieving them of the economic product of their crimes, are perhaps the main difficulties faced by the Guatemalan authorities in prevention and suppression of ML and FT.

773. The evaluation team is optimistic about the evolution of existing plans in Guatemala to integrate and coordinate efforts of the various agencies working in this field. The involvement of the Vice-President of the Republic in this process of evaluation, as well as the motivating role that he will be assuming in the interagency coordination scheme which was about to be formalised at the time of the visit, give rise to positive expectations for the medium term results of the Guatemalan system.

774. Nevertheless, efforts to combat corruption, to modernise the legal system and to combat crime in general must be redoubled if they are to lay the foundations without which the AML/CFT system cannot be effective.

Table 1: Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

The Forty Recommendations	Rating	Summary of factors underlying rating[9]
Legal system		
1. ML offence	**LC**	• Effectiveness: Under the number of sentences for ML in relation with the high index of criminality existing in this country.
2. ML offence – mental element and corporate liability	**LC**	• No legal person has been convicted of ML, although the necessary legislation has existed since 2001 • The number of convictions with severe penalties and investigations of complex ML through the financial system (like the existing case in relation to corruption) are still few. The majority of convictions are for illegal transportation of cash ("mules"). This reduces the dissuasive effect of the offense.
3. Confiscation and provisional measures	**PC**	• There is no authority for confiscation of property of corresponding value • There are no measures to prevent or annul acts or contracts concluded for the purpose of prejudicing the ability of the authorities to recover property subject to confiscation • Requests from the Ministerio Público to courts for provisional measures is time consuming, not very effective, and compromises the confidentiality of the proceedings • The *beneficio de antejuicio* enjoyed by some public officials, particularly at the municipal level, in practice limits investigation, tracing and confiscation of property in corruption cases • There is no tactical, technical or operational coordination among public order authorities and agencies to adequately identify and trace property subject to confiscation
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	(Compliant)
5. Customer due diligence	**PC**	• Some obligations, which shall be enshrined in laws or regulations (criteria with asterix) are only are embodied mandatory lower hierarchy circular lettes. • There is no efficient measure for financial institutions to determine the ownership of legal company, since information of the trade registry is not updated and existence of bearer shares limits knowledge about securities holder (5.5.2) • According to the regulated persons, efforts at updating information have not been fully successful (5.7.2). • The Risk Management Guidelines was only addressed to

[10] These factors are indicated only when the rating is less than Compliant

		banks, finance companies and offshores. Therefore the other financial institutions have not been required to apply enhanced due diligence to high risk categories of customers, business relationships or transactions with higer risk (5.8) • No limits are set to the cases in which the verification of the identity of the customer and the beneficial owner is allowed to be postponed after the initiation of the business relationship. In addition, financial institutions have not been instructed to set up risk management procedures when they allow this to happen (5.14) .
6. Politically exposed persons	**PC**	• Due diligence requirements regarding PEPs have not been imposed on all financial institutions but only of Banks, finance companies and offshore entities. • Financial institutions are not required to obtain management level approval for continuing an already established business relationship with a politically exposed person.
7. Correspondent banking	**LC**	• Regulations do not apply to relations between stock exchange brokers and hypothetical counterparties abroad. • No more specific guidelines have been issued on AML/CFT measures to be taken by financial institutions concerning payable through accounts.
8. New technologies and non face-to-face business	**PC**	• The specific provisions on technological advances and non face-to-face relations have recently been issued, so it was not possible to assess their effectiveness (The Risk Management Guidelines was issued a few months before the visit). • The Risk Management Guidelines issued by the IVE in April 2009. which is the guide that deals directly with innovative products and services, and the question of distribution channels (among which may be included non face-to-face relationships) has not been fully implemented and applies only to Banks, finance companies and offshore entities, so the other regulated entities lack clear and specific instructions on the subject.
9. Third parties and introducers	**LC**	• There are no guidelines for cases in which institutions delegate some aspects of CDD, for in the opinion of the authorities this is not permitted, and in practice has never happened. However, the evaluators consider that such delegation is not clearly prohibited.
10. Record keeping	**LC**	• The rules do not expressly establish the moment from which the five-year period for records of the commercial correspondence of customers begins, which are not related with trasnactions
11. Unusual transactions	**LC**	• Insurance intermediaries, as financial institutions, are not ML/FT prevention obligated, nor required to monitor, detect and analyse unusual operations.
12. DNFBP– R.5, 6, 8-11	**NC**	• There are no explicit legal provisions making DNFBPs responsible for ML prevention or for developing specific policies such as Know your Customer, special measures for high-risk customers such as PEPs, keeping records of information, nor submitting STRs on ML, nor to monitoring contractual relations to detect unusual trends and identify ML patterns. • The DNFBP sector has no ML/FT prevention programmes that might include internal policies and controls to monitor risks, training and audits.

		• The CFT Act (which sets out the list of the DNFBPs) dates from August 2005; however, it was only on 24th April 2009 (less than two months before the CAFTF evaluation mission visit) that the Superintendency of Banks issued Oficio No.424-2009 which informs the DNFBPs that they are required to comply with ML/FT legislation. The Lottery (as a DNFBP) was addressed in Oficio No.179-2009 of February 2009. • At the time of the evaluation visit, the IVE was just starting the process of registration and initial familiarisation meetings with certain DNFBP sectors, and therefore it is not possible to judge the implementation and effectiveness of ML/FT prevention policies nor of the supervision and follow-up in that area. • Notaries, accountants and auditors have still not been registered with the IVE for ML/FT prevention purposes. • Lawyers and company and trust service providers are not regarded in the relevant laws and regulations as subject to ML/FT prevention requirements. • The Business Register does not contain relevant information on company and trust service providers. • Casinos are an undeniable reality in the country despite the fact that they are prohibited by law. The prohibition has not been able to be enforced, but they are also not subject to AML/CFT obligations.
13. Suspicious transaction reporting	**LC**	• The number of STRs submitted by non-bank financial institutions, such as finance companies, insurance companies, bonding companies, stockbrokers, bureaux de change, warehousing companies and cheque changing businesses is tiny (about 2% of the total). • STRs show certain defects of quality and content. • There is between certain compliance officers because of the possibility of being called to court as witnesses or experts on the operations they have reported.
14. Protection and no tipping-off	**C**	(Compliant)
15. Internal controls, compliance and audit	**C**	(Compliant)
16. DNFBP – R.13-15 & 21	**NC**	• There is no express direct legal provision requiring DNFBPs (except for lotteries, raffles and similar activities) to submit ML STRs under Article 26 of the AML Act; they are only required to present STRs on FT under Article 16 of the CFT Act and Article 7 of its Regulations. • There is a DNFBP sector composed of lawyers, notaries and accountants which the CFT Act expressly exempts from the requirement to present STRs on FT; and as pointed out under the previous rating factor, they are also not required to submit STRs on ML, either to the IVE or to any self-regulatory authority. In neither situation are the motive, the limits or the context in which the exemption applies specified, for example legal professional privilege or legal professional secrecy. • Compliance with as regards STR in the DNFBP sector is zero. The IVE is beginning the work of registration and the initial meetings for rapprochement with this registered sector are taking place.

		• There is no express obligation directing that STRs be formulated and presented regardless of whether or not they are thought to involve fiscal or tax matters. • There is no feedback from the IVE to DNFBPs on decisions and results arising out of an STR: for example, whether it merits further investigation and/or prosecution; or if it was concluded from the analysis that the reported transaction was lawful. • DNFBPs are not expressly required in the law to develop ML/FT prevention programmes that include internal risk-monitoring policies and controls, training and audits; and the majority of DNFBPs have not developed ML/FT prevention programmes on their own initiative. • Company and trust service providers are not included in the laws and regulations in this area as regulated entities for purposes of ML/FT prevention, and therefore are not required to submit STRs. • The casino business is an undeniable reality in the country despite being prohibited by law (according to the broad interpretation of the Criminal Code shared by the local authorities); which in practice means that this sector (recognised as vulnerable but not governed by law) is not subject to any obligation to possess ML/FT prevention programmes or to submit STRs in accordance with international standards. • DNFBPs have no express legal protection against liability on submitting STRs, since the CFT Act and its Regulations do not stipulate that the protection provided for financial institutions in Article 30 of the AML Act is applicable to these businesses as well. • There are no provisions in Guatemalan law to prohibit DNFBPs and their employees from disclosing the fact that an STR is being submitted, and there are therefore no sanctions for this.
17. Sanctions	**PC**	• Only 10 fines in 6 years (2003 to 2008) all concerntrated in banks, except for 1 in Exchagen houses. • The scale of fines established by the Superintendence limited the maximum sanction very far below that provided for in the Act which could prevent the BSI to impose example fines proportionate to the gravity of certain offences. • The range of ML/FT sanctions is limited: No prevention sanctions have been provided for Directors and senior management. • There is no power to withdraw, restrict or suspended licences due to noncompliance with ML/FT to Enforced Subjects that are not financial institutions.
18. Shell banks	**LC**	• Stock Exchange entities are not prohibited to have correspondent relations with Shell Banks abroad. • The Guidelines on Correspondent Banks, Branches and Subsidiaries was issued during the period of the visit and it was therefore not possible to assess its implementation by enquiry in the financial sector.
19. Cash transaction reporting	**C**	(Compliant)
20. Other NFBP and secure transaction	**C**	(Compliant)

techniques		
21. Particular attention for higher risk countries	**LC**	• The Guidelines which recently included preventive measures and information on high risk countries have the following deficiencies: a) they apply only to Banks, finance companies and offshore entities; high risk sector according to study accomplied by Guatemala) and not other financial institutions, (such as stockbrokers not belonging to financial groups),and savings and creditr cooperatives (these latter have almost the same amount of assets tha financial companies): B) it is expressed in a language which does not leave clear its mandatory character • At the time of the evaluation visit, IVE instructions on two countries only were found, and there were no measures in place to ensure that information would be provided on concerns relating to countries with ALM/CFT weaknesses. • At the time of the evaluation visit, there was no legal or administrative requirement to examine transactions with persons from or in countries not applying FATF standards, nor were there any countermeasures in place against the persistence of such situations.
22. Foreign branches and subsidiaries	**PC**	• Regulated entities other than Banks ad offshore entities are instructed to ensure that their branches and subsidiaries comply with the AML regime of the host country, which is the opposite principle to that of the FATF. Furthermore, these establishments are not required to apply Guatemalan rules especially when the host country is a non-cooperative country. • Financial institutions other than banks and offshore companies are not required to instruct their branches and subsidiaries abroad to apply the higher standard when there are differences between the requirements of Guatemala and those of the foreign country. • Financial institutions other than banks and offshore entities are not required to inform the SIB of difficulties encountered by their branches or subsidiaries abroad in attempting to comply with AML/CFT measures, owing to obstacles in the foreign country. • Althoug it is not possible to open a banking branch without BSI authorization Supervision Guide specified Branches that applies to banks is very recent and it was not possible to verify its effective application (it was issued at the end of the visit of the evaluation team).
23. Regulation, supervision and monitoring	**PC**	• Not enough staff in IVE in order to supervise all regulated/reporting institutions in the country • Just before the evaluation there was implementation of a modern supervision scheme bsed on risks. However, before IVE did not provide written reports to the supervised institutions, nor did it conduct routine follow-up of the recommendations for improvement, and ir delayed in verball communicate its findings to the financial instituton inspection • There have not been enough inspection visits on site to insurance and securities institutions and even less to institutions not subject to central principles (such a remittance companies)
24. DNFBP – regulation, supervision and monitoring	**NC**	• The casino business is an undeniable reality in Guatemala, despite being prohibited by law • Although the prohibition on casinos has not been enforced,

		they are also not subject to ML/FT prevention, nor is there any State authority or self-regulation to monitor them and impose AML/CFT sanctions. • The IVE is in the process of registering DNFBPs and the first familiarisation meetings with this sector are taking place. There is therefore no effective supervision, monitoring or adoption of punitive measures by the IVE. • The IVE does not yet have procedures and/or a manual for effective AML/CFT supervision of DNFBPs . •
25. Guidelines and feedback	**LC**	• Limited and recent feedback to financial institutions. • Only 2% of STRs are submitted by non-banking financial institutions, such as finance companies, insurance companies, bonding companies, stockbrokers, bureaux de change, warehousing companies and cheque changing businesses. This indicates a lack of adequate guidelines and awareness raising in these sectors. • There are guidelines to indicate that financial institutions should be given information on ML methods and techniques. However, it was not possible to determine whether the authorities give this information to regulated entities. • APNFD: There is as yet no effective AML/CFT feedback, guidelines or directives for DNFBPs. The IVE is still in the initial phase of familiarisation meetings with this sector, initiated by the recent IVE Oficio No.424-2009 • APNFD: No association level and/or self-regulatory authority in the DNFBP sector has developed AML/CFT guidelines.
Institutional and other measures		
26. The FIU	**LC**	• The IVE does not have prompt access to police information • The IVE does not receive prompt responses to requests for information which it makes to other bodies • Excesive waste of time and resources to document requests from the Ministerio Público, which might be used to strengthen the analysis of cases and coordination with the own MP to investigate complex cases • The Information Analysis Unit of the IVE has not yet published enough periodic reports with statistics, typologies and trends, and information on the activities of the IVE •
27. Law enforcement authorities and investigative techniques	**PC**	• Effectivity: criminal actions against money laundering are relatively few and without sufficient enphasis in crime or corrupt organization leaders.
28. Powers of Access to documents and information.	**C**	Complied
29. Supervisors - powers	**LC**	• Nor the Superintendece nor IVE have the express powers to sanction directors and members of the high management of the financial institutions for noncompliance to the instituton
30. Resources, integrity and training	**PC**	• The judicial branch has not received sufficient specialized training in ML-FT. • The police do not have sufficient resources or training to deal with crimes of this nature. • The Criminological Investigation Division of the Ministerio

		Público consists mainly of university students, who are also not adequately equipped or technically trained to investigate ML/FT offences. • The DIGICI of the Ministerio de Gobernación is not sufficiently well trained and does not have the necessary resources to collaborate with other actors in combating ML/CFT. • The IVE lacks sufficient human resources for AML/CFT supervision on site of the 400 financial institutions registered. This is exacerbated when the DNFBPs are taken into consideration. 429 of these had registered at the time of the visit..
31. National co-operation	**PC**	• At the time of the visit there were no mechanisms for good coordination and collaboration among ML/FT investigation, prevention and repression agencies.
32. Statistics	**PC**	• There is no system of collection and analysis of data to enable the authorities to prioritise needs, plan an overall national strategy, or review the efficiency of their AML/CFT system. • The Ministerio Público does not have an established statistical system for following up the effectiveness of investigations and convictions for ML/FT. • The statistics produced by the IVE and other agencies such as the Internal Revenue Superintendency bare not used for strategic purposes at the national level. • The exact number of DNFBPs is unknown, only an estimate. • No data were obtained regarding the number of remittance companies, or the volume of money they handle .
33. Legal persons – beneficial owners	**NC**	• National legislation permits the issue of bearer shares, and it is not possible for the authorities and regulated entities to obtain access to information enabling them to discover the identity of the beneficial owner or the controllers of legal persons. • The competent authorities and declaring entities have no access to information on the beneficial owners of legal persons or their controllers. • The AML/CFT Act and regulations contain no specific provisions for any mechanism to prevent and control the possible abuse of legal persons, particularly companies that may issue bearer shares, in money laundering and terrorist financing activities. • The information available in the Business Register, although it is in the public domain, is not kept up to date, and at present there are no adequate mechanisms to enable it to be updated. •
34. Legal arrangements – beneficial owners	**LC**	• Effectivity: Even though only supervised credit institutions may be trust service providers and are subject to the same AML/CFT regulations, they should be provided with more specialized guidelines and instructions, and held to a higher compliance level for these services.
International co-operation		
35. Conventions	**C**	(Compliant)
36. Mutual Legal Assistance (MLA)	**LC**	• Lack of detailed statistics prevented a proper evaluation of effectiveness
37. Dual criminality	**C**	(Compliant)
38. MLA on confiscation and freezing	**PC**	• The country lacks legislation to permit sharing of property related to money laundering and financing of terrorism when

		joint investigations are carried out with other countries. • The assets confiscated for ML and FT benefit only the judicial branch. No asset forfeiture fund has been created that might help work done by the competent authorities, such as the law enforcement and criminal investigation authorities. • Although it is provided for in the legislation, in practice the assets confiscated as a result of the orders issued for provisional measures are not provisionally assigned for use by the various authorities ML and FT prevention authorities.
39. Extradition	**LC**	• The number of extradition requests and the process followed internally by Guatemala should give a clearer picture of the efficiency of present implementation of the existing Treaties and Conventions regarding extradition for cases of money laundering.
40. Other forms of co-operation	**LC**	• The Customs service does not have an established mechanism for communicating with other countries when it finds someone hiding precious metals. • The IVE does not make sufficient use of its power to consult information from third sources (such as police records of persons) when replying to information requests. • Despite the existence of a customs cooperation agreement with El Salvador on transit of persons, goods and cash, at the time of the visit no figures were available on the cooperation between the two countries.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	• The existing mechsnisms are not rapid enough to allow to take measures to be taken in compliance with Resolutions 1267 and 1373.
SR.II Criminalise terrorist financing	**LC**	• Although serious studies conducted by the authorities indicate that the FT risk has been very low in the past, the absence of cases and investigations does not allow to have total certainty on the effective implementation of this recommendation. • The incapacity of the judicial system to prosecute and investigate complex offences which make use of the financial system casts doubt on the possibility of imposing penalties of FT • The financing of individuals or terroris organizations is not mentioned in the Criminal Code and to sanction it, it is necessary to make a broad interpretation of the law, which has not been tested in Court.
SR.III Freeze and confíscate terrorist assets	**PC**	• It has been demonstrated in practice the possibility of freezing very rapidly assets derived from any crime and the prosecutor could issue a warrant within hours based on the UNSCR listing, but there is no general obligation for FIs to suspend the transaction while they receive a formal order, or to mandatorily report name-matches as suspicious transactions. • There is no procedure for handling requests of Resolution 1267, nor for authorising access to minimal subsistence funds for individuals affected. • There is no authority for embargo or sequestration of additional property generated indirectly from property used by a terrorist unless the terrorist is part of a criminal organisation
SR.IV Suspicious	**LC**	• The requirement to submit STRs on FT matters embodied in

transaction reporting		Art. 16 of the CFT Act does not make express reference to operations attempted but not concluded. • The same factors of Rec 13 afect the Rec
SR.V International co-operation	**LC**	• Although there is legislation to permit cooperation, the effectiveness and speed of its application by the judicial authorities could not be clearly determined. • The number of extradition requests and the process followed internally by Guatemala should give a clearer picture of the efficiency of present implementation of the existing Treaties and Conventions regarding extradition for FT cases.
SR VI Money/value transfer services	**LC**	• The IVE has sent out no instructions for remittance houses to enable them to put in practice all the controls demanded by the Act.
SR VII Wire transfers	**LC**	• Although the Law and CFT Regulations establish obligations accordint to RE. VIII and the banking sector complies them in a good measure, doubts related to the threshold as of which information and transfers monitoring is demanded • The factors governing rating of Rec. 17 (sanctions) affect compliance with this recommendation.
SR.VIII Non-profit organisations	**PC**	• The pertinent state authorities do not carry out periodic re-evaluations to determine possible vulnerabilities of the NPOs to FT • There is no collaboration agreement among State authorities for fluid exchange of information with regard to investigation of NPOs • NPOs that do not qualify as regulated entities for the IVE are not subject to greater controls except for the fact that they are registered and licensed • There is no effective AML/CFT supervision and monitoring in the NPO sector nor to any particular degree on those which manage a significant proportion of financial resources or international activities in that sector • No studies have been done on corruption in the entire NPO sector nor in particular among those which receive State funds to carry out social projects, despite the fact that these types of NPO are also subject to control by the Accountant General of the Republic • There are no responses to international requests for information relating to investigations of NPOs for suspected terrorist activities, including financing • No NPOs in Guatemala have been penalised for non-compliance in AML/CFT matters.
SR.IX – Cross Border Declaration and Disclosure	**PC**	• There is no effective control of movement of persons and cash at frontiers and seaports. • There is no effective cooperation between the competent ALM/CFT authorities and the Internal Revenue and Customs services. • There is no established and effective policy for control of unusual cross-border movement of gold, precious metals or precious stones. • There is no mechanism in Guatemala to enable authorities to identify, nor any regulation requiring them to check and impound, money at the frontiers that might be related to persons listed in the United Nations Security Council resolutions.

		• Administrative sactions may not be impssed due to the violation of the obligationto declare

Table 2: Recommended Action Plan to improve the AML/CFT system

AML/CFT Systems	Recommended Action
1. General	
2. Legal System and Related Institutional Measures	
2.1 **.** Criminalisation of Money Laundering (R.1 and 2)	• R. 1 and 2 • Strengthen the capability of the police to provide more efficient support to the Ministerio Público in investigations. Consider the creation of a specialized police investigation unit. • Consideration should be given to increasing the number of specialized Fiscalías (at present 4) which deal with ML cases, in order to streamline the investigations and prosecutions. • Provide the judges with programmes of updating on the criminal laws against ML, to avoid incorrect interpretations of its scope, and to train them to handle more complex ML cases than those consisting of cash smuggling. The possibility should be studied of creating specialized courts to hear ML or financial offences. • Gubernative Agreement shall be approved in this projects and create a interagency commission including the security agencies, the Ministerio Público and the IVE, as well as the judiciary, and implement work of same for the purpose of minimising the systemic disjunction in the holistic tackling of the ML phenomenon. • Attempt to put into operation a link at the technical level between the IVE analysts and those of the Specialized Financial Analysis Unit of the Ministerio Público, to improve and adequately distribute the results of analysis and thus save time and optimise the quality of the reports.
2.2. Criminalisation of Terrorist Financing of (SRII)	• Incorporate expressly in in the Criminal Code the act of financing a terrorist organisation or an individual terrorist, for the punishment of this conducts not to depend from an ample interpretation of Article 5. • It is recommended that the investigative structures and techniques both of the Ministerio Público and the security agencies be strengthened and modernised, as well as the interaction between these bodies, in order to launch and develop effective investigations into complex crimes such as the financing of terrorism. • The use of modern methods of investigation, consisting of undercover operations, controlled delivery, wiretapping and tapping of other communication means, included in the law against organized crime should be implemented for the purpose of detecting and investigating cases of complex offences, among them FT in Guatemala. These modern investigative techniques are embodied

	in and given legal force in Title III of Act 21 of 2006.
2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)	• Identify and eliminate the reasons for which the Ministerio Público fears that requesting provisional measures from judges puts confidentiality and efficiency of investigations at risk. Also eliminate undesired effects of the pretrial benefit in investigations due to launderings by public officers who this figure benefits. • Authorize the commission of equal value of goods and crease legal resources for authorities to prevent or annul agreements entered into by persons who simply seek to limit seizure of goods • Amendment to the law should be considered to enable money and property confiscated in ML and FT cases, as well as the temporary use of goods subject to provisional measures, to be divided in accordance with criteria of equity and criminal policy among all ML and FT agencies, not only to the judiciary. • Create inter-agency channels of communication between the IVE and the other public order bodies, such as the police and the prosecutors, and strengthen the technical, operational and budgetary capacity of the police and the prosecutors to identify and trace property subject to confiscation. • Work towards an interaction and a higher level of communication and coordination between the IVE and the Analysis Unit of the Ministerio Público, for the purpose of avoiding duplication of functions and achieving greater communication among the analysts at the technical level. • Consider modifying and broadening the mandate of the International Commission against Impunity (CICIG) to deal with ML and FT cases, which could unblock the system, streamline prosecutions and bring about convictions for these offences more speedily and effectively.
2.4 Freezing of Funds used for Terrorist Financing (SRIII)	• Establish a specific procedure to enable the freezing within a matter of hours after their detection of assets of persons designated in the framework of the UN Security Council Resolution 1267 (1999). • Establish a procedure for reasonably prompt action in cases where another country notifies Guatemala that it has designated a person as terrorist on the basis of UN Resolution 1373, when such notification does not constitute mutual legal assistance. • Set up a procedure for handling possible requests for lifting • It is suggested to inform regulated institutions more efficiently when the lists have been updated, and provide them with precise instructions on how to proceed. It is suggested furthermore that in cases of matches with the United Nations lists the report should

	be sent simultaneously to the IVE and to a specialized Fiscalía, for the purpose of obtaining a freezing order as promptly as possible. • Take steps to speed up the formulation and entry into force of the Executive order Gubernativo creating the National Coordination Commission, which would facilitate interagency coordination both at the governmental and private levels and make for more effective implementation of procedures for freezing of funds or assets of designated persons. • Develop a procedure to authorise the person whose funds have been seized under Resolution 1267 to have access to funds for his subsistence or to cover certain necessary fees and services.
2. 5 The Financial Intelligence Unit and its Functions (R.26, 30 and 32)	• Make greater efforts to convince the Ministerio Público of the advantages of hiring a legal advisor to increase cooperation and effectiveness of the assistance expected to be given to the anti-money laundering Fiscalía. • Explore possible ways to reduce the efforts dedicated information collection por MP and work more coordinately with MP in the investigation of complez cases • Set up electronic communication of STRs from the regulated entities to the IVE, and the cases which the IVE submits to the Ministerio Público. • Sign memoranda of understanding with more public institutions, including the police, in order to improve prompt and secure access to information that may support the IVE's investigations. • Try more direct communications between IVE and MP to minimize the number of persons who have access to denouncements that IVE sends to MP.
2.6 Law Enforcement, Prosecution and Other Competent Authorities (R.27, 28)	R.27 : • Provide more active training for members of the judiciary, the Ministerio Público and the DIGICI in AML/CFT matters. • Strengthen the Police and other agencies in AML/CFT subjects. • Set up permanent or temporary specialized ML/CFT investigation groups in order to carry out joint investigations with appropriate competent authorities of other countries. • Continue with the implementation of special investigative measures in ML/FT cases, such as undercover operations, controlled delivery and wire tapping in order to achieve confiscation of high amounts of money, and the capture and prosecution of the most important figures behind organized crime. • Review, in a spirit of collaboration, the implementation of investigative methods used by the law enforcement bodies in ML/FT cases in order to share and disseminate the resulting findings or studies with other actors in the AML/CFT system.

	• Explore measures to prevent information leaks after judges are informed, and ensure that mayors' immunity is not an obstacle in the investigation of ML/TF cases.
2.7 Declarción o Revelación Transfronteriza. (RE. IX)	• Set administrative penalties for non-compliance with frontier cash declaration requirements. • Require customs authorities to check and impound money at the frontiers that might relate to persons on the United Nations Security Council resolutions. Set up an effective mechanism to put this requirement into effect. • Make Sworn Declaration Forms available to all persons entering or leaving the country not only by air, but by land or sea, and strengthen verification capacity on land frontiers. • Set and implement strict controls on unusual cross-border movement of gold, metals and precious stones, and procedures to inform the relevant customs authorities of other countries when unusual movement of this type of merchandise is detected. • Create clearly defined mechanisms for cooperation between the customs, immigration, police authorities, the Ministerio Público and the IVE.
3. Preventive Measures – financial institutions	
3.1 Risk of Money Laundering or Terrorist Financing	
3.2 Customer Due Diligence, including Enhanced or Reduced Measures (R.5-8)	**Rec. 5.** • R.5 Include insurance intermediaries within the group of enforced/obliged persons. • R.5 Require that financial institutions consider the filing of an STR when information cannot be obtained or verified • R.5. Improve the reliability of the national identification document, as in fact is being planned with the issue of the new Personal Identification Document. Set up mechanisms to enable financial institutions more easily to identify their customers on the basis of the DPI. It is suggested that agreements should be promoted among the financial institutions and the authorities responsible for the issue of the new identification document so that the latter may provide information to the financial institutions to assist in updating customer data. • R.5.4 Include the express question on if they are acting in benefit of a third person, in forms designed by the Company in a Credit Card or for Exchange Houses as for the star of relations with legal persons • R. 5.5. Expressly require financial institutions to know the beneficial owner in trust agreements and verify the information on all those involved in such contracts. • R.5.5 Make it clear in the regulations that the beneficial owner of an account, with special emphasis in Anonimous Company accounts with bearer shares • R.5.5 Establish clear guidelines requiring financial

	institutions to take measures to determine who are the natural persons who in the final instance are the owners or controllers of trusts or company. • R.5.7 It is suggested that meetings should be held with the financial institutions to find solutions to problems difficult the updating of customer data. • R.5.8 Require all financial institutions to apply enhanced due diligence to higher risk categories of customers, business relationships or transactions. (The Risk Management Guidelines may be applied to the rest of the regulated intuitions and not only to banks, finance companies and offshores). • R.5.8 It is particularly recommended that among the high risk customers be included non-resident customers, and that examples of enhanced CDD to be applied by regulated institutions in high risk relationships and operations be included also. • R.5.9 - 12 Study the possibility of allowing regulated institutions to apply simplified CDD measures, in accordance with the FATF recommendations, to lower risk cases. • R5.9 When provisions that allow insurers or other entities the application of simplified CDD measures over a shoter forms to start relations, such application of measures shall be cleared to customers residing abroad must be limited to countries known to comply with the FATF recommendations, and to implement them effectively and that such measures may not be used whrn there is suspicion of money laundering or financing of terrorism or dealing with specific risk scenarios. • R.5.14) Set out rules for the financial institutions indicating that they may perform the verification of the identity of the customer and beneficial owner after the establishment of the business relationship provided this takes place as soon as reasonably practical, and it is necessary in order not to interrupt the normal conduct of business or when the ML/FT risks are effectively managed. • R.5.14.1) Require financial institutions to adopt risk management procedures when they allow their customers to use the business relationship before their data are verified. These procedures must include a series of measures such as limitation of the number, types and/or amounts of transactions that may be performed, and monitoring of large or complex transactions being performed outside the expected parameters of this type of relationship. **Rec 6** • R.6. Broaden the provisions relating to PEPs to require implementation by bonding companies, warehousing companies, rental companies, insurance companies, stockbrokers, bureaux de change, pawnshops, cheque changing businesses, cooperatives, finance companies, factoring companies, credit card operators, money transfer operators, credit card companies and other persons regulated

	under the AML/CFT Acts. • R.6. Amend the definition of PEPs contained in the oficios issued by the IVE so that it indicates that individuals who occupy or have occupied prominent official posts in a foreign country, along with their family members and close associates, shall be considered PEPs. This should be without prejudice to national officials and other persons included in the present definition continuing to be considered PEPs. • R.6 Require financial institutions to obtain management level approval to continue a business relationship when a customer has been accepted but it is later discovered that the customer or beneficial owner is a PEP, or becomes a PEP. **Recommendation 7** • R.7 Require all institutions that may al least hypothetically establish correspondent or similar relations to apply the provisions issued for cross border correspondent banking. • R.7 Issue a clear instruction to financial institutions to evaluate the AML/CFT controls of the ordering institution and to decide whether they are adequate and effective. • R.7 . Require all financial institutions which might provide correspondent or similar services to document the respective AML/CFT responsibilities of each institution regarding the correspondent relationship. **Recommendation 8** • R.8 Require all financial institutions to have established policies or take necessary measures to prevent the improper use of new technologies in money laundering of terrorist financing schemes. This could be done by sending the Risk Management Guidelines to the remainder of the regulated persons. • R.8 Require all financial institutions to have policies and procedures to handle any specific risk associated with non-face-to-face relationships or transactions. These policies and procedures must be applied when the customer relationship is being set up and when ongoing due diligence is being performed. This could be done by sending the Risk Management Guidelines to the remainder of the regulated persons. It is recommended that consideration be given to amending the wording of the Guidelines to place more emphasis on non face-to-face transactions, in order that institutions should have greater clarity on the subject.
3.3 Third Parties and Introduced Business (R.9))	• Issue instructions to inform institutions of the measures to be adopted when they rely on a third party to perform elements of CDD or to present business. These provisions must be in keeping with FATF Recommendation 9. Otherwise prohibit the operation explicitly.
3.4 Financial Institution Secrecy or Confidentiality (R.4)	• A balance should be struck between the requests for information from the Ministerio Público through the IVE, and through court orders, in order to avoid erosion of requests from the Ministerio Público to the IVE for

	amplification of information.
3.5 Record Keeping and Wire Transfer Rules (R.10 and SRVII)	• Rec 10: Require enforced persons to keep plans of action, design resources, set reasonable time limits for completing and updating data, documents and profiles of old customers. • Strengthen the supervision by the Superintendency of Banks in general, and the IVE in particular, of compliance by all regulated entities with the requirements for secure and up-to-date customer records, as laid down by previously defined matrices and guidelines, recording on physical and/or electronic supports (written reports and/or aide-mémoires) of any discovered weaknesses or non-compliance, as stipulated by Article 3 c) of the Financial Supervision Act. • R.E. VIII Issue circular letter on client identification in • transactions that leaves no place t doubt on the obligation to identify regardless of the amount • More effective controls and guidelines should be applied for remittance businesses in order to reduce informal sectors and integrate them into the DNFBP supervision regime. • The IVE should review and update, in keeping with the gravity of the incidents of non-compliance, the gradation or scale of pecuniary sanctions in accordance with the minimum and maximum amounts incorporated in the Act, regardint area of FT in the matter of wire transfers.
3.6 Monitoring of Transactions and Relationships (R.11 and 21)	• R. 11: Strengthen the supervisory work of the Superintendency of Banks in general, and the IVE in particular, to be able them to cover all the regulated entities regularly and at reasonable intervals, and ascertain the quality and effectiveness of the process of examination of, and written conclusions, records and files on, those transactions discovered to be unusual but which do not become the subject of an STR. • Include in the legislation and/or in circulars and standards the requirement for financial institutions (other than banks, finance companies and offshore entities) to pay particular attention to business relations and transactions with persons from or in countries that do not apply FATF recommendations or apply them insufficiently. • R.21. Amend the ML/FT Risk Management Guidelines to make its wording more imperative. • Establish obligations for insurance intermediaries on the monitoring, detection and analysis of unusual operations abidding by Recs. 11 and 21.
3.7 Suspicious Transaction Reports and other reporting (R.13, 14, 19, 25 and SRIV)	• R.13: Take appropriate measures on the following aspects: • Continue overcoming the defects of quality and content still present in STRs • Verify regularly and at reasonable intervals the compliance of all regulated institutions, and ascertain the quality and effectiveness of the processes they use for determining and submitting STRs • R.13: Establish in the best possible manner, protection or alternative measures for the compliance officers shall not expose them to being summoned to court as experts or witnesses during trials of cases reported by them, proceeding to the Experts opinion incorporation on behalf of IVE to

	assiste debates. • R 25. Strengthen the IVE's work of feedback to financial institutions on STR subjects with respect to the follow-up thereof. • RE. IV,(same as R.13) .
3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)	• R.15. Recommend to financial institutions that they verify the criminal record of the employees to be hired. • R.22. Demand besides national banks and off-shore banks, exchange houses to make sure that their branches and subsidiaries abroad comply with AML/CFT measures in accordance with the requirements of Guatemala and the FATF recommendations, insofar as the laws and regulations of the foreign country allow, particularly with regard to branches and subsidiaries located in countries which do not apply FATF recommendations or do so insufficiently. It is also recommended that the wording of Article 6 of the AML Regulations be changed for consistency between the law and the Guidelines for Branches and Subsidiaries.
3.9 Shell Banks (R.18)	• R.18 Regulate the topic with Exchange Brokers alqhtough they currently do not have correspondent relations demanding them to, that in case this occurs, to the same requirements as the Banks.
3.10 The supervisory and oversight system – competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17& 25).	• R23. Improve the quantity and quality of the AML/CFT on site audits carried out by the Supervisio Department of the IVE. For this it is of vital importance to provide better support to this department in order to enable it to have more staff to audit financial institutions and other regulated entities. • R23. It is suggested that cooperation agreements be concluded with sectoral bodies that carry out audits, so that these may contribute to the IVE's AML/CFT supervision of regulated entities. In this regard the General Cooperatives Inspectorate (INGECOOP) stated that this body carries out AML/CFT supervisions in the cooperative sector, and that in 2008 it performed 108 ML/FT audits . Such agreements could reduce the workload of the IVE or at least provide it with useful information to facilitate its supervisory work. • R23. Extend the application of the model risk-based supervision of all regulated sectors. • R23. Inform regulated entities, in a timely manner, of the results of the AML/CFT audits carried out by the supervision department. • R23. Follow up implementation of the recommendations issued in AML/CFT reports. • R.23. Give the SIB the necessary powers to review at any time, and not only at the time of authorizing the operations of a financial institution, that the persons who aquire an ownership or managerial interest are fit and proper. This recommendation is refered to institutions other than banks, insurance comp\anies and entities that are part of a financial conglomerate for whom the necessary requirements are already in place. Especial priority should be given to financial cooperatives and remittance services. • R23. Provide ML/FT risk management guidelines for the

	insurance and securities sectors. • Provide all regulated entities with feedback on ML and FT techniques and methods in Guatemala. • R. 29 It is suggested to specify explicitly the power and role of the IVE to make on-site AML/CFT inspections of financial institutions, especially those which operate outside the area of supervision of the SIB. • R17. Establish in the legislation: • ML/FT prevention administrative sanctions for Directors and senior management of financial institutions • Withdrawal, suspension or restriction of licences for all regulated entities as ML/FT prevention sanctions. • R17. Review and update, according to gravity of instances of non-compliance, the scale of pecuniary sanctions in accordance with the minimum and maximum amounts provided in the Act. • Include insurance brokers/agents (intermediarios) as Regulated Entities in the legislation.
3.11 Money/value transfer services (SR. VI)	• Send out a mandatory instruction to remittance companies to enable them to put into practice all the controls demanded by the Act. • An awareness-raising campaign should be launched on the responsibilities of remittance operators regarding compliance with the reporting regulations and the AML/CFT Acts.
4. Preventive measures - DNFBP	
4.1 Customer Due Diligence and Record Keeping (R.12)	Establish expressly and unequivocally in the legislation the following requirements for all DNFBPs: • To maintain prevention programmes to prevent both ML and FT, including ongoing training. • Submit STRs on ML. • Develop Know your Customer policies. • Develop enhanced CDD policies for high-risk customers, for example PEPs. • Monitor contractual relations to detect unusual trends and identify ML patterns. • Retain records of information for at least five years. • Include as regulated persons required to prevent ML and FT all company and trust service providers, and casinos. • Streamline and strengthen the process of rapprochement and ML/FT prevention awareness building in all DNFBP sectors.
4.2 Suspicious Transaction Reporting (R.16)	Include expressly in the legislation for all DNFBPs, including lawyers, notaries, accountants, and casinos: • The requirement to have prevention programmes for both ML and FT, including ongoing training in these subjects • The requirement to submit STRs on ML and FT • Legal protection against liability when STRs are submitted • Sanctions contravention of the prohibition on tipping-off when an STR is submitted • • Speed up and strengthen the process of contact and awareness building on ML/FT prevention in all DNFBP

	sectors. • Put in place an effective system of feedback from the IVE to the DNFBPs on decisions and results concerning STRs. • Strengthen the IVE's supervision of DNFBPs.
4.3 Regulation, Supervision and Monitoring (R., 24-25)	• R. 24. Include among regulated entities required to prevent ML and FT, casinos. • Make specific provision in the legislation subjecting DNFBPs to special regulation, and to effective ongoing ML/FT prevention supervision and monitoring. • The IVE should have a manual for effective ML/FT prevention supervision of DNFBPs. • R. 25. Streamline and strengthen the IVE's ML/FT prevention familiarisation and awareness building process in all DNFBP sectors, and initiate an effective policy of feedback and guidelines in the area. • The IVE should issue ML/FT Risk Management Guidelines for DNFBPs, as is done for banks, finance companies and offshore banks. • Foster association level self-regulation for DNFBPs in the area of ML/FT prevention.
4.4 Other Designated Non-Financial Businesses and Professions (R.20)	• Take the necessary measures to start imposing compliance on new regulated entities: motor vehicle dealers and art and antiques dealers. • Develop effective work on the basis of the studies of ML/FT vulnerabilities among DNFBPs other than those recommended by the FATF.. • Continue efforts to deepen the level of banking in the country, modernise payment systems and simplify payment by electronic means, taking care to avoid the ML/FT risk inherent in these new technologies.
5. Legal Persons, Legal Arrangements and Non-Profit Organisations	
5.1 Legal Persons – Access to Beneficial Ownership and Control Information (R.33)	• Train the staff of the Business Register and of Guatemalan declaring entities on AML/CFT measures. • Adopt laws to enforce adequate transparency regarding the identity of beneficial owners and controllers of legal persons. • Adopt the legal frameworks and guidelines related to prevention of money laundering and financing of terrorism through legal persons
5.2 Legal Arrangements – Access to Beneficial Ownership and Control Information (R34)	• More AML/CFT training for staff of authorities responsible for controlling financial institutions which offer trust agreements and financial entities that offer these services in capacity as turstees. In addition, it would be useful to publish guides on measures to prevent, detect and control the use of trust services for money laundering and terrorist financing purposes.
5.3 Non-Profit Organisations (SRVIII)	• Carry out studies and evaluations on ML/FT vulnerabilities and corruption among NPOs.

	• Conclude interagency and international collaboration conventions for exchange of information for the purposes of ML/FT investigations involving NPOs. • Confer on the IVE express powers and resources, including express power of sanction, to apply ML/FT prevention supervision to all NPOs, particularly those who hold a significant portion of financial resources or engage in international activities,
6. National and international co-operation	
6.1 National Cooperation and Coordination (R.31)	• The promulgation of the Executive order Gubernativo being drafted by the National Commission for Coordination of Efforts Against Laundering of Money and Other Assets and Financing of Terrorism in Guatemala should be accelerated. • Create interagency cooperation mechanisms among the main anti-ML/FT actors, especially the security agencies, the Ministerio Público and the Financial Intelligence Unit (the IVE), that will facilitate high-impact cases, prosecutions and convictions, as well as identification and tracing of property subject to confiscation. • Create working groups at the operational level to increase the effectiveness of AML/CFT investigations carried out by the Ministerio Público and the law enforcement agencies. • Create spaces for greater cooperation between the IVE and the Analysis Unit of the Ministerio Público.
6.2 Conventions and UN Special Resolutions (R.35 and SR I)	• Lay down procedures and mechanisms to enable Resolutions 1267 and 1373 to be implemented with the necessary speed (see SR.III)
6.3 Mutual Legal Assistance (R.36 - 38, RE. V)	• R. 38. Evaluate the possibility of: • Creating a custody fund of property seized that aids in strengthening investigation authorities and public order • Regulate that related with the forfeiture of assets related with joint investigations of other States. • Take advantage of existing legal means to temporarily use assets product of precation meausres, for the benefit of different authorities in charge of prevening and punishing ML/FT
6.4 Extradition (R.39, 37 , RE. V)	• R. 39. The number of extradition requests and the process followed by Guatemala should more clearly reflect efficiency in the present implementation of existing treaties and conventions on extradition in ML cases.
6.5 Other forms of co-operation (R.40, RE. V)	R. 40. • Strengthen the mechanisms of cooperation between the Customs authorities and their foreign counterparts, particularly in order to improve detection of illegal consignments of cash and precious metals. • Gather useful and reliable statistics on the result of customs controls as they apply to combating ML and FT. • Supplement the responses of the IVE to requests from foreign FIUs, with information on police records of persons

	under investigation and other external data bases as needed. • Continue the periodic measurement by the IVE of satisfaction of its foreign counterparts with the speed and quality of its responses.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Rec. 30** • The judicial branch has not received sufficient specialized training in ML-FT. • The police do not have sufficient resources or training to deal with crimes of this nature. • The Criminological Investigation Division (DICRI) of the Ministerio Público is composed mainly of university students who are also not adequately equipped or technically trained in investigating ML/FT offences. • The recently created Civill Intelligence Directorate (DIGISI)of the Ministerio de Gobernacón is not sufficiently well trained and does not have the necessary resources to collaborate with other actors in combating ML/CFT. • The IVE lacks sufficient human resources for AML/CFT supervision of the 400 financial institutions registered. This is exacerbated when the DNFBPs are taken into consideration. 429 of these had registered at the time of the visit. • The use of human resources of the Supervision Department of the IVE to respond to requests from the Ministerio Público has limited their capacity to carry out inspections, particularly over the period 2006-2007. **Rec. 32** • Although the IVE collects adequate statistics for its job as FIU and supervisor, there is no system of collection and analysis of data in other institutions to enable the authorities to prioritise needs, plan an overall national strategy, or review the efficiency of their AML/CFT system. • The Ministerio Público does not have an established statistical system for following up the effectiveness of investigations and convictions for ML/FT. • The exact number of DNFBPs is unknown, and there is only an estimate. • No data was obtained regarding the number of remittance companies, or the volume of money they handle. • There are no available figures on cooperation with customs authorities in other countries for detection of money or securities at the frontiers
7.2 Other Relevant AML/CFT Measures or issues	
7.3 General Framework – Structural Issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

There are no additional comments for publication.

ANNEXES

Annex 1: List of abbreviations
Annex 2: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.
Annex 3: List of all laws, regulations and other material received

Annex 1: List of abbreviations

AML	Anti-Money Laundering
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CDD	Customer Due Diligence
DICRI	Criminal Investigations Directorate
DIGICI	Directorate General of Civil Intelligence
FENACOAC	National Federation of Cooperatives and Loan Agencies
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
INACOOP	National Cooperatives Institute
IVE	Special Verification *Intendencia* (the FIU of Guatemala)
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
ML	Money Laundering
MOU	Memorandum of Understanding
NPO	Non-profit organization
PEP	Politically Exposed Person
SAT	Superintendency of Inland Revenue
SIB	Superintendency of Banks
STR	Suspicious transaction report
UN	United Nations
UNSCR	United Nations Security Council Resolution

Annex 2: Details of all bodies met on the on-site mission –

Ministries, other government authorities or bodies, private sector representatives and others.

Rama Ejecutiva	**The Executive**
Regulación/Supervisión Financiera:	**Financial regulation/supervision**:
Superintendencia de Bancos (SIB)	Superintendency of Banks (SIB)
Intendencia de Verificación Especial –IVE (UIF de Guatemala)	Intendency of Special Verification –IVE (Guatemala's FIU)
INACOP e INGECOP (Regulador Cooperativas)	Financial Cooperatives Regulators: INACOP and INGECOP
Otras autoridades administrativas:	**Other administrative authorities**
Ministerio de Gobernación	Ministry of Government (Interior)
Superintendencia de Administración Tributaria-SAT	Superintendency of Tax Administration (SAT)
Intendencia de Aduanas	Customs Intendency
Registro Mercantil	Mercantile (company) Registry
Banco de Guatemala	Bank of Guatemala (central bank)
Vicepresidente de la República	Vicepresident of the Republic

Judicial, Policial, Control	**Judiciary, Law enforcement, Comptrolership**
Ministerio Público (Fiscalía General)	Public Prosecutor's Office (Fiscalía)
Fiscalía Especializada contra el Lavado de Dinero	Specialized AML Fiscalia
Juez	Judge
Organismo Judicial- Sub-Secretario General	Judiciary - Under Secretary General.
Dirección General de Inteligencia Civil- DIGICI	Directorate General of Civil Intelligence
Contraloría de Cuentas	Comptroller
Comisión Internacional contra la Impunidad en Guatemala – CICIG (ONU)	International Commission Against Impunity in Guatemala – CICIG (UN)

Sector Privado	**Private Sector**
Actividades financieras:	**Financial Activities:**
Asociación Bancaria de Guatemala	Guatemalan Banking Association
Asociación Guatemalteca de Instituciones de Seguros - AGIS	Guatemalan Association of Insurance Institutions (AGIS)
Banco Industrial	Banco Industrial
Citibank	Citibank
Banco Azteca	Banco Azteca
Banco de Antigua	Banco de Antigua
Negocios y Transacciones Institucionales, S.A. (bursátil)	Negocios y Transacciones Institucionales
Western Union (SOIN S.A.)	Western Union (SOIN S.A.)
Génesis Empresarial, S.A.	Génesis Empresarial, S.A.
Asociación Guatemalteca de Instituciones de Seguros	Asociación Guatemalteca de Instituciones de Seguros
Seguros G&T	Seguros G&T
FENACOAC (Federación de Cooperativas)	Federation of Fin. Cooperatives (FENACOAC)
Cooperativa de Ahorro y Crédito San José Obrero	San Jose Obrero Savings & Loan Cooperative
GTC Bank (offshore)	GTC Bank (offshore)
Banco de Desarrollo Rural –BANRURAL	Banco de Desarrollo Rural –BANRURAL
Génesis Empresarial (Microfinanzas)	Génesis Empresarial (Microfinanzas)
Bolsa Nacional de Valores	National Securities Exchange

APNFD:	**DNFBP:**
Colegio de abogados y notarios	College of Attorneys and Notaries
Lotería Santa Lucía	Lotería Santa Lucía (lottery)
TRANSAC Inmobiliaria	TRANSAC Inmobiliaria (real estate)
Colegio de Contadores Públicos y Auditores	Board of Public Accountants and Auditors

Annex 3: Lists of laws, regulations and other material received

1. Act 67-2001, against money laundering ("AML Act")
2. Executive Order 118-2002 of the President of the Republic: Regulations of the Anti-Money Laundering Act ("AML Regulations")
3. Executive Order 438-2003 of the President of the Republic, incorporating Savings and Loan Cooperatives as Regulated Persons
4. Executive Order 524-2007 of the President of the Republic, incorporating Lotteries, Raffles and similar activities licensed by the Ministerio de Gobernación, as regulated persons
5. Act 58-2005 to Prevent thye Financing of Terrorism ("CFT Act")
6. Executive Order 86-2006 of the President of the Republic: Regulations of the Anti-Terrorist Financing Act ("CFT Regulations")
7. IVE *Oficio* 247-2003 of 19 May 2003 on Measures to Prevent Money Laundering
8. IVE *Oficio* 1585-2008 of 20 August 2008, on Development of the Electronic Archive for Monthly Reporting of transfers of funds equal to or exceeding US$2,000.00 or the equivalent in other currency.
9. IVE *Oficio* 13-2009, of 7 January 2009, on guidelines for Keeping of Accounts for Companies or other Entities in Formation
10. IVE *Oficio* 180-2009 of 20 February 2009, on Development of the Electronic Archive for Monthly Reporting of Purchase or Sale of Foreign Currency in Cash
11. IVE *Oficio* 181-2009, of 20 February 2009, on Development of the Electronic Archive for Monthly Reporting of Entry or Exit of Cash in National Currency
12. IVE *Oficios* 244-2009, 245-2009 and 303-2009, of 6 and 32 March 2009, on Politically Exposed Persons
13. IVE *Oficio* 424-2009, of 34 April 2009, addressed to Regulated Persons Under Special Regime - PORES
14. IVE *Oficio* 434-2009, of 24 April 2009, on the Money Laundering and Financing of Terrorism Risk Management Guidelines
15. IVE *Oficio* 837-2009. Of 17 June 2009, on the Basic Prevention guide for Correspondent Bank Services, Bank Branches Abroad, and Subsidiaries
16. IVE *Oficio* 838-2009, of 17 June 2009, on Basic Guidelines on Measures to be taken by Regulated Persons in the Case of Assets or Property that may be or are linked to Terrorism financing of Terrorism, or Related Acts