Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

September 25th, 2009

VENEZUELA

Venezuela is a member of the Caribbean Financial Action Task Force (CFATF). This evaluation was done by the CFATF and the report was discussed by its Plenary in May 8 2009 and adopted by its Council of Ministers on September 25, 2009, as part of the third round of mutual evaluations.

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Preface- Information and Methodology used for the evaluation of Venezuela

1. This evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Venezuela was based on the 2003 Forty Recommendations and the 2001 Nine Special Recommendations on the Financing of Terrorism of the Financial Action Task Force (FATF), and was drafted using the 2004 AML/CFT Methodology. The evaluation took account of the laws, regulations and other material furnished by Venezuela, as well as the information obtained by the evaluators during and after the in situ visit held from August 11-22, 2008. The evaluation team held meetings with officials and representatives of all the relevant agencies of the Venezuelan Government and the private sector. Annex 2 of this report contains a list of the bodies with which meetings were held.

2. The evaluation was carried out by the following team of experts from CFATF member countries: Teodoro Bustamante, Chief of the Directorate of Economic Investigations of the Nicaraguan National Police (legal evaluator); Osvaldo Henderson, Deputy Chief Prosecutor for Organized Crime, in the Chief Prosecutor's Office of Costa Rica (law enforcement evaluator); Robert Quiroz, Director of the Financial Intelligence Unit of Costa Rica (financial and FIU evaluator); and Rocío Ortíz Escario, Inspector of Credit and Savings Institutions of the Central Bank of Spain (financial evaluator). The team was led by Mr. Esteban Fullin, Deputy Executive Secretary of GAFISUD (the Financial Action Task Force of South America) in generous cooperation with the CFATF Secretariat. The team would like to express its gratitude to the Venezuelan government.

3. The evaluators reviewed the institutional framework, AML/CFT laws, regulations, guides and any other norms established to prevent money laundering (ML) and financing of terrorism (FT) through the financial institutions and the Designated Non-Financial Businesses and Professions (DNFBPs), as well as studying the capacity, implementation and effectiveness of all these measures.

4. This report offers a summary of the AML/CFT system in effect in Venezuela at the date of the on site visit or immediately thereafter. It describes and analyses its characteristics, including the levels of compliance of Nicaragua with the 40+9 FATF Recommendations (see Table I) and formulates recommendations on how the deficiencies identified may be overcome (see Table II).

EXECUTIVE SUMMARY

1. Context

1. This report provides a summary of the AML/CFT measures in effect in Venezuela at the date of the evaluation visit (11 to 22 August 2008) or immediately thereafter. It also shows the level of compliance with the FATF 40+9 Recommendations (see Table 1) for strengthening the system.

2. The "Bolivarian Republic of Venezuela", situated in the northern part of South America, has an area of approximately 912,050 square kilometres, and 28,800,000 inhabitants. Petroleum and its derivatives are the mainstay of the economy, which boasts one of the highest per capita incomes in the region.

3. Because of its geographical location, Venezuela is a transit country for illicit drugs, which account for the largest proportion of money laundering activities. Other sources of illicit funds are corruption, which accounts for the largest number of cases analysed by the FIU, after those related to drug trafficking.

4. Up to the present time no cases of financing of terrorist activities have been discovered in the Republic of Venezuela.

2. Legal systems and related institutional measures

5. As regards criminalisation of money laundering, Article 4 of the Organic Law Against Organised Crime (LOCDO) criminalises and sanctions money laundering under the title of "Legitimisation of Capital". It embodies all the characteristic elements and modalities set out in the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). All offences enumerated in the LOCDO constitute predicate offences, and in general terms almost all serious crimes are covered as predicate to money laundering. A person may be prosecuted for laundering assets derived from crimes committed abroad, and a person may be convicted for laundering the proceeds of offences committed by himself (self-laundering).

6. As regards evidence, for purposes of conviction for money laundering, intent on the part of the accused may be inferred from the objective circumstances of the case. Evidence may also be introduced on the basis of the principle of *libertad probatoria* (full admissibility of evidence) embodied in Article 198 of the Organic Code of Criminal Procedure (COPP). The offence is an independent one, and therefore a prosecution for money laundering does not require previous conviction for the offence from which the illicit assets were derived. Finally, criminal liability of legal persons is recognised, except for the State and State enterprises. In the period 2004-2008 there were 5 instances of convictions confirmed by the Supreme Court. None of them, however, was obtained under the LOCDO, but rather under anti-narcotics legislation.

7. Financing of terrorism is also criminalised, together with the financing of criminal organisations or armed gangs with terrorist objectives, as well as the financing of terrorist organisations and acts of terrorism. Only financing of individual terrorists is not covered. There have been no convictions for financing of terrorism.

8. As regards provisional measures and confiscation, Venezuelan law stipulates that seizure or confiscation of assets are necessarily accessory to the basic sanction. Acts intended to hinder the identification, blockage or seizure of assets derived from or related to an offence may be voided, but this may not be done in the case of goods of equivalent value. Preventive securing of assets may be performed without prior notification. No figures concerning application of provisional measures or confiscation were provided. There are no mechanisms to enable terrorist assets to be frozen or confiscated, as embodied in Special Recommendation III.

9. In the area of competent authorities, Venezuela has a National Financial Intelligence Unit (as part of the financial supervisory structure) which receives suspicious transaction reports and which may request, receive, analyse, record and forward to the competent authorities the financial information it needs to carry out its investigations. In practice the FIU suffers from certain shortcomings in the analysis of information.

10. The bodies acting as law enforcement agencies are the right ones, but they lack specialised money-laundering departments. Permitted investigative techniques include undercover operations and wiretapping, but these have not yet been used in the area of money laundering or financing of terrorism.

11. Investigative authorities may collect all information of interest by means, inter alia, of statements, inspection of persons, vehicles, and public places; by means of raids, recordings, interception of calls or correspondence, requests for data held by financial institutions, accounting records and commercial registers, always provided the requirements of legality, relevance and usefulness, which are the governing principles of evidence in criminal prosecution, are met.

3. Preventive Measures – Financial Institutions

12. The system of prevention is most highly developed in the banking sector. As regards Customer Due Diligence, customer information must be available to the authority, and correct customer identification is clearly established, but this does not apply to verification of the information used. Numbered accounts are prohibited. Anonymous accounts would be prohibited under the Andean Pact to which Venezuela is a signatory but this prohibition has not been specifically included in the regulatory regime of the securities or insurance sectors. There is no express prohibition on issue of bearer shares, although it is stated that in practice this does not occur.

13. In Venezuela no CDD regulations regarding the use of third parties have been issued, and the practice is not prohibited.

14. There is sufficient legal provision to ensure that bank secrecy shall not hinder the implementation of the rest of the FATF Recommendations. There is specific provision to that effect as regards suspicious transaction reporting (Article 51 of the LOCDO, considered in more detail below) and as regards requests for information by the supervisory body, which may not be refused on grounds of bank secrecy (Article 252 of DFL 1526).

15. Banks and other financial institutions supervised by SUDEBAN are required to retain documents or records of customer transactions and business relations with the institution for 5 years, as well as documents necessary to the identification of customers who have performed these operations or opened such business relations with the regulated entity. In practice the institutions have mentioned the difficulty of obtaining, for every customer, all the data or information necessary to complete the customer file.

16. As regards wire transfers, Venezuelan law makes no specific reference to originator information to be included in cross-border wire transfers. The representatives of the entities interviewed stated that the minimum data are the name and country of the originator and the name and account of the recipient.

17. In Venezuela there is a series of regulations requiring financial institutions to pay special attention to all complex or unusually large transactions, and to all unusual patterns of transactions without apparent economic or legal purpose, and to examine, as far as possible, the background and purpose of such transactions. However, there has been no supervision by SUDEBAN as regards exchange operators, who are mainly situated close to the frontiers.

18. There are rules regarding the measures to be adopted when establishing business relations with institutions, or operating with persons, in countries which do not apply, or apply insufficiently, the

FATF Regulations, but during the on-site visit no internal prevention and control measures and procedures were detected. It must therefore be concluded that no effective measures have been established to ensure that financial institutions are aware of the weaknesses of the AFL/CFT systems of other countries, considering that neither the Government or SUDEBAN have provided an official list of these countries.

19. The legal requirement for reporting suspicious transactions derives from the law against organised crime, Article 51 of which stipulates that all regulated entities, when they suspect that funds or assets involved in an operation are the proceeds of illegal activity, must immediately inform the Financial Intelligence Unit of the Superintendency of Banks, which shall analyse them, file them or forward them to the Prosecutor of the Ministerio Público, who may order a criminal investigation.

20. Resolution 185-01 expressly states that a report is not a criminal denunciation and does not involve the formalities and requirements of such a proceeding, nor any criminal or civil liability on the part of the regulated entity or its employees, or for the signatory; but there is no express mention of protection under the concept of a safe haven for financial institutions. Nevertheless, this resolution does not have the force of law. The prohibition on disclosing an STR or any kind of information related to investigations carried out by the FIU derives from Resolution 185-01 and not from a law.

REPORTS by year	2004	2005	2006	2007
Reports received by the FIU	584	843	1.021	1.234
Reports forwarded to Minist. Publico	338	282	332	529

21. Articles 60 and 61 of Resolution 185-01 stipulate that regulated entities shall submit to the Superintendency of Banks and Other Financial Institutions, by wire, a report of all transactions performed by their customers in their current or savings accounts, liquid asset funds or similar products, in excess of four million five hundred thousand bolivars (Bs 4,500,000.00). There is a similar rule in the insurance sector, but not in the securities sector.

22. The FIU prepares a half-yearly feedback report which is published on the web page, on number and type. Institutions regulated by the Superintendency and other reporting institutions also receive a quarterly report on the status of suspicious transaction reports.

23. In addition, the crime of Financing of Terrorism is recognised in Article 7 of the LOCDO, and all institutions governed by that Act are required to report, without delay, by means of the respective suspicious transaction reports, their reasons for suspecting that the funds, capital or assets involved in an operation or business transaction in their field of activity may derive from an activity that is illicit in terms of the Act. The problem is that the situation in which the funds derive from a lawful activity is not covered, and this is a weakness with regard to FT. The STR figures at the disposal of the evaluation team do not differentiate between ML and FT reports.

24. The Banking, Insurance and Securities sectors all have rules for the development of anti-money laundering and anti-terrorist financing policies and controls. However, in the Securities sector the regulations are not as developed and, therefore, there is less control.

25. Financial institutions are legally required to verify the implementation by their foreign branches and subsidiaries of ML prevention and control measures.

26. The legislation in force is sufficient to ensure that shell banks cannot operate in the Venezuelan financial sector.

27. The existing regime of administrative sanctions for legal persons is aimed at the general business operations of a financial institution. It provides adequate machinery to ensure efficient and proportional civil, criminal or administrative penalties, but there is no set of sanctions for financial institutions aimed specifically at money laundering and financing of terrorism. Only the overall regime of sanctions is applicable.

28. The General Banking Act stipulates that persons who have received a sentence entailing deprivation of liberty may not be promoters, main shareholders (10% or more), directors, managers or board members of banks, savings and loan institutions, other financial institutions, bureaux de change or frontier exchange businesses.

29. The Superintendency of Banks is responsible for the supervision, monitoring and general control of financial institutions, mainly banks. In the case of securities, it is the National Securities Commission, and in the insurance sector the Superintendency of Insurance, that fulfil these functions. In all thee sectors there is a regime of sanctions for those refusing to provide information during inspections.

30. Regarding alternative money transfer systems, there is a competent authority responsible for registration and/or licensing of natural or legal persons providing money or value transfer services. It was stated that most of these operators are located along the frontier with Colombia, and that they have not been inspected by the authority since 2004.

4. Preventive Measures: Designated Non Financial Businesses and Professions

31. As regards DNFBPs, the only AML/CFT regulations that exist relate to gaming houses, bingo halls and casinos, but it has not been possible to assess their effective enforcement. There are no legal provisions covering any of the other categories of DNFBPs.

32. Furthermore, no STR system has been established in the DNFBP sector.

33. No consideration has been given to broadening the preventive regime to DNFBP categories other than those included in Recommendation 12, nor was any information obtained concerning modern control measures or techniques of financial operations that would be less vulnerable to money laundering.

5. Legal Persons and Legal Arrangements, and Non-Profit Organisations.

34. Although the commercial legislation in force ensures complete identification of owners and beneficial owners of legal persons at their inception, lack of computerisation of records makes it impossible to cross-reference the information to prevent legal persons being used for ML/FT.

35. There is a register of trusts set up by banking institutions, maintained by the Superintendency of Banks, but there is no centralised information on trusts existing in the country as a whole. It was not possible to discover the type of information contained in the abovementioned register, nor to verify whether it contained the minimum data for identification of participants (trustee, trustor and beneficial owner).

36. The legislation in force contains no specific reference to or enhanced due diligence measures applicable to non-profit organisations. There is no evidence of the existence of a national register of NPOs. There is therefore no control of their field of activity or their owners or founders.

6. National and International Cooperation

37. There is legislation establishing coordination and cooperation among the various national authorities responsible for implementing AML/CFT policies and mechanisms, under the leadership of the National Anti-Narcotics Office. Despite this, there are certain specific cases of shortcomings in communication or expeditious information exchange between the various authorities involved in combating ML/FT.

38. In Venezuela the 1988 Vienna convention has been ratified since 1991; the 2000 Palermo Convention since 2002; the 1999 UN Convention for the Suppression of the Financing of Terrorism; and finally, since 2003, the 2002 Inter-American Convention Against Terrorism.

39. As regards the United Nations instruments for prevention and elimination of financing of terrorism, the legislative framework in force is adequate, but it was not possible to determine how it is being implemented. It was not clear who receives the requests, nor how many have been received.

40. The legal system established for Mutual Legal Assistance includes international ML/FT cooperation. There is only a difficulty in identifying property of given persons, in view of the present system of record keeping. There is also no obstacle to implementation of mutual legal assistance even in the absence of dual criminality.

41. The laws in force include a preventive measure, in the framework of the so-called "financial investigation of the suspect", which allows the Ministerio Público to investigate administratively the life-style, financial resources and wealth of that person, for the purpose of determining the origin of his assets. No agreements have been concluded with other countries to coordinate confiscation measures or to share confiscated assets.

42. In Venezuela the offences of ML and FT are extraditable. Although Venezuelan nationals may not be extradited, the law permits them to be tried if the offence of which they are accused is punishable in domestic law. In cases carrying a penalty of more than 30 years, Venezuela will also not grant extradition of a foreigner.

43. The Venezuelan competent authorities are members of international organisations that ensure adequate exchange of information. They have also signed a number of memoranda of understanding for the purpose.

7. Resources and Statistics

44. There are deficiencies in resources in the area of supervision and inspection of the banking, securities and insurance entities, especially the last two categories where the legislation is less developed. Statistics are not sufficient to enable the efficacy of the AML/CFT system to be assessed.

1 GENERAL

1.1 General information of the Republic of Venezuela

1. The Republic of Venezuela is situated on the American continent, in the north of South America, on the Caribbean coast. Its mainland territory lies between 0° 38' 53'' and 12° 11' 46'' North latitude and 49° 47' 30'' and 73° 23' West longitude. Its northern coast is on the Caribbean Sea and is 2,813 km long. To the south it shares a 2000 km long frontier with the Republic of Brazil, to the east is its Atlantic coast and a 743 km long boundary with the Republic of Guyana. To the west it shares a border of 2050 km with the Republic of Colombia.

2. Traditionally the Venezuelan economy has been a single product economy, based on petroleum. In the period between the 50s and the 90s, the country experienced one of the biggest per capita incomes of the region, although from 1980 onwards this began to decline. Only recently has per capita income begun to increase once more, mainly as a result of the shifts in international oil prices.

3. According to the annual report of the Central Bank of Venezuela, in 2006 the Venezuelan GDP showed an increase of 10.3%. The report emphasises that during 2006 the non-oil sector of the economy grew by 11.4% and that the non-oil sectors that showed the greatest growth were: financial and insurance companies (37%), construction (29.5%), communications (23.5%), trade and repair services (18.6%) and community, social and personal services (14.8%). The manufacturing sector grew by 10% and international reserves reached 37,299 million dollars.

4. The population of Venezuela is 27, 896,681, and over the last ten years it has grown by an average of 17% per year.

5. The gross domestic product (GDP) at constant prices grew by 4.8% in the first quarter of 2008, compared with the same period in the previous year.

6. The Constitution of the Bolivarian Republic of Venezuela, approved by a popular referendum on the 15th December 1999 and promulgated by the National Constituent Assembly on the 20th December of the same year, stipulates that Venezuela is a democratic, federal social state under the rule of law and justice. The organs of the National Public Power are located in the city of Caracas, capital of the Republic. The National Public Power is composed of the Executive Power, the Legislative Power, the Judicial Power, the Electoral Power and the Citizen Power.

7. The Executive Power consists of the President, the Executive Vice-President and the Council of Ministers. The President of the Republic is elected by universal, direct and secret suffrage for a term of six years and may be re-elected for the term immediately following. The President is the Head of State, of government and of the national armed forces. The Constitution empowers the President of the Republic to exercise legislative initiative and to request from the National Assembly the power to legislate on specific subjects.

8. The legislative power is exercised by the National Assembly, a unicameral collegiate body comprising 167 deputies, three of whom are representatives of the indigenous peoples. The deputies serve for terms of five years and may be re-elected for a maximum of two further terms. Like the President of the Republic, they are elected by universal, direct and secret ballot.

9. In Venezuela the power to administer justice emanates from the citizens and is exercised under the law in the name of the Republic. The Supreme Court of Justice is the highest judicial body of the country and is composed of 32 judges distributed in seven Chambers (constitutional, civil cassation, criminal cassation, social, electoral, political and administrative cassation and the Plenary Chamber). Each Chamber consists of five judges, except the constitutional Chamber

which his made up of seven judges. All judges are appointed by the National Assembly for a term of 12 years.

10. The Moral or Citizen power is made up of three institutions: Contraloría General de la República (Office of the Accountant General of the Republic), the Ministerio Público (Public Prosecutor) and the Public Defender. The holders of these offices make up the Consejo Moral Republicano (Republican Moral Council).

11. The 1999 Constitution includes provision for recall by referendum of the occupants of all popularly elected offices. They may be required to submit to re-election halfway through their term, as a innovative and democratic means of increasing the citizens' power of political decision over their representatives.

12. The territory of the Republic is divided into twenty-three States, the Capital District (in which Caracas, the capital, is situated), the Federal Dependencies and (in the text of the Constitution) the Federal Territories. The State (Regional) Public Power is expressed through the States which are politically independent and equal, with legal personalities different from that of the Republic, and their agencies are organised under State Constitutions.

13. The national political-administrative organisational units are the Municipalities, which enjoy autonomy in the election of their authorities, the management of matters within their area of competence, and the generation, collection and investment of their resources.

14. Internationally, the Republic of Venezuela has been classified as a transit country for illicit drugs. This classification, within the worldwide problem of the illicit traffic of narcotics and psychotropic substances may be explained by the favourable geographical location of the country. Its situation in the inter-tropical zone of the American continent, with Atlantic and Caribbean coastlines, makes it a tempting target both for transit of natural drugs towards the markets of the north, and for synthetic drugs on their way to South America. Venezuela's status as an oil producing country open to international trade, which gives rise to very dynamic activity in the country's ports and airports, is also used to advantage by criminal organisations involved in illegal drug dealing, using a range of methods of concealment to achieve their goals.

15. Another way in which the territory of the Republic of Venezuela is used is by means of clandestine airstrips, constructed for the most part in the frontier regions, and used for the transport of illegal drugs mainly towards Central America and the Caribbean, as well as other destinations.

16. The problem of drug trafficking in Venezuela has other manifestations too. Laundering of drug proceeds has fostered the development of a parallel market in dollars, the rate of exchange of which compared with the official rate is very high, and has fostered the development of an excessively competitive and high cost real estate market, resulting in distortion both of the economy at large and the individual budgets of ordinary citizens.

17. For these reasons efforts must be redoubled to reduce the supply and availability of drugs, by developing strategies to prevent their production and distribution, by means of wide-ranging and sustainable preventive programmes of alternative development; control of regulated chemical substances; and activities of interdiction and prevention of the laundering of money associated with drugs; and, in the case of consumption,. prevention, treatment and rehabilitation

18. For all these reasons the Plan in prospect seeks to offer a holistic solution based on the provisions of Article 93 of the Organic Law Against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, which states: "The National Executive shall develop forecasting, prediction and prevention plans and programmes through the instrumentality of the competent ministries and in collaboration with international networks designed for the purpose, jointly with the responsible decentralised agency, and under the coordination of the latter, to

prevent and forestall the consumption of and illicit traffic in the substances referred to in this Act, and to combat the abuse of alcohol, tobacco and its compounds such as chimo [tobacco mixed with hydrous carbonate of soda for chewing], giving absolute priority to programmes in favour of children, adolescents and women, from a gender perspective, setting out strategic guidelines for the State Agencies responsible for prevention, detoxification, treatment, rehabilitation and social re-adaptation".

1.2 General situation of Money Laundering and Financing of Terrorism

19. Some of the offences declared by Organic Law against Organised Crime to be predicate offences for money laundering are: trafficking, trade, retailing, manufacture and other illicit activities connected with, inter alia, narcotics and psychotropic substances, child pornography, corruption and other offences against the common weal, extortion, traffic in persons and migrants, smuggling and other customs offences. The most common predicate offences for money laundering are illicit drug trafficking and trading, since these are activities typical of organised crime and a source of great profit to the groups involved in it.

20. From the criminal investigations conducted in the Republic of Venezuela into laundering of the proceeds of the illicit traffic in narcotics and psychotropic substances, it may be observed that the method used by some criminal organisations is to set up agriculture and livestock businesses through which they acquire large estates and cattle herds, which are shifted around from one estate to another in order to conceal their size or quantity and are also used for milk production and other livestock-raising activities to bring in apparently legal profits.

21. It should be pointed out that the shareholders in these businesses are not the same people involved in drug trafficking. Most of them belong to the social and family environment.

22. These criminal groups have a rigid hierarchical structure, with division of labour, amassing capital derived from drug trafficking and other illegal activities and laundering it through agriculture and livestock raising as described above, as well as through the purchase of high value real estate.

23. According to the authorities, the present situation regarding money laundering is marked by strengthening of preventive actions. This means that Venezuela has adapted its internal laws and regulations to comply with the international conventions signed by the Republic. The country now possesses a Organic Law Against Organised Crime, which broadens the range of predicate offences for money laundering, and incorporates others beyond drug trafficking and related offences. Statistics to date show 623 cases involving corruption and crimes against the public weal, which have become more prominent and are second to the illegal traffic in narcotics and psychotropic substances as a predicate offence for money laundering (this issue dealt with more specifically in 2.1).

24. The system of prevention of money laundering in Venezuela encompasses the group of financial institutions referred to in Article 1 of Resolution 185-01 of 12th September 2001, published in number 37,287 of 20th September 2001 of the Official Gazette of the Bolivarian Republic of Venezuela: "Rules for Prevention, Control and Prosecution of Operations of Money Laundering applicable to Institutions regulated by the Superintendency of Banks and Other Financial Institutions": The Deposit Guarantee and Bank Protection Fund, general-purpose banks, commercial banks, mortgage banks, investment banks, second-tier banks, the National Savings and Loan Bank, leasing institutions, money market funds, savings and loan institutions, bureaux de change, Municipal Credit Institutes, branches of foreign banks, frontier money changing operators and other businesses governed by special laws and regulations, subject to inspection, supervision, monitoring, regulation and control of the Superintendency of Banks and other financial institutions."

25. The organised criminal groups involved in money laundering have a rigid hierarchical structure, with division of labour, amassing capital derived from drug trafficking and other illegal activities and laundering it through agriculture and livestock raising as described above, as well as through the

purchase of high value real estate. They also set up companies in the name of intermediaries through whom they acquire real estate and other goods.

26. As a result of the implementation of anti-money laundering measures, the financial institutions would seem to have formulated and submitted suspicious operations reports more effectively.

27. Among the money laundering devices used in Venezuela is that of sale and purchase of goods and real estate such as, inter alia, farms and cattle, and setting up limited liability companies in the names of intermediaries. The financial analysis and criminal investigations carried out on such persons have revealed that they lack adequate wealth or an adequate financial profile for such ownership.

28. Up to now there have been no cases in Venezuela of financing of terrorist activities. But it is important to stress that terrorist financing is criminalised in the Organic Law Against Organised Crime.

1.3 Overview of the Financial Sector and DNFBPs

29. The types of financial institutions falling under Decree 1526 With Force of Law, reforming the general law for banks and other financial institutions and published in Extraordinary Official Gazette 5555 of 13th November 2001, are listed in Article 2 of that Decree: viz. general-purpose banks, commercial banks, mortgage banks, investment banks, development banks, second-tier banks, leasing institutions, money market funds, savings and loan institutions, bureaux de change, financial groups, frontier money changing businesses, credit card issuing and operating businesses, mutual funds, financial operations carried out by bonded warehouses, and savings and loan institutions. The above mentioned Decree defines the financial activities of these institutions, in accordance with the subsystems to which they belong, as follows:

- General-purpose Banks (Article 74). Banks that may engage in all operations which are carried out by specialised banks or financial institutions, under the provisions of the Law on Banks and Other Financial Iinstitutions except those of the second-tier banks.

- Commercial banks (Article 84): their purpose is to carry out operations of financial intermediation and other financial operations and services compatible with their nature, within the limits set out in the Decree Law.

- Mortgage banks (Article 94): these are empowered to grant mortgage loans aimed at the construction sector; to acquire dwellings and release mortgages; as well as carry out financial operations and services compatible with their nature, within the limits laid down in the relevant Act

- Investment Banks (Article 104): their purpose is to act as intermediaries in the placement of capital, to participate in financing of operations in the capital markets, finance production, construction and investment projects, and, in general, carry out other operations compatible with their nature, within the limits set out in the Act.

- Development Banks (Article 110): their main purpose is to foster, finance and promote economic and social activities for specific sectors of the country, compatible with their nature and within the limits of this Decree Law. When the resources are supplied by the National Executive for specific programmes, they may carry out second-tier activities. When their exclusive purpose is to foster, finance or promote operations of microfinance supported by public or private initiatives, in both urban and rural areas, they shall grant smaller loans, with parameters of qualification different from those applying to other banks, savings and loan institutions and financial institutions, and they may engage in all other operations of financial intermediation and financial services compatible with their purposes

- Leasing firms (Article 117): their purpose is to carry out, on a regular and habitual basis, operations of financial leasing, under the conditions governed by this Decree Law, as well as other operations compatible with their nature which have been authorised by the Superintendency of Banks and Other Financial Institutions, and within such limits as that agency may establish.

- Money market funds (Article 126): their purpose is the sale to the public of stock or securities, as well as rights to and shares in the latter, in liquid assets and other funds or methods developed for the purpose, under the conditions of the present Decree Law, except for Trust Funds. They may also engage in such other operations compatible with their nature as may have been authorised by Superintendency of Banks and Other Financial Institutions within the limits set out by that agency.

- Savings and Loan institutions (Article 132): their purpose is to create, maintain, foster and develop conditions and mechanisms favourable to the accumulation of financial resources, mainly savings, channelling them in a secure and profitable manner through any type of credit activity, to families, cooperative societies, craftspeople, professionals, small industrial and commercial businesses, and particularly for the granting of loans to solve the problem of family housing and facilitate the purchase of real estate necessary for development of the society.

- They may also provide services ancillary to or connected with these operations, such as investing in special housing programmes, acting as intermediaries for the channelling of resources to craftspeople and small businesses, transferring funds within the country, accepting the custody of funds, securities and objects of value, providing safe deposit services, acting as Trustees and carrying out wishes, commissions and other such operations.

- Bureaux de Change (Article 139). Their purpose is to buy and sell foreign currency, travellers cheques, and exchange operations related to wire transfers and other such exchange operations compatible with their nature as may have been authorised by the Central Bank of Venezuela, within such limits as may be laid down by this institution. Bureaux de Change are not classified as financial institutions.

- Frontier Exchange businesses (Article 153): their purpose is to buy and sell foreign currency in cash, as well as such exchange operations compatible with their nature as may have been authorised by the Central Bank of Venezuela, within such limits as the Superintendency of Banks may lay down. They may operate only in the frontier areas of the country and are therefore expressly excluded from Island Territories. The Central Bank of Venezuela has the power to license these businesses in each locality of the frontier regions; when the number of vacancies established is complete, no further applications to operate as a Frontier Exchange business are entertained.

- Credit Card issuers and operators: Although these are not defined in the initial Act, it is understood that they may carry out only those activities that are compatible with their nature.

- Mutual Funds (Article 10 of the Decree with the Status and Force of Law that regulates the national mutual guarantee system for small and medium enterprises): their purpose is to guarantee, against written or cash guarantees, reimbursement of loans that may be granted to their members by public or private credit or financial institutions regulated either by the General Law on Banks and Other Financial Institutions, by the law for the national savings and loan system or any other special law, and to grant to such members direct guarantees to enable them to submit bids and tenders, and to provide them with technical assistance and advice in financial or management matters.

- National Mutual Funds (Article 5 of the Decree with the Status and Force of Law that regulates the national mutual guarantee system for small and medium enterprises): their purpose is to

support the operations carried out by Reciprocal Guarantee Associations in their respective economic sectors, by acquiring shares representing the capital of such institutions; granting or opening lines of credit for specific programmes and projects and second-tier financing operations in accordance with such standards, rules and procedures as the National Executive or the Superintendency of Banks may lay down for the purpose.

- Risk Capital Funds (Sub-paragraph 4 of Article 3 of the Decree with Force of Law on risk capital funds and societies): this is a legal person created in the form of a limited liability company, which acts as intermediary between potential investors who are evaluating new investment opportunities in such projects, medium or long term, innovative or related to enterprises, as have a high potential for growth and development, and which require financing. The purpose of a risk capital fund is to provide technical, financial and management support to its members, and thus foster the creation of risk capital associations.

- Risk Capital Associations (Sub paragraph 4 of Article 3 of the Decree with Force of Law on risk capital funds and associations): this is a legal person created as a limited liability company, the purpose of which includes direct and temporary investment in innovative projects, businesses in formation, or in the capital of businesses, under the conditions laid down in this Decree Law, and to offer technical, financial and management support to its members.

- Bonded warehouses financial operations carried out by the bonded warehouses which fall under the provisions of Decree 1526 with Force of Law for the reform of the general law of banks and other financial institutions.

30. The following statistical chart shows the number of public and private institutions regulated by the Superintendency of Banks and Other Financial Institutions

Art 1 (1.3)
Third FATF multilateral evaluation
Number of financial institutions, private and public, regulated by SUDEBAN
at 30-03-2008

Type of Institution	Number of institutions regulated by SUDEBAN		Total
	Private	Public	
General Banks 1_/	21	3	24
Commercial Banks 2_/	15	-	15
Investment Banks	3	1	4
Mortgage Banks	1	-	1
Leasing Businesses	-	1	1
Savings and Loan Institutions	2	-	2
Development Banks 3_/	6	1	7
Banks under Special Laws	-	4	4
Bureaux de Change	24	-	24
Frontier Exchange Businesses	28	-	28
Mutual Funds		23	23
National Mutual Funds		1	1
Risk Capital Funds	-	-	-
Risk Capital Associations		1	1
Branches	45	-	45
Money Market Funds	2	-	2
T o t a l	**147**	**35**	**182**

SOURCE: SUPERINTENDENCY OF BANKS AND OTHER FINANCIAL INSTITUTIONS

GENERAL MANAGEMENT SECTION - STATISTICS AND PUBLICATIONS SECTION

1_/ INCLUDES, AMONG STATE INSTITUTIONS, BANFOANDES, BANCO DEL TESORO AND BANCO AGRICOLA DE VENEZUELA

2_/ INDUSTRIAL DE VENEZUELA, INSTITUTO MUNICIPAL DE CRÉDITO POPULAR (IMCP), BANCO NACIONAL DE VIVIENDA Y HÁBITAT (BANAVIH) AND BANCO DE COMERCIO EXTERIOR, C.A. (BANCOEX).

3_/ BANCO DE LA GENTE EMPRENDEDORA (BANGENTE), BANCO DE DESARROLLO DEL MICROEMPRESARIO, BANCO DEL SOL, BANCRECER, MIBANCO Y BANCO DE DESARROLLO ECONÓMICO Y SOCIAL DE VENEZUELA (BANDES).

31. Non-financial business and professions are legally required to comply with certain money laundering prevention mechanisms in sectors such as: casinos, the building sector, the mining sector and professions such as those of lawyers, notaries and accountants.

32. Casinos are regulated entities as laid down in the Organic Law Against Organised Crime, and they are at present adapting their rules to the broader objectives and guidelines for money laundering prevention. It should also be emphasised that at the present time the Venezuelan construction sector as a whole is studying the possibility of promulgating standards for money laundering prevention, both through the Bolivarian Chamber of Construction and the Venezuelan Chamber of Construction; it is also understood, in this regard, that the Ministry for Basic Industries and Mining has committed itself to regulate the trade in metals and sale of precious stones for purposes of money laundering prevention. As regards professions such as notaries it is important to stress that efforts have been made through the National Directorate of Registers and Notarial Affairs of the Ministry for Internal Relations and Justice to put in place anti-money laundering machinery. In 2007 Circular No.2535676 was issued, ordering all registries and notarial firms to attach copies of the documentation enabling the origin of the funds used for carrying out the different transactions executed by them in the Republic of Venezuela to be determined.

1.4 Overview of Commercial Laws and Mechanisms governing Legal Persons and arrangements

33. Article 112 of the Constitution of the Republic of Venezuela stipulates: all persons are free to engage the economic activities of their choice, with no restrictions other than those embodied in this Constitution and those which may be established by law for reasons of human development, security, health, environmental protection or other areas of concern to the society. The State shall promote private enterprise, guaranteeing the creation and fair distribution of wealth, as well as production of goods and services to satisfy the needs of the population, freedom of labour, enterprise, trade and industry, without prejudice to its power to impose measures for planning, rationalising and regulating the economy and fostering the overall development of the country.

34. The following are legal persons and therefore possess rights and are subject to obligations under the provisions of the Venezuelan Civil Code, published in Official Gazette No. 2990 on 26th July 1982: 1. The Nation and the political entities that it comprises; 2. The churches, of whatever denomination; the universities and, in general, all moral beings or bodies of a public nature; 3. Legally established associations, corporations and foundations of a private nature. They acquire legal personality by the recording of their statutes in the sub-registry office of the department or district in which they were set up, and an authentic copy of their statutes will be kept there.

35. Foundations may also be established by will. In such cases they are considered to have legal existence from the moment of recognition of this act, always provided that when succession occurs the respective registration requirement is complied with.

36. The Commercial Code approved in 1955 and published in Extraordinary Official Gazette No.475, Title II, Concerning the Form of Articles of Association, establishes a series of requirements and formalities for company creation and functioning.

37. Within the overall classification, the following companies may be set up in Venezuela:

1. Sociedad o Compañía anónima (S.A., C.A.). (Limited Liability Stock Company, also known as a Corporation)

2. Sociedad de Responsabilidad Limitada (S.R.L.) (Limited Liability Company)

3. Compañía en Nombre Colectivo. (Company in Collective Name)

4. Compañía 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.

5. Compañía 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.

38. The Companies do not acquire legal personality until they are ubscribed in the relevant Commercial Register. The registration require a series of formalities to complied with, among them:

- The designation of a company name

- The drafting of the Articles of Association and Statutes of the Business. For this legal advice is necessary, i.e. the documents must be drafted and endorsed by a lawyer (a legal professional duly registered in the Instituto Previsión Social de Abogados INPRE and in the College of Attorneys of his respective jurisdiction and who, in addition, is under no restriction concerning the exercise of his profession). The Statutes are the detailed rules which will regulate the industrial and social relations of the company.

39. The legal requirements for each type of company, in particular, are:

For the Sociedad en Nombre Colectivo and Sociedad en Comandita Simple (Art.212 of the Commercial Code)

- Identification and domicile of the partners both "comanditantes" and "comanditarios"
- Company name and objectives of the company
- The identity of the partners authorised to perform acts and sign for the company
- Total of paid up shares and unissued shares
- The time of foundation of the company and the proposed duration of its existence
- The rules under which profits will be distributed and losses absorbed

For the Sociedad Anónima and the Sociedad en Comandita por Acciones (Article 213 of the Commercial Code)

- Name and domicile of the company, its establishments and branches, and of its representatives.
- The type of business in which the company will engage.
- The amount of subscribed capital and paid-up capital, with supporting documents.
- Identification and domicile of the partners, and the number and value of the shares held by each of them.
- Value of credits and other goods contributed
- Rules for drawing up balance sheets and calculating and distributing profit and loss.
- The composition of the Board of Directors and the names of its members, designation of its representative and a list of functions and duties of each of them. In the case of a company in Comandita por Acciones, the name, surname and domicile of the jointly liable partners.
- The number of commissioners.
- In companies set up "de forma sucesiva" (through promoters) the specific advantages or rights granted to the promoters.
- Regulations for the assembly of shareholders, particularly the validity of their deliberations and the exercise of the vote.
- The time of foundation of the company and its duration

For the Sociedad de Responsabilidad Limitada (Art 214 of the Commercial Code)

- Identification, domicile and nationality of the founding partners, and the domicile and purposes of the company.
- Amount of capital. In this case this must include 50% of the contributions in money and the full amount of contributions in kind. Proof of payment must be attached to the Articles of Association

- The amount of capital subscribed by each partner, as well as the proportions contributed in money or in kind, and in the latter case the value attributed to the contributions in kind.
- The number of persons who will manage and represent the company.
- The number of comisarios when the capital is in excess of five hundred thousand bolvars (500,000.00 Bs).
- Rules for drawing up balance sheets and distribution of profit and loss.
- Any permissible special agreements and conditions applicable to the partners.

40. As a general rule, within 15 days following the drawing up of the contract, an example of the Articles of Association and a copy of the statutes of the company must be submitted to the Commercial Registrar. The competent registrar is the one in whose territory the company is domiciled. Once the registrar approves the Articles of Association he will order:

- Its registration and the opening of the file in which all documentation produced during the existence of the company is held.
- The deposit, for a period of six months, of a copy of the registered document in the Commercial Register.
- The required publication must take place within 15 days of grant of the Articles of Association, in the Forensic Gazette of the Commercial Register (Act Concerning Public Register and Notarial Matters, 2001).

41. When the Ministerio Público becomes aware, by any means, of the commission of an act punishable in the public sphere, he shall take measures for the investigation and determination of the commission of such act, together with all the circumstances which may make it so punishable and the responsibility of its authors and other participants; secure the active and passive objects used in its commission. In this regard the Ministerio Público has the power to obtain all information concerning legal persons and their beneficial owners.

42. Article 354 of the National Constitution stipulates that companies formed in foreign countries but whose main commercial or industrial purpose is in the Republic of Venezuela, shall be considered national companies. Companies constituted in foreign countries but having branches or agencies in the Republic of Venezuela which are not their principal purpose, keep their nationality but are considered as being domiciled in Venezuela. These foreign companies shall have a representative in Venezuela, who is considered to be invested with full powers, except the power to alienate the business or concession, unless such power has been expressly conferred on him. All those who do business on behalf of companies constituted abroad and not duly registered in Venezuela are personally and jointly liable for all obligations contracted in the country, without prejudice to the right of third parties making claims upon the company itself, should they wish to do so, and to request the seizure of goods held in its name.

43. The Public Register and Notarial Act, Official Gazette No.5556 of 13th November 2001 states that any document submitted to the Registries and Notarial offices must be drafted by and endorsed by a duly registered attorney authorised to practice. All hard copy of the Registry and Notarial systems will be computerised and gradually transferred to the relevant databases.

44. The purpose of the Commercial Register is:
- Registration of individual and joint business people and other persons indicated in the law, as well as the registration of acts and contracts concerning them, in accordance with the law.
- The registration of the representatives or commercial agents of foreign public establishments or commercial firms constituted abroad, which carry on business in the Republic.
- The legalisation of the books of business people.
- The receipt and publication of the balance sheets and periodic reports of businesses.
- Centralisation and publication of information in the Registry.
- Registration of any other act indicated in the law.

45. The registration of an act in the Commercial Register and its subsequent publication, when the latter is required, gives rise to a *juris et de jure* presumption of knowledge by all of the registered act.

1.5 Overview of strategy to prevent money laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

46. The Republic of Venezuela, with a view to combating money laundering and financing of terrorism, has signed and ratified the Palermo Convention. For this reason, the National Assembly promulgated in 2005 the Organic Law against Organised Crime. This Act embodies a range of predicate offences for money laundering, and also criminalises it as a stand-alone offence.

47. Article 7 of the Act criminalises the financing of terrorism as follows: "Any person who belongs to, finances, acts or collaborates with armed gangs or organised criminal groups for the purpose of causing havoc, disasters or fires, or exploding mines, bombs or other explosive devices, or subverting constitutional order and democratic institutions, or seriously disturbing public peace, shall be liable to imprisonment for ten to fifteen years".

48. The promulgation of the Law against Organised Crime, together with the criminalisation of money laundering as a stand-alone offence, has enabled the number of investigations relating to money laundering to be increased. This can be seen from the information supplied in the following table:

Active: **Year**	**No of investigations into money laundering**	**No of guilty verdicts**	**Number of Letters Rogatory**
2004	**196**		**04**
2005	**92**		**10**
2006	**68**	**1**	**07**
2007	**190**	**-**	**04**
2008	**77**	**-**	**12**

49. At the present time the Government of the Republic of Venezuela is firmly committed to including designated non-financial professions into money laundering and terrorist financing prevention. Rules for prevention are therefore being formulated for application in the mining sector (jewellery and precious metals), the construction sector, lawyers' associations, the sector of bingo halls and casinos and in the area of registration and notarial acts).

b. Overview of strategy to prevent money laundering and terrorist financing

50. Ministry of Internal Relations and Justice: including central international cooperation authorities: This is the ministry responsible for State security. Through the National Anti-Narcotics Office it conducts actions relevant to the strengthening of prevention of laundering of the proceeds of drug trafficking and related offences. In addition, the Decentralised Agency against Organised Crime has been created within it. Another of its responsibilities is to promote judicial security of the population through the agencies responsible for the administration of justice, registers and notarial matters, documents, identification and human rights of the citizenry. It also works to speed up the process of passage of laws by the National Assembly.

51. Ministry of External Relations: this ministry is governed by the Constitution of the Republic of Venezuela and various laws and regulations. Among its responsibilities are: the international activities of the Republic, the conduct of relations with other States, representation of the Republic in international organisations, conferences and any other international activities, unless, in the latter case, the President of the Republic confers the task of representation to another ministry or public official, as expressly provided in the Act, or unless this is required by the treaties to which the Republic is signatory. It is also responsible for negotiation, signature, ratification, acceptance, approval, adhesion to, reservations, extensions of declarations, pacts, agreements and other

international instruments, except in cases in which the Act may expressly confer the task of negotiation to another ministry. The Ministry of External Relations is also responsible for international extradition requests, letters rogatory, commissions and requests for enforcement of legal decisions and verdicts.

52. The Ministry responsible for the law governing legal persons and legal arrangements: The Judicial Power is responsible for the administration of justice. It comprises the Supreme Court of Justice, other courts as determined by law, the Ministerio Público, the Public Defender, criminal investigation agencies, legal officials and auxiliaries, the prison system, alternative means of justice and attorneys licensed to practice.

53. Committees or other bodies for coordination of AML/CFT activity: Strategies for prevention, prosecution and control of money laundering are coordinated by the National Anti-Narcotics Office, which is empowered by the Organic Law against the Illicit Traffic and Consumption of Narcotic Substances to:

- Coordinate, at the strategic level, with the competent bodies, strategies for the administration of health, customs, control and prosecution of laundering and money and other economic assets.
- Coordinate, at the strategic level, with the Financial Analysis Unit, the Ministerio Público, the police forces and the armed forces involved in intelligence, criminal investigations into and repression of the production and traffic in illicit drugs, and prevention, control, prosecution, and repression of money laundering; and supervise the functioning of these agencies. In this regard, the Ministerio Público, the police and the armed forces, the Financial Analysis Unit and the agencies that regulate institutions for the purpose of preventing and controlling money laundering, must be provided with all the information and data which may be necessary for the exercise of their functions.
- Direct and coordinate the National Anti-Money Laundering Networks.
- Advise the ministry responsible for external relations with regard to international relations on this subject, and also to represent, together with such ministry, the national government abroad. In this regard it shall promote international co-operation against the illegal traffic and consumption of substances and chemicals, and money laundering, with a view to achieving regional integration against the illegal trans-national traffic, and, together with the ministry responsible for external relations, promote international conventions, treaties, and agreements against the illegal traffic and consumption of substances and chemicals, as well as money laundering.

54. Criminal justice and operational agencies:

1. Financial Intelligence Unit (FIU): This is the agency empowered by the General Law of Banks and other Financial Institutions to receive, analyse, and process Suspicious Operations Reports from the Venezuelan financial system. It also transmits to the Ministerio Público the results of its financial analysis and expert study, to enable the latter to initiate the necessary investigations together with the respective investigative agencies.

2. Law enforcement agencies, including the police and other related investigative bodies: The Scientific, Criminal and Criminalistic Investigation Corps has, within its internal structure, an anti-money laundering division, which carries out investigations into this offence as authorised by the competent authorities.

3. Prosecutorial authorities, including bodies specialised in confiscation: The Ministerio Público is responsible for criminal action on behalf of the State. It is a single and indivisible agency and falls under the direction and responsibility of the Fiscal or the Fiscal General de la República (National Public Prosecutor) who shall exercise his functions directly or through the officials duly empowered either by delegation or in circumstances determined by the Act. The prosecutor of the Ministerio Público is responsible for directing the criminal prosecution process. In cases

when criminal investigation is put in train for one of the offences embodied in the Organic Law against the Illicit Traffic and Consumption of Narcotics and Psychotropic substances or the Organic Law against Organised Crime, the prosecutor of the Ministerio Público requests authority from the controlling judge for the provisional seizure of movable or immovable assets or blockage of accounts, and the assets are placed at the disposal of the National Anti-Narcotics Office through the Directorate of Court-Assigned Assets, the body responsible for custody and administration of such assets. Once a guilty verdict is handed down, the assets become State property definitively.

4. Customs: The National Customs and Taxation Service (SENIAT) is at present carrying out the necessary coordination for the approval of an internal legal framework to enable anti-money laundering recommendations to be applied in its various operations.

5. As necessary – specialised anti-drug agencies, intelligence agencies or security services, or tax authorities: the National Anti-Narcotics Office is the lead agancy of the Anti-Narcotics Policy of the Republic of Venezuela. It is part of the Ministry for the Popular Power for Internal Relations and Justice; among its legally assigned functions are:

   - To implement the public policies and strategies of the national government in the operational areas of control, prosecution, intelligence, repression, prevention, treatment, rehabilitation, social re-adaptation and international relations.
   - To direct and coordinate the National Networks against Money Laundering, against the Traffic and Consumption of Narcotic and Psychotropic substances, the Community Social Networks and the Annual Operational Plan. The Anti-Money Laundering Network is composed of the regulatory agencies, the financial analysis unit, the Ministerio Público, the criminal investigation agencies, and the criminal couSTR, represented by the Criminal Chamber of the Supreme Court of Justice, and other State bodies which may be considered necessary and relevant for the efficiency and effectiveness of the Network.
   - To foster and provide advice in development of training and educational programmes for specialists in this area.
   - To develop, in collaboration with business, and trade union associations and churches of all denominations, social prevention programmes.
   - To create such committees or task forces as it may consider useful in the achievement of its goals. These committees or task forces shall operate under the direction and supervision of the relevant decentralised agency. For this purpose, it shall request the cooperation of public and private sectors or specialists in the field. It shall also request the mandatory attachment from criminal investigation bodies of serving police officers to act, as necessary, as liaison with those forces.
   - To advise the ministry responsible for external relations on international relations in this field and also to represent, together with such ministry, the national government abroad. In this regard it shall foster international cooperation against the illicit traffic and consumption of substances and chemicals, in accordance with the law, as well as money laundering, with a view to achieving regional integration against this illicit trans-national industry. Together with the ministry responsible for external relations, it shall also promote international conventions, treaties and agreements against this traffic and against money laundering.
   - To coordinate, at the strategic level, with the Financial Analysis Unit, the Ministerio Público, the police and armed forces bodies responsible for intelligence, criminal investigation and repression of production of and traffic in drugs and prevention, control, prosecution, repression of money laundering, and to supervise the functions of such agencies. In this regard, the Ministerio Público, the police and the armed forces, the Financial Analysis Unit and the agencies which regulate institutions for the purpose of preventing and controlling money laundering, must obligatorily provide it with all the information and data that may be required for the fulfilment of its functions.
   - To coordinate, at the strategic level, with the competent agencies, the administrative aspects of health, customs, control and prosecution of laundering of money and other economic

assets. To coordinate with the competent agencies of supra-governmental organisations, such as the Organisation of American States and the United Nations, the various events for technical collaboration in the area, as well as with other regional bodies in the field.

- To lay down the technical criterion for standards and guidelines in overall social, traffic and consumption prevention programmes and programmes for prevention of money laundering.

55. Special groups or commissions on money laundering, financing of terrorism or organised crime:

1. Financial sector bodies:

- Ministries or agencies responsible for the granting of licences, registration or any other form of authorisation for financial institutions. The body responsible for granting licences or authorising the operation of financial institutions is the Superintendency of Banks and Other Financial Institutions. The rules and regulations it establishes or to which the financial institutions are subject are to be found in the General Law of Banks and other Financial Institutions, the recent amendment to which occurred on the 13th November 2001 and is published in Extraordinary Official Gazette No.5555.
- Supervisors of financial institutions, including supervisors of banks and other institutions of credit, insurance, securities and investment: The Superintendency of Insurance is the agency responsible for regulating the activities and operations of insurance, reinsurance and initial financing companies; the National Securities Commission regulates the operations carried out in the stock market sector through stockbrokers and other regulated entities in the capital market.
- Supervisors or authorities responsible for monitoring and insuring AML/CFT compliance by other types of financial institutions, especially Bureaux de Change and money transfer businesses: The Superintendency of Banks and other financial institutions is the body responsible for monitoring and insuring AML/CFT compliance on the part of other types of financial institutions such as Bureaux de Change. Also, the authorities state that since 2003 exchange control exists in Venezuela and any transfer of money abroad is governed by the body responsible for foreign exchange policy, which is the Foreign Exchange Administration Commission (CADIVI) and these operations are carried out through exchange operators (financial institutions and Bureaux de Change): which are subject to customer due diligence in accordance with Resolution 185-01 "Standards for Prevention, Control and Prosecution of Money Laundering Applicable to Institutions Regulated by the Superintendency of Banks and other Financial Institutions".
- Central Bank: The Central Bank of Venezuela is governed by the Central Bank Act.

2. Designated Non-Financial Businesses and Professions and other issues

- The body responsible for supervision of casinos is the Ministry of the Popular Power for Tourism, under which are the national commission for casinos, bingo halls and slot machines.
- Supervisor or other competent authority, or Self-Regulatory Organisation, (DNFBPs): The construction sector is classified as a Regulated Entity by the provisions of the Organic Law against Organised Crime.
- Self-Regulatory Organisations (SRO) for professionals such as lawyers, notaries and accountants: a body responsible for self-regulation of registrars and notaries in Venezuela is Servicio Autónomo de Registros y Notarias (Independent Registry and Notarial Service).

c. Progress since the last mutual evaluation

56. The Organic Law against Organised Crime promulgated by the National Assembly and published in Official Gazette No.38,281 of 27th September 2005 embodies principles and concepts included in the United Nations Convention Against Trans-National Organised Crime (Palermo 2000), the purpose of which is to promote international cooperation for the efficient prevention and combating of trans-

national organised crime, by broadening the range of crimes related to money laundering and making it a stand alone offence.

57. The Bank for Economic and Social Development (BANDES), a State body, the main purpose of which is to support development of the productive sector through programmes of micro-credit, created a Compliance Department to ensure implementation of money laundering prevention mechanisms.

58. With a view to incorporating the greatest number of stakeholders in the national economy into the implementation of anti-money laundering prevention mechanisms, the National Anti-Narcotics Office, through the Anti-Money Laundering Directorate, has held interagency meetings with: the Venezuelan Construction Chamber, the Foreign Exchange Administration Commission (CADIVI), the Ministry for Tourism (MINTUR), the National Casino, Bingo Hall and Slot Machine Commission, the Venezuelan Central Bank (BCV), the Ministry for the Community Economy (MINEC), the Venezuelan Shipping Registry, the Cámara Bolivariana de la Construcción (Bolivarian Construction Chamber), the Colleges of Attorneys of the Capital District and the State of Miranda, College of Public Accountants of the Capital District, the Colleges of Graduates in Administration of the Capital District and the State of Miranda, the National Directorate of Registers and Notarial Matters, IPOSTEL, the Venezuelan Chamber of Commercial Centres (CAVECECO), the Venezuelan Real Estate Chamber, Dealers in Metals And Precious Stones, Independent Professionals (Attorneys, Managers and Accountants), the Central Bank of Venezuela (BCV) and Activities Carried Out By Natural And Legal Persons With a View to the design and Construction Of Housing Developments; as well as with Real Estate.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1. Description and Analysis[1]

Recommendation 1

59. Venezuelan law classifies and penalises the offence of money laundering under the name of Legitimación de Capitales (Legitimation of Capitals). It brings together the basic elements and modalities established in the 1988 United Nations Conventions against the Illicit Traffic of Narcotic and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Trans-National Organised Crime (Palermo Convention). The classification and criminalisation, as a stand-alone offence, of money laundering is contained in Article 4 of the Organic Law Against Organised Crime (LOCDO), promulgated and published in the Official Gazette No.5,789 of 26th October 2005.

60. An innovative element in the Organic Law Against Organised Crime is its Article 5, which stipulates that these crimes may be committed or carried out by negligence, carelessness, lack of expertise, or disregard of the law by employees or management of the regulated entities covered by Article 43 of the Act. Regulated entities are: banks, businesses, natural persons and financial institutions; insurance and reinsurance companies, reinsurance brokers; limited liability stock companies; mutual investment funds; management companies, stockbrokers, intermediaries, stock broking companies, money transfer agents and other natural or legal persons providing public services in the field; natural or legal persons engaged in professional or business activities, such as: gambling houses, bingo halls or legally established casinos; those involved in real estate promotion, purchase or sale; construction firms; jewellers and other traders in metals and precious stones; hotels and businesses and tourist centres licensed to change money; traders in ships, aircraft and motor vehicles; dealers in motor

[1] Note to Evaluators: The description and analysis of all recommendations must include an analysis of efficiency and relevant statistical data

vehicle parts and used motor vehicles; dealers in antiques, objets d'art or archaeological items; merchant shipping businesses; foundations, civil associations and other non-profit organisations.

61. The Organic Law against Organised Crime embodies a wide range of predicate offences for money laundering. Article 4 of the Act stipulates: "Anyone who, alone or through an intermediary, is the owner or possessor of money, goods, possessions or profits directly or indirectly derived from illicit activities, shall be liable to a term of imprisonment from eight to twelve years and a fine equivalent to the value of the illegal increase in wealth." The phrase "illegal activities" embraces all the offences in the aforementioned Act in which property is involved, either as instruments of crime or result or proceeds of it. This is refined by sub-paragraph 3 of Article 4 which is worded: acquisition, possession or use of proceeds of any offence included in this Act. Article 5, referring to Article 43 and Article 16 of the Act lists 17 types of predicate offences for Money Laundering.

62. Because of their status as illegal activities, the offences referred to in the following Acts: Organic Law against the Illicit Traffic in Narcotic and Psychotropic Substances (LOCTISEP), the Law against Corruption and the Law against Exchange Offences, are also predicate offences.

63. The concept of limitation does not apply in Venezuela, and therefore, in general, all the offences set out in the Organic Law against Organised Crime (LOCDO) constitute predicate offences for money laundering, as well as the offences referred to in the other Acts aforementioned. The penalty for all the offences included in the latter Act is usually higher than a custodial sentence of one year.

64. In particular the LOCDO included as predicate offences specifically to the following categories of offences:
Illicit Trade in metals, precious stones and strategic materials (art3.)
Conspiracy (art 6).
Terrorist Financing and Terrorism (Article 7)
Arms trafficking (art. 9)
Illicit Genetic Manipulation (art 10)
Illegal trafficking of organs (art. 11)
Assassination (murder) (article 12)
Obstructing the administration of justice (Article 13)
Pornography (s. 14)
Obstruction of freedom of trade (s. 15)
Crimes of organized crime (Art. 16)
Traffic or diversion of precursor chemical
The import, export, manufacture and trade in illicit arms and explosives.
Fraud and other types of fraud.
Banking or financial crimes.
Burglary and theft.
Corruption and other crimes against the public interest.
Environmental crimes.
Robbery, theft or illicit trafficking of motor vehicles, vessels, aircraft, ships, trains of all kinds, their parts or parts.
Smuggling and other crimes in customs and tax nature.
The counterfeiting of currency and public credit titles.
Trafficking in persons and migrants.
Illegal deprivation of individual liberty and kidnapping.
Extortion.

65. It should also include in this list the offences of illicit drug trafficking, corruption and illicit exchange.

66. An analysis of the legislation as opposed to the categories of offences established by FATF verifies specifically the absence of the offences of piracy, misuse of confidential or privileged information and market manipulation, and piracy or counterfeiting of products.

67. According to interviews and following the text of the regulation, the previous conviction of predicate offence is not required to be able to judge for an offence of money-laundering. Nor can there limit to prosecute those who committed the crime and the precedent of legitimizing assets.

68. The legal framework that enables action to be taken against illegal acts affecting another State and which in one way or another are related to Venezuela, is based on Article 152 of the Constitution of the Bolivarian Republic of Venezuela, which stipulates: "The international relations of the Republic are governed by the objectives of the State as regards the exercise of sovereignty and the interests of the people; they are governed by the principles of independence…….**cooperation**, with regard to human rights…… The Republic shall maintain the firmest and most decisive defence of these principles and of democratic practice in all international bodies and institutions".

69. The LOCDO enables those persons who have committed the predicate offence in other countries to be prosecuted or penalised for money laundering, as established in Article 31 of the Act: The following persons are liable to prosecution and shall be punished in accordance with this Act: Venezuelans or foreigners who commit in a foreign country any of the offences referred to in this Act prejudicial to the integrity or security of the Bolivarian Republic of Venezuela. This principle of extraterritorial jurisdiction shall be applied unless the accused person has been prosecuted in another country and served his sentence. In addition, Article 59 of the Act sets out guidelines for international cooperation in suppressing organised crime and dismantling its organisations: by identifying the individuals engaged in these criminal activities, locating them and assembling the necessary evidence for their prosecution; depriving these organisations of the proceeds of their illegal activities by means of the provisional measures of seizure, freezing or confiscation, etc.

70. The crime of money laundering in Venezuela also applies to those who commit the underlying offence. At the same time Article 29 of the LOCDO and Articles 37 and 39 of Organic Code of Criminal Procedure (COPP), adopt the Principle of Opportunity and, without defining it as such, establish it as a special investigative technique which enables better results to be obtained in investigations into these offences. It states that money laundering does not necessarily apply to all the persons involved. The opportunity principle is based on the total or partial suspension of criminal proceedings in favour of the accused when, in matters relating to organised or violent crime, the accused collaborates usefully in the investigation, provides essential information to prevent it continuing or to prevent others from being committed, helps to clarify the case under investigation or others related to it, or supplies useful evidence against other accused, always provided that the penalty for the offence for which prosecution is suspended, is less than or the same as the penalty for the offences, the prosecution of which is assisted or the continuation of which is avoided.

71. Besides, the TSJ takes account of the crime of association established in Article 6 of the LOCDO, which states: "Association: Whoever takes part in an organised criminal group for the purpose of committing one or more of the offences included in this Act shall be punished, for the association alone, with a term of imprisonment of four to six years". Likewise, Article 80 of the Venezuelan Criminal Code defines the attempt as a crime, as follows: "As well as the consummated offence or misdemeanour, an attempt or foiled attempt shall be punishable". It stipulates that "There is an attempt when, for the purpose of committing a crime, someone has begun to carry it out with the appropriate means and has not achieved all that is required for its consummation, for reasons independent of his will".

72. It also states that " immediate collaborators, accomplices, accessories and all who provide or lend assistance or aid or instruction, or provide means for the commission of any offence under this Act, shall be punished in accordance with regulations established by the Code Criminal. "(Article 17 of the LOCDO)

Recommendation 2

73. The offence is deliberate by its very nature, and refers to "anyone who intends to commit the offence of money laundering". Regarding evidence, for the purpose of obtaining a conviction for money laundering, intentionality may be inferred from the objective circumstances of the case. This is possible because of the independent nature of the offence of money laundering, added to the possibility of bringing circumstantial evidence, which is deduced from the admissibility criterion defined in Article 198 of the Organic Code of Criminal Procedure (COPP), which says "all the facts and circumstances of interest for the correct solution of the case may be proved by any type of evidence covered by the provisions of this Code, and not expressly forbidden by law". Likewise, article 22 of the COPP stipulates that "evidence shall be weighed by the court in accordance with sound judgement, abiding by the rules of logic, scientific knowledge and the lessons of experience." From this, as mentioned above, it may be considered that *the element of intentionality is adequately inferred from multiple objective circumstances, such as:* possession, acquisition, use, concealment, conversion, transfer or conveyance, by any means, of property, capital, possessions, profits or surpluses for the purpose of concealing or disguising the origin thereof.

74. Article 26 of the Organic Law against Organised Crime deals with the criminal liability of legal persons, with the exclusion of the State and its enterprises, who are responsible for criminal acts related to organised crime committed on their behalf, by their management or representatives. In the case of legal persons belonging to the banking or financial system which intentionally launder money, the Court shall order an investigation, always safeguarding the rights of depositors. The Act therefore assigns civil and administrative liability to legal persons involved in money laundering. This provision is reinforced by Articles 96, 97, 209, and 210 of the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances.

75. Venezuelan criminal law therefore embodies all three types of sanctions: criminal (imprisonment), civil (disqualification) and administrative (fines), such as closure of businesses, preventive closure of any location, establishment or business, club, casino, nightclub, engaged in or involved with organised criminal groups. These are administrative measures within a criminal investigation (Articles 19, 20 and 21 of the Organic Law against Organised Crime). Such penalties may be either principal or accessory.

Effectiveness of Recommendations 1 and 2

As regards effectiveness of application of the recommendations, two sets of statistical data are available, one set of figures supplied by the Supreme Court, and on the other by the Ministerio Publico. The first relate to

76. concern 45 cases[2] brought before the courts for money laundering and which are mainly related to traffic and consumption of narcotic and psychotropic substances, 23 of which resulted in guilty verdicts and 22 are still in progress.

77. In addition, the TSJ supplied data on 4 decisions of the Court of Cassation on money laundering cases heard during the period of the evaluation, as follows:

Years	Cases/Cassation	Judgement Upheld
2004	1	1
2005	1	1
2007	1	1
2008	1	1
Total	4	4

78. It is not known which of these verdicts were handed down under the 2005 LOCDO.

[2] Source: TSJ summary

79. For its part, the Ministerio Publico stated that since the LOCDO has been in force no ML convictions have been obtained; this suggests that the four cases reported by the TSJ would have been decided under the previous Act. The Ministerio Publico goes on to say that despite618 investigations having been launched on the basis of STRs submitted by the FIU, no conviction has been obtained. It was also maintained in the interviews that all the predicate cases of drug trafficking and consumption include investigation and trial of money laundering. However, no institution supplied any overall figures on the number of persons arrested, cases, or confiscations for these offences.

Year	N° of ML investigations	N° of convictions
2004	**196**	
2005	**92**	
2006	**68**	**1**
2007	**190**	**-**
2008	**77**	**-**

80. This table, supplied by the Fiscalia, reports a conviction in 2006 under the previous Act. There are therefore a maximum of 5 convictions, and none under the Act at present in force. This is also in the light of the fact that in the last four years around 623 cases referred by the FIU have been processed.

81. The statistical information is definitely not well ordered, which makes it difficult to deduce the effectiveness of criminalisation and sanction.

82. Finally, the penalties set out in the Act seem to be proportionate, effective and dissuasive. The Act provides for prison terms of eight to twelve years and fines equal to the value of the illicit gains.

83. To correctly understanding of the information provided by the Public Ministry, there have been no rulings yet for implementation of the current LOCDO which would suggest that law enforcement would experience some problems in terms of their effectiveness. Despite this, the representatives of the Public Ministry and the Judiciary understand that the law is accurate and would not preclude effective enforcement.

2.1.2 Recommendations and Comments

84. It is necessary to cover all categories of predicate crimes defined by the FATF.

85. It would be useful for the National Anti-Narcotics Office (ONA), as the agency directing the enforcement and follow up of anti-money laundering and terrorist financing policies and mechanisms, to establish, in agreement with the other member institutions of the National Anti-Money Laundering Network and the Network Against the Traffic and Consumption of Narcotic and Psychotropic Substances, the types of statistics that should be recorded, in this case, of the investigations carried out by the Ministerio Público, the Scientific, Criminal and Criminalistic Investigation Corps (CICPC), the investigative wings of the Guardia Nacional Bolivariana (Bolivarian National Guard) and of the decisions of the courts.

86. During the on-site visit the institutions described did not submit coherent statistics, except for the TSJ, which submitted and justified the data on its activity concerning decisions handed down in ML and FT cases. The Ministerio Público stated that since the LOCDO has been in effect it has obtained no ML verdicts, despite the fact that it launched 618 investigations of Suspicious Transaction Reports (STRs) from the FIU. It was also stated during the interviews that all the underlying cases of trafficking in and consumption of narcotic and psychotropic substances include investigation and

prosecution for money laundering, including the 623 drug cases mentioned in the previously submitted Mutual Evaluation Report. Nevertheless, no institution provided general results on the number of persons arrested, cases, or confiscations for these offences.

87. Venezuela has the necessary legislation for prevention and punishment of ML and FT. However, the institutions concerned need to apply it adequately, in accordance with the spirit in which it was adopted.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating [63]
R.1	**LC**	Lack of inclusion of some predicate offences. Problems regarding the effectiveness of the regulation, evidenced by the lack of rulings.
R.2	**LC**	Despite the number of investigations, there are not enough statistics on convictions to verify the effectiveness of criminalisation and sanctions. No reports of convictions of legal persons have been received.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

88. The offence of terrorist financing is governed by Article 7 of the Organic Law against Organised Crime as follows: "Anyone who belongs to, finances, acts or collaborates with armed gangs or organised criminal groups for the purpose of bringing about havoc, catastrophes, or fires, or exploding mines, bombs or other explosive devices or subverting constitutional order and democratic institutions or seriously disturbing public peace shall be liable to imprisonment for ten to fifteen years".

89. In addition, the following Article (8) includes an additional offence, aggravated according to the means of perpetration, as follows: The penalty shall be increased to eighteen to twenty years' imprisonment when the offence referred to in the previous Article is committed: with concealed weapons or with the use of civil or military uniforms as disguise; with the use of chemical or biological substances capable of causing physical damage, or by means of computer systems which alter the information systems of the institutions of State; against children or adolescents; with the use of nuclear, biological, bacteriological or similar weapons; against ships, boats, aircraft or motor vehicles in public use; against hospitals or centres of assistance, or the premises of any public service or State enterprise; against the authorities of Supreme Powers of the State; against persons belonging to the diplomatic corps accredited to the country, their premises or representatives; or against the representatives of international organisations.

90. The reference, in relation to this aggravating factor, to the effect that the penalty will be increased "when the crime referred to in the previous Article is committed" with hidden weapons and other methods, might give the impression that it is not referring to financing of terrorism. It might therefore be interpreted that the terrorist act has to be committed in order for its financing to be penalised, and that it would be for the judges to interpret this fact.

91. The offense while titled in law as an offence of Terrorist Financing is so broad that it also covers terrorist activities to punish terrorists who "act" with these organizations.

[63] These factors are only required to be set out when the rating is less than Compliant

92. However, the penalization of the offence would not cover the case of the financing of individual terrorists as required by Special Recommendation II. It only covers the criminal organizations or armed groups for terrorist purposes (including the financing of terrorist organizations and terrorist acts).

93. Regarding the notion of if the offence covers both the collection of funds and the provision of same, although legally it may be a bit general to establish as an offence that which "finances", the team shares the vision of the authorities in understanding that both behaviors are included.

94. The analysis of the law does not suggest the need to commit the terrorist act to obtain a conviction for this offense. The law establishes that the financing of criminal organizations whose purpose is to carry out terrorist acts, does not require this harmful result to fall into the conduct of terrorist financing.

95. While the definition of terrorism or terrorist acts established by law is not a reflection of the definition of terrorism provided by the UN Convention, it will include the activities that arise in this international instrument, in Venezuela, according to this law would punish those who finance organizations for the purpose of "causing havoc, disaster, fire or blowing up mines, bombs or other explosive devices or to subvert the constitutional order and democratic institutions or seriously disrupt public peace ".

96. The criminalisation of the offences in the previous Article is supplemented by sub-paragraph 4 of Article 2 of the same Act, concerning the definition of funds, which is specifically restricted to the definition laid down in sub-paragraph (d) of Article 2 of the UN Convention against Trans-National Organised Crime, which defines property as: "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets". It is considered that this definition complies with the requirements of Article 1 (1) of the UN International Convention for the Repression of the Financing of Terrorism, in that it gives a broader description of the concept of funds but one which is consistent with the provisions of the LOCDO.

97. Terrorist financing is a predicate offence, according to the Venezuelan authorities, and particularly the opinion of the Supreme Court of Justice (TSJ), sustained by Article 6, 7 and 8 of the LOCDO, which lay down the association and modalities of the offence. Nevertheless, cases falling within the definition of terrorist financing should, as a matter of priority, be investigated and prosecuted under this heading and not as underlying offences, in view of the greater danger they represent and in view of the fact that the penalty is greater.

98. The principle of extraterritoriality applies to this offence, under Article 31 of the LOCDO, which stipulates that the LOCDO enables those persons who have committed the predicate offence in other countries to be prosecuted or penalised for money laundering, as established in Article 31 of the Act: The following persons are liable to prosecution and shall be punished in accordance with this Act: Venezuelans or foreigners who commit in a foreign country any of the offences referred to in this Act prejudicial to the integrity or security of the Bolivarian Republic of Venezuela. This principle of extraterritorial jurisdiction shall be applied unless the accused person has been prosecuted in another country and served his sentence. In addition, Article 59 of the Act sets out guidelines for international cooperation in suppressing organised crime and dismantling its organisations: by identifying the individuals engaged in these criminal activities, locating them and assembling the necessary evidence for their prosecution; depriving these organisations of the proceeds of their illegal activities by means of measures of provisional seizure, freezing or confiscation, etc. Articles 59 and 60 of the same special law lay down guidelines for international cooperation, pursuant to the Constitution of the Republic and the International Treaties ratified by the Venezuelan State.

99. On the other hand the authorities also understand that an offence of terrorist financing would be commited by the person within Venezuela who collects or provides funds for terrorist organizations located in a foreign country.

100. When the person under investigation is outside the country, extradition must be sought, and if this is not possible for any reason, the TSJ states that the case may not be heard in the absence of the accused. Only provisional measures, to ensure availability of the assets, may be taken.

101. According to the authorities of the Judicial Power (TSJ) and the governing body for ML and FT prevention and correction policies, prosecution may be brought for association or intent to commit FT, under Articles 6 and 7 of the special law that governs it, and because it is crime against the public weal. In addition, this law provides for civil and administrative liability of legal persons involved in these offences. This is in Article 26. At the same time, Venezuelan criminal law recognises three types of sanctions: criminal (imprisonment), civil (disqualification) and administrative (fines), such as closing of establishments, preventive closing of any premises, establishment or business, club, casino, nightclub, engaged or involved with organised criminal groups. These would be administrative measures within a criminal investigation (Articles 19, 20, and 21 of the Organic Law against Organised Crime). These penalties, depending on the verdict, may be principal or accessory.

Effectiveness of Special Recommendation II

102. During the on-site visit the authorities of the Ministerio Público stated that during the period under evaluation they had investigated and charged before the courts 24 cases of terrorism. However, they did not provide statistics on these cases regarding the number of persons arrested, confiscations, or the results of the trials. The Supreme Court of Justice however provided statistics on 36 cases of terrorism of which 35 gave rise to guilty verdicts and one is still in progress.

2.2.2 Recommendations and Comments

103. Although terrorist financing is clearly recognised as an offence in the Organic Law against Organised Crime (LOCDO), the authorities of the Bolivarian Republic of Venezuela should take into account that, if this law were to be amended, the definition and modalities of FT should be broadened, to concur in all its aspects and with greater precision with CFATF Special Recommendation II.

104. The present definition is included in the definition of terrorism. It would therefore be desirable to define it separately, with a link not only to terrorist acts but also to terrorist organisations and individual terrorists.

105. If at any time the special law were to be amended, the concept of terrorist financing could be adapted, for example to strengthen the link between this concept and definitions of intent, intention, legal persons, criminal, civil and administrative penalties and evidence, which are now only included in the law in a general way.

106. It was not possible to verify the effectiveness of this concept owing to the lack of information on specific cases of financing of terrorism.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	**A few problems in description of the offences, which could cast doubt on the independence of the offence of FT.** **Although there are cases of terrorism, no case of financing of terrorism is known** **Lack of penalization for individual terrorist financing**

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 and 32)

2.3.1 Description and Analysis

107. Concerning the recommendation that the laws should include provisions for confiscation of property that has been laundered or which constitutes: a- proceeds of; b- means used in and c- means attempted to be used in any offence of money laundering, financing of terrorism or other predicate offences, and property of equivalent value, the authorities state that Articles 19, 20, 21 and 22 of the Organic Law against Organised Crime make provision for confiscation of property, inputs, raw materials, capital, equipment, machinery, among others, that are proceeds of the offences committed by members of organised criminal groups, and also for the seizure of ships, aircraft or land transport vehicles, and blocking or unblocking of bank accounts, such property and funds to be devoted by the State to the control, prosecution, prevention, rehabilitation, social re-insertion and repression of the offences committed by organised crime, including money laundering and terrorist financing.

108. Article 19 stipulates that a necessary accompaniment to the main penalty is the seizure or confiscation of the property, inputs, raw materials, machinery, equipment, capital or products and profits derived from crimes committed by members of an organised criminal group, even if they are in possession of or the property of intermediaries or third parties not taking part in these offences, whether they are natural or legal person. A further accessory penalty shall be the confiscation of the instruments, equipment, weapons, vehicles and effects with which the punishable offence was committed.

109. It can therefore be seen that the legislation provides the possibility of securing property derived, directly or indirectly, from the proceeds of crime, and to all property referred to whether or not it is in the hands of, or belongs to, an accused person or a third party.

110. This power embodied in Article 23 allows the judges at the request of the Public Prosecutor to order the annulment of acts to impede the identification, seizure or confiscation of goods or products related to the crime. The article provides that one "may testify as an intermediary, to natural or legal persons appearing as owners or proprietors of money, assets, securities, shares, securities, real estate, personal, movable or immovable property, where there exists sufficient evidence of purchase with the proceeds of organized crimal activities "and thus rolls back the effects of alienation and proceeds with the seizure of property.

111. Venezuela can not seize assets of corresponding value, although it is possible on goods unrelated to the unlawful order to recover the fine that can be set in conjunction with a sentence of imprisonment upon conviction.

112. Article 20 of the Act also refers to confiscation of vehicles, with the proviso in its paragraph 3 concerning owners or third parties acting in good faith.

> *"...Shall be exempted from such measures when there are circumstances demonstrating the lack of intention on the part of the owner...".*

113. The next article of the Act (Article 21), provides for provisional blocking of bank accounts:

> *"Article 21. In the course of a criminal investigation for any of the offences committed by organised crime, the Prosecutor of the Ministry may request the controlling judge to authorise the preventive blocking of bank accounts belonging to any of the members of the group under investigation, as well as the preventive closure of any premises, establishment, business, club, casino, nightclub, show or industry related to such group...".*

114. As already mentioned, the laws, as required by Recommendation 3.1, must take measures for the confiscation of laundered property or property which constitutes proceeds of crime, instruments used in its commission and intended to be used in its commission. These provisions are directed

specifically to any offence of money laundering, terrorist financing or predicate offences, and confiscation of property of equivalent value.

115. Nevertheless it is important to note that taking the laws of the country as a whole, it may be concluded that the possibility of preventive securing of property exists, and is derived from the Organic Code of Criminal Procedure, Article 108, which speaks of the functions of the Ministerio Público, as the body legally responsible for prosecutions, as the directing agency in criminal investigation, and as ordering and supervising the work of the police investigative agencies and procedures for preservation of evidence. Sub-paragraph 11 of the Code embodies the possibility of securing of assets where it says "…To order the securing of active and passive objects directly related to the commission of the offence…". We may therefore conclude that it complies with the requirement of preventive securing of property.

116. This securing may be ordered *ex parte*, thus complying with the relevant recommendations, and domestic legislation provides for civil actions by third parties alleging possession in good faith.

117. Another important element concerns the powers of the law enforcement agencies, the FIU or other competent authorities, to identify and trace property subject, or which may become subject, to confiscation, or which is suspected to be proceeds of crime. From the interviews it seems that only the Ministerio Público has this power. It is clear from interviews in the both the State and private banking system that they submit information on accounts, and in general on operations that may be of relevance to an investigation, but only when the order comes from the Prosecutor of the Ministerio Público in charge of the case. This makes it impossible for the other authorities to become informed. The same applies to the Integrated National Customs and Taxation Administration Service, and the National Independent Registration and Notarial Service, among others.

118. To this is added the fact that the information, in the register of movable and immovable property, as well as information on physical persons, is not computerised. As regards the former (register of property) it must be recognised that a laudable effort has been made in recent months to digitalise and centralize the data. Regarding physical persons, on the other hand, the information is computerised only if the person appears on the electoral register. Otherwise the record of that person remains on paper in the region of his or her birth.

119. From all this it would seem that, although the powers exist, they could be better used by the police agencies responsible for investigation, since the Organic Code of Criminal Procedure permits it. What is certain is that technical conditions make it very difficult to handle in practice certain aspects of information concerning the ownership by persons under investigation, by making it materially impossible to carry out efficient provisional confiscation. (Recommendation 3.2, 3.3, 3.4, 3.5 and 3.6).

R.3

120. As mentioned in the previous point, the lack of trials and convictions under the present (2005) law makes it impossible to assess the system of confiscation regarding ML and FT, added to which is the lack of statistics on confiscations for ML rather than drug trafficking in general.

121. Although the report submitted by the competent authorities of the Bolivarian Republic of Venezuela refers to data and figures concerning confiscation, it has not been possible to corroborate these with any figures from the authorities. Added to this is the problem that the goods described have been confiscated as a result of cases handled under the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, which is outside the area of interest of the present evaluation, which refers to money laundering and terrorist financing; and the authorities of the Ministerio Público inform us that no cases have been brought under the new legislation.

2.3.2 Recommendations and Comments

122. In view of the situation observed in the Bolivarian Republic of Venezuela, we consider it advisable to make the following recommendations.

- Since there is sufficient legislation to ensure the possibility of provisional confiscation of proceeds of money laundering or which constitute instrumentalities used and/or which are intended to be used in an offence of money laundering, terrorist financing or other predicate offences, it would be advisable, through feedback from the officials of the Ministerio Público as legal directors of criminal investigation to the various police bodies and the National Financial Intelligence Unit, for a review to be carried out of the investigative powers conferred by national legislation so that these agencies may not be restricted to a role of responding to the request or orders of the Prosecutor, but may fulfil a real investigative function that would serve to provide raw material for the prosecutorial actions of the representative of the Ministerio Público
- As regards the recording of property, not only for purposes of legal security of third parties, but also to facilitate the actions of the criminal justice system against perpetrators of this type of crime, efforts should be made to design computerised systems of recording: real estate, vehicles, driving licences, intellectual property, companies or legal persons, trademarks and any other item which will facilitate access to information. Otherwise, even though the power exists the practical possibility will be nullified. It is necessary not only to have the legal power to confiscate, but to know what items are subject to confiscation.
- One of the few means of measuring the efficiency and effectiveness of the system is by analysing the result of the activity carried out. There is therefore a clear need for systems for control of confiscated property, containing information on: offence, date of confiscation, description of the type of property, authority concerned, place of occurrence of the confiscation, status (provisional-definitive), and to whom donated, as well as other information. This would enable clear statistics to be generated, and the efficiency of the system to be assessed, as well as its efficiency by zone, by subject, etc.
- Lack of clear statistics on confiscations, their disposal and all the aspects mentioned above reflects a lack of transparency of public agencies towards society. Besides being bad practice, this may favour corruption by officials. Cross-referenced control systems must be created to generate detailed statistics.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	The lack of cases brought under the existing law makes it impossible to assess the effectiveness of provisional measures and confiscations. The data in the registers are not computerised, which makes it difficult to trace property. The lack of specific statistics on confiscations and provisional measures in ML cases makes it impossible to assess the effectiveness of the measures.

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

2.4.1 Description and Analysis

123. Here it is important to note the difference between international cooperation in handling cases of financial terrorism or acts of terrorism abroad with freezing of funds or other assets are the property of, or in the name of, persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee, pursuant to Security Council Resolution 1267-1999, since in the latter case it is not a question of International Letters Rogatory based on the existence of an ongoing case in a foreign country, but rather because of the appearance on this list of the person concerned. Such freezing, in addition to being based on the latter circumstances, must be without delay and without notification to the designated persons in questions. All member countries of the United Nations are bound by this

Resolution and its successive Resolutions to freeze the assets of persons and entities indicated by the Al-Qaida and Taliban Sanctions Committee.

124. The response of the Venezuelan authorities in their report is based on the powers conferred by the Organic Law against Organised Crime and the Organic Code of Criminal Procedure, the basic assumption of which is different from that of this Special Recommendation. What must be recognised, however, although it is not directly related to the issue, is the effort made by the Law Courts in naming two Control Courts and one appeal court to hear terrorist cases, as well as the drafting of an Anti-Terrorist Act, which so far is not known, with a view to giving effect to the provisions in Security Council Resolution 1373 of 28th September 2001.

125. III,2 Under Resolution 1373-2001 of the Security Council of the United Nations, countries must freeze without delay funds and other assets or resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of, such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.

126. In this regard, it may be observed that the country under evaluation continues to proceed on the grounds that to the extent that the acts concerned constitute the commission of one of the offences described in its Organic Law against Organised Crime, there is no problem. The Organic Law makes this clear, as also does the Organic Code of Criminal Procedure. Articles 7, 19, 20 21 and 22 indicate this as do number 59, on international cooperation and legal assistance (International Cooperation to suppress organised crime), 60 (information exchange among countries), 62 (…shall provide mutual legal assistance in investigations, prosecutions and legal actions relating to the offences mentioned in this Act…) and 63 (on the functions of the Ministry of External Relations) of the same Organic Law. But in the case of the lists we encounter the same limitation as mentioned in paragraph 1 of this section.

127. The restriction mentioned above, and the same line of reasoning, apply to the obligation to have effective laws and procedures for examining and giving effect to actions initiated under the freezing procedures of other jurisdictions.

128. The freezing referred to under Criteria III.I to III.3 cannot be extended to other types of funds, because as pointed out, there is no legislation on this aspect.

129. Since the machinery for freezing under the Recommendation does not exist, it would not be possible for immediate communication to the financial sector to take place. In fact, both the private and public banking sectors informed us during the interviews that they do not receive the lists of terrorists from the central authority, in this case the Superintendency.

130. In the absence of supporting legislation, there can be no clear guidelines for financial institutions and other persons or entities which might be holding captured funds or other assets, regarding their obligations under the freezing procedures.

131. The same gap in the law means that there are no procedures for considering petitions for delisting, or for unfreezing the funds or other assets of persons or entities delisted. In fact, a common feature of these recommendations is that the country under evaluation did not even reply to the questionnaire.

132. This also does not arise, for since it is a direct consequence of the existence of a law to permit it, and since such a law does not exist, there are no effective and publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner upon verification that the person or entity involved is not a designated person.

133. There are no appropriate procedures for authorising access to funds or other assets frozen pursuant to United Nations Security Council Resolution 1267-1999, in view of the non-existence of any regulation to this effect.

134. Although Venezuela, in its Organic Code of Criminal Procedure, has appropriate procedures by means of which a person or entity whose funds or other assets have been frozen may appeal for a court review of this measure, this applies to the ordinary procedure, and not to these cases, as there is no freezing procedure.

135. Freezing, seizing and confiscation cannot be applied in circumstances different from those embodied in Criteria 3.1 to 3.4 and Criterion 3.6 (R.3) because of lack of legislation.

136. The laws and other measures should provide protection for the rights of third parties acting in good faith. Such protection must comply with the standards set out in Article 8 of the Convention on Financing of Terrorism. However, since the possibility of freezing, seizing and confiscation are not covered in the law, it has not been considered necessary to establish such possibilities.

137. The requirement to monitor compliance with legislation assumes the existence of such legislation.

138. The measures set out in the document on Best Practices for SR.III have not been implemented. No report was received and no corroboration was possible during the on-site visit.

139. In view of the lack of legislation for the purpose, there has been no freezing of funds pursuant to Resolutions 1373-2001 and 1452-2003, and therefore no procedure for covering basic costs has been implemented.

140. 32. There is no activity to be presented in statistical form.

2.4.2 Recommendations and Comments

- In view of the absence of regulations or legislation enabling Resolutions 1267-1999, 1373-2001 and 1452-2002, to be applied, the recommendation is that as soon as possible a law should be promulgated embodying the possibility of provisional freezing in these cases, designating the relevant authority for effective communication to regulated entities, and providing for the disposal of such funds once their confiscation is ordered.
- Once the law is passed, the necessary measures should be taken to make the entire system known, and to carry out training in the possible actions to be taken concerning persons appearing on the UN lists.
- There should be a follow up of the draft law mentioned in the report as follows: "A *Bill for an Anti-Terrorist Act is at present being debated in the National Assembly with a view to giving effect to the provisions of Resolution 1373 adopted by the Security Council on 28th September 2001".*

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	Non-existence of legislation for the purpose.

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

2.5.1 Description and Analysis

Recommendation 26

141. The general law on banks and other financial institutions, Article 226 reads *"…The Superintendency of Banks and Other Financial Institutions shall have a National Financial Intelligence Unit through which it may request, receive, analyse, record and forward to the competent police investigation authorities and to the Prosecutors of the Ministerio Público such financial information as they may require to carry out their investigations; as well as suspicious activity reports on money laundering which all the entities governed by the present Decree Law and all those governed by special laws, under its control, must submit to these criminal investigation agencies.*

142. *All information requested by the Superintendency of Banks and Other Financial Institutions through the National Financial Intelligence Unit shall be confidential in nature, in accordance with the rules to be issued to this effect by the Superintendency of Banks and Other Financial Institutions".*

143. Resolution 185-01 of the Superintendency of Banks and Other Financial Institutions sets out the way in which STR forms shall be used, and also Charges the FIU with providing for continual training and feedback to the financial institutions on the procedures that they must follow when reporting.

144. Article 51 of the Organic Law against Organised Crime also makes the reporting of suspicious activities mandatory. However, financial institutions are allowed up to thirty (30) calendar days to submit the STR. This practice is based on Resolution 185-01 of the Superintendency of Banks and this may result loss of the criterion of opportunity at the beginning of an investigation by the competent authorities.

145. Although the law stipulates that the National Financial Intelligence Unit may request, receive, analyse, record and forward to the competent police criminal investigation authorities and the Prosecutors of the Ministerio Público the financial information they may request to carry out their investigations, as well as Suspicious Activity Reports on money laundering, during the interviews with public and private banking institutions, as well as other entities, these institutions made it clear that they submit more information only if it is the Ministerio Público which requests it. Furthermore, there is little observable contribution from the Financial Intelligence Unit to the cases submitted to the Prosecutors. This may well be the cause or effect of the FIU not having seen the need to request more information from these agencies.

146. With regard to the assessment of its independence and operational autonomy, and its need for freedom from undue influence,. the FIU is considered a Staff Unit of the Superintendency of Banks, just like Internal Audit, General Secretariat, and Legal Advisory Section, which are advisory bodies to the office of the Superintendent of Banks. In addition the Director of the FIU can not execute the budget allocated for the operation of this unit because it has to apply for the purchase of materials and supplies to the General Superintendent.

147. On the appointment of staff working for FIU, the authorities of Venezuela reported that such appointments will be free to the Director of the FIU and not dependant on the Superintendent of Banks

148. The above facts limit the autonomy and independence of the FIU, the fact that this unit is not an Executive Unit or a Substantive Direction of SUDEB, all this affects the performance of the unit. In addition, its freedom of action in the area of human resources and budgeting has been seen to have diminished, since it will depend on decisions of other officials to obtain the resources necessary to carry out its tasks adequately. An example of this is the lack of computerised financial analysis systems which would be of great help in the work. The Unit should also have in its own hands the control of the servers where all the data is stored, for reasons of security.

149. Another point that may lead to further limit UNIF observations are reflected in recommendations 13 and IV on the referral of the RTS decentralized responsibility for combating organized crime and the National Financial Intelligence Unit, so that the RTS will not only be sent to the FIU, but also to this body, which even today does not perform its duties.

150. Regarding the last point, it is considered necessary to provide the FIU with technical and human resources to enable it to better analyse the reports submitted by the regulated entities. At the same time attempts should be made to improve access to information in the interest of more detailed analysis before it is sent to the Fiscalia.

151. At present the FIU has the necessary staff, but if it is to start carrying out more exhaustive analyses it will probably need more (analysts or forensic auditors). Finally, the lack of access to information sources and data bases for giving added value to the reports sent to the Fiscalia must once more be emphasized and the importance of properly securing the information stored on servers (computer equipment) belonging to the FIU, as the information is now stored on the servers of the Superintendency of Banks, and do not have an computer official to perform technical support in the UNIF.

152. This is mainly due to the FIU not having its own servers for database management, mail servers, backup information from the terminals of forensic analysts or auditors, rather this work is performed by an employee of the computing unit the SUDEB, who informed us during our on site visit that the SUDEB servers were located outside the physical facilities of the unit and that the connections are made remotely. According to the official, this was to protect the information from the SUDEB and of course as part of the information in this institution was the information from the FIU.

153. All the information requested by the Superintendency of Banks and Other Financial Institutions through the National Financial Intelligence Unit shall be confidential in nature, in accordance with the standards that may be issued by the Superintendency of Banks and Other Financial Institutions to this effect. This is laid down in Article 226 of the General Law on Banks and Other Financial Institutions.

154. The FIU publishes on its web page a six-monthly feedback report, on the following subjects, among others:

155. Number of Suspicious Activity Reports by Systems, by Regulating Body, by Quality of Report, by Period of Time, by Origin, by Geographical Location, by Reporting Institute, by Identity of Persons Reported On, by Economic Activities Reported,. The Financial Intelligence Unit provides financial institutions regulated by the Superintendency of Banks and other reporting bodies with quarterly reports on the status of Suspicious Activities Reports (acknowledgement of receipt) sent individually by each agency. This was corroborated by the Evaluation Mission during the on-site visit. This information serves to improve the quality of the reports.

156. Venezuela has been a member of the Egmont Group of Financial Intelligence Units since May of 1999.

157. Venezuela exchanges information with 18 countries with which it has signed Memoranda of Understanding, among them: Spain, United States, Colombia, Panama, Argentina, Australia, Belgium, Bolivia, Guatemala, United Kingdom, Korea, Portugal, Russia, Albania, Finland, Cuba, Peru and the Netherlands Antilles. Despite the fact that Venezuela has such Memoranda for the exchange of information, when one of them requests information, there is a long delay to resolve and provide information to the requesting country, this according to the comments made by several of the countries who had exchanged information with Venezuela.

158. With regard to statistical data, we have been told of reports sent to the Ministerio Público, but we do not have statistics on cases received and cases forwarded that would enable us to get a clear picture of the operations of the office. The FIU states that it has forwarded 1481 cases to the Ministerio Publico since 2004.

	Year 2004	Year 2005	Year 2006	Year 2007	TOTAL
January	26	19	18	69	132
February	40	20	79	67	206
March	23	6	19	58	106
April	16	6	58	65	145
May	24	15	5	50	94
June	66	6	55	40	167
July	30	0	4	41	75
August	33	107	0	37	177
September	23	60	0	31	114
October	36	0	0	27	63
November	14	39	0	11	64
December	7	4	94	33	138
TOTAL	**338**	**282**	**332**	**529**	**1481**

159. Venezuela did provide complete and detailed information on international cooperation provided through the Egmont Group, but there are some contradictions, since in some cases the FIU acts promptly, while in others there is some delay.

2.5.2 Recommendations and Comments

- The National Financial Intelligence Unit needs to be given an organisational status with greater functional independence, to eliminate any possibility of influence on its work.
- Such functional independence should include improvement of staff stability and budgetary autonomy, indispensable requirements for fulfilling the obligation of protecting privacy of information.
- The FIU should be endowed with sufficient resources that it may have within it the servers (computer equipment) necessary for storing information obtained from reports as well as information added by the Unit itself for purposes of their report to the Ministerio Público.
- Allocation of resources should include the possibility of acquisition of an information analysis programme to enable the overall study of information filed to be not a manual empirical task but the product of specialised contribution to the analysis of the financial aspects of possible criminal activity.
- The FIU should create awareness among the law enforcement authorities of the functions assigned to it by national and international regulations and standards, and thereby promote broader participation in the struggle against organised crime. The additional information requested from financial authorities could thus be processed and analysed, and a technical forensic opinion issued as a tool in the prosecution brought by the police or the Ministerio Público.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of the factors relevant to S2.5 underlying overall rating
R.26	**PC**	Lack of independence of the FIU, which has a direct bearing on the question of human and material resources. Vulnerability of information stored on servers (computer equipment) that are not the exclusive property of the FIU. Limited contribution by the FIU to the analysis of processing of inputs generated by the regulated entities, as an expert forensic opinion for the use of law enforcement agencies.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R27 and 28)

2.6.1 Description and Analysis

Recommendation 27

160. With regard to the requirement that there should be designated law enforcement agencies responsible for the adequate investigation of money laundering and terrorist financing offences, reference should be made to two undeniable facts: a) the existence of the designated agencies and b) the possibility of adequate investigation.

161. With regard to the first of these factors, it is important to stress the effort being made by the various police bodies to have specialised investigation units for this type of offence. For example, the Bolivarian National Guard of Venezuela has created within its Anti-Narcotics Command a Department of Financial Investigation, which at present is very scantily staffed, but which, as mentioned, represents an important effort to confront these types of crime by organising information in computerised systems (perhaps not the right ones from the security point of view), which is an indispensible tool for the management of financial information. For its part, the Scientific, Criminal and Criminalistic Investigation Corps also has an Anti-Narcotics Directorate within its National Criminal Investigation Squad. Among the divisions of this Directorate is the Anti-Money Laundering Division which, although it has six specialists among its twenty-six officers, is not considered to have sufficient staff to deal with the 148 cases which we understand are at present pending. Recruitment is stated to be one of the problems that must be overcome and an agreement with the University is contemplated.

162. It would seem that the lack of units specialised in the investigation of these types of crimes also affects the Ministerio Público, which, together with the Office of the Accountant General of the Republic and the Office of the Public Defender, is part of the Citizen Power under the Constitution of Venezuela.

163. The Venezuelan authorities inform us that:

"…Article 285 of the Constitution of the Bolivarian Republic of Venezuela sets out the functions of the Ministerio Público. Its sub-paragraph 3 confers the direction of criminal investigations on the Ministerio Público: Article 285.3 of the Constitution: "To regulate and direct criminal investigation into perpetration of punishable offences, in order to determine their commission and all the circumstances that may influence the identification and responsibility of their authors and other participants, as well as the securing of active and passive objects relating to such commission…"

164. This constitutional provision bears legal relation to the Organic Code of Criminal Procedure, Article 11 of which assigns responsibility for criminal matters *"…Action in criminal matters is the responsibility of the State through the Ministerio Público, which is required to exercise it except where the law specifically states the contrary…"*. This position is also reflected in the Organic Law of the Ministerio Público, specifically in Article 16 sub-paragraph 3 on the functions of the agency, endowing it with powers to *"…regulate, direct and supervise everything related to criminal investigation and action; act in its own capacity or through the Scientific Criminal and Criminalistic Investigation Corps, or through agencies with particular competence and support in matters of…"*

165. What seems to exist therefore is an adversarial system of criminal procedure, in which the Ministerio Público directs investigation and is responsible for prosecution. This is perhaps why the Legislature, in view of the emphasis placed on directing investigation, considered that specialisation was necessary and provided as follows in the Organic Law against Organised Crime:

"… Article 5

General Directorate against Organised Crime of the Ministerio Público.The Ministerio Público shall create a Directorate General against organised crime, endowed with a technical team specialised in investigation and analysis of the offences that are the subject of this Act. Under this Directorate there shall be, at least, one Directorate against Traffic in Narcotic and Psychotropic Substances, and another concerning money laundering and other financial and economic crimes. The Ministerio Público shall develop special programmes of information, education and training for the Prosecutors of the Ministerio Público in this field…"

166. Despite this legislative decision, this General Directorate or Department of the Ministerio Público responsible for investigations does not exist. However, it seems clear that the law intends that this function should be given its due importance, as was already stated in the evaluation report on the country in 2004, in which the following observation appears:

> *"…162. There is no section in the Ministerio Público specialised in handling money laundering offences. These are the purview of the Drug Directorate of the Ministerio Público, since the only predicate offence is drug trafficking. As was noted in the previous evaluation, human and technical resources for adequate performance of the task remain limited (CAFTF Recommendation 1[a])…"*

167. But the following recommendation was also made:

> *"…214. The philosophy that considers money laundering a derivative offence should be changed and it should be treated with the severity it deserves (as a serious and independent crime). (CAFTF Recommendation 2)…*
> *…218. "Prosecution" Department of the Ministerio Publico should be created to deal exclusively with money laundering (CAFTF Recommendation 1 and FATF…)"*

168. Thus the two points mentioned above as deserving of attention converge.. Regarding the existence of the designated offices,. We see that the more important of them (the Ministerio Público), because of its monopoly on criminal proceedings and direction of investigations, making the police subordinate, does not have a specialised unit, despite what the law requires, but continues, in its original structure, giving preponderant importance to drug crimes, and perhaps thereby perpetuating the philosophy that considers money laundering as an offence underlying such crimes. This has a definite bearing on the capacity to carry out appropriate, efficient and effective investigations into money laundering and financing of terrorism. This is perhaps one of the reasons for the figures submitted to us in the interviews with the officers of the Ministerio Público, which show only four final guilty verdicts, 2 of them arising from the previous system of criminal procedure and 2 from the present one., which dates from 1999. **[text missing]** as well as meeting the need to improve the investigative capacity of the police forces as regards the broadening of financial analysis procedures to cover the investigation of property or registers, companies, etc.

169. Although specific offices are not an international requirement, it is clear that both prosecutors and police need to treat ML as an activity distinct from drug-related crime.

170. Venezuela has taken steps, both legislative and of other types, to enable the competent authorities investigating money laundering cases to postpone or suspend the arrest of suspects and/or seizure of money, for the purpose of identifying persons involved in these activities or for collecting evidence. This is made possible (as is stated in the report submitted) by the Opportunity Principle in sub-paragraph 37 of the Organic Code of Criminal Procedure and in Article 29 of the Organic Law against Organised Crime. The latter Article concerns the judicial agency which must take these decisions, decisions which in principle would seem to be contrary to the duty of prosecuting crime, but which the same law sees as necessary for improving the efficiency of that very prosecution.

171. As the Recommendation requires, the country under evaluation has legislation to enable its law enforcement or prosecutorial authorities to have an adequate legal base for the use of a wide range of special investigative techniques during investigations of money laundering and terrorist financing. The report states that:

"…In the Organic Law on Organised Crime there is a complete Title devoted to the *"Undercover Techniques of Criminal Investigation…"*

172. But this paragraph provides not only for undercover operations covered in eight Articles of Title III but also for wire tapping, which is covered in Article 10 of the same Act, and is also applicable to all evidence, provided the principles of freedom and legality of proof set out in the Organic Code of Criminal Procedure are respected.

173. Nevertheless, despite the various interviews with police bodies, in which it was claimed that undercover agents were used, no case could be identified in which it was used in an investigation of money laundering or terrorist financing. The practices mentioned in the interviews related to drug operations, where the role is closer to that recognised in the doctrine as collaborator, to controlled delivery and others, but not to an undercover agent whose identity has been changed and who has been submitted to the legal requirement set out in the Act. This situation was corroborated by interviews with the Prosecutors of the Ministerio Público, who are responsible under the regulation for making the request for authority to use this police technique in investigations, an authority that must be endorsed by the judge in control of the Legality of the Preparatory Phase. These Prosecutors stated that this legal tool had not yet been used in ML cases.

174. It was learned that in the Scientific, Criminal and Criminalistic Investigation Corps, within the National Coordination of Criminal Investigations, there is an Anti-Narcotics Directorate, which in turn set up an Anti-Money Laundering Division. This Division has six specialists, a number they themselves do not consider to be sufficient. Although the existence of a permanent group specialising in the investigation of the proceeds of crime is a positive element, it would appear that the structure of the office does not recognise money laundering as an independent offence, since it is one component within a structure that investigates drug crime. For its part, the Bolivarian National Guard of Venezuela, also in its Anti-Narcotics Command, has created a Department of Financial Investigation. These are not bodies with an independent structure; in both forces they are subordinate to those responsible for investigation of matters falling under the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances.

175. With regard to cooperative investigations with the appropriate competent authorities of other countries, including the use of special investigative techniques, always provided that special safeguards are set up, it is important to note that the Organic Law against Organised Crime also has in it a Title on International Cooperation and Legal Assistance, which provides for information exchange among government institutions of other countries for prosecuting members of organised criminal groups and also for money laundering offences. The Act, particularly Title V, likewise covers other aspects contributing to investigations of this type involving several countries.. The intention of the second part of the Recommendation is therefore complied with.

176. As has been repeatedly emphasised in this section, it is clear that as long as there is no acknowledgement of the importance of the criminal phenomenon of money laundering and of terrorist financing as independent offences and as prejudicial to the country and to the international community, in view of their trans-national character, and as long as there are no specialised, or non drug-related, offices in the agency that is at the head of the investigative process, it is obvious that it has been impossible to discern, corroborate or learn of any exercise of constant feedback within the law enforcement institutions or authorities for the purpose of keeping abreast of the subject.

Recommendation 28

177. Under Venezuelan law, and as stated by Venezuela in its report, the Ministerio Público, as the lead prosecutorial agency, and as has been pointed out above, has powers of prosecution of its own. These are contained in its basic charter, specifically in Article 285, as well as in the Organic Code of Criminal Procedure. It is also endowed with other powers in matters of investigation, and with the support of its investigative organs may collect all the elements of interest by means of declarations, inspections of persons, vehicles, and public places, searches, recordings, wire tapping, interception of mail, requests for data held by financial organisations, accounting files, commercial registers, etc, always provided the requirements of legality, relevance and utility are respected as guiding principles of evidence in criminal cases. One of these investigative powers is the power to interview witnesses, although it is clear from the legislation that the presentation and examination of the evidence must be done during the oral hearing.

178. Therefore it is understood that the competent authorities responsible for investigations of the FT and other underlying offences have the powers which enable it to: require the display, inspection of persons or areas in order to search, seize and obtain records of operations, identifying data collected from the DDC process, account files and business correspondence and other records, documents or information that are in the possession or under the care of the financial institutions or other companies or individuals. Moreover, these authorities have powers that allow them to make inquiries to witness statements for use in investigations and prosecutions for LA, FT and other underlying offences, or in related actions.

Recommendation 30

179. With regard to the structure, financing, staff and technical resources of the law enforcement authorities, we must point out that as regards the Ministerio Público, it is not possible to make any statement on these aspects, since there is not even a specialised Directorate. For this reason if it were to be described it would have to be with the Narcotics Division, which would not be wise, since this is not part of the evaluation. Nevertheless it is important to note that the Ministerio Público, by virtue of its structure and its constitutional status, would be capable of working with sufficient independence and operational autonomy to make sure that it is free from undue influence or interference.

180. As regards the police investigative bodies, specifically the Scientific Criminal and Criminalistic Investigation Corps, in the National Coordination of Criminal Investigation, this body has, as previously indicated, an Anti-Narcotics Directorate, which has in turn set up an Anti-Money Laundering Division, with a total of twenty-six officers, of whom only six are financial specialists and who themselves do not consider that this is a sufficient number. In addition to suffering from non-recognition of the crime of money laundering, since it is considered a component of the structure which investigates drug crimes, it also has a small office and lacks staff and technical resources for its work. Similarly, the Anti-Narcotics Command of the Bolivarian National Guard of Venezuela, which has created within itself a Department of Financial Investigations, is not an independently structured agency. Rather, both these police bodies are subordinated to those responsible for carrying out investigations of matters under the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances. This speaks volumes about the strong and independent structure that is needed for investigation of these offences. It is also clear that in the direct hierarchical relationship with the Executive Power, independence and financial autonomy do not seem to figure prominently in its structure. For example, there are no laws determining specific types of financing, and this is particularly due to the lack of control of goods confiscated which might be a real source of independence, at least economic independence. These offices are the smallest in the institutions, and in general depend – as has already been said - on the offices, departments or sections responsible for investigating drug offences.

181. They do not have up-to-date technical resources, including sufficient computer equipment, databases, or criminal analysis programmes which could assist in the overall analysis of the information collected from the Suspicious Operation Reports which come from open sources or from cases already handled.

182. As regards the requirement that the staff of competent authorities should maintain high levels of professionalism, including standards of confidentiality, high integrity and appropriate skills, the evaluation visit revealed high professionalism in the officers of the Ministerio Público and the police forces in question. However, it is clear that if the institutions have not given the crimes of money laundering and terrorist financing the treatment that they deserve, or which they receive in the systems of the Isthmus, and in view of their status as agencies for prosecuting organised crime, which in itself signifies a professional status that implies the personal integrity in those who are selected to join, it can be maintained that the present method by which they are controlled is the same as for all the other members of the institutions, and that there is no special system for ensuring compliance with the present recommendation. The news of various police officers arrested, up to the time of the on-site visit, for belonging to drug gangs, is a sign of the efforts being made to maintain the integrity of the institutions, but it also points to the vulnerability of the honesty of the officers, and therefore confidentiality in investigations could easily suffer the same fate. Furthermore, the computer systems used for transferring, for example, reports within the Anti-Narcotics Command of the Bolivarian National Guard is vulnerable in itself, as it uses insecure programmes without encryption on accessible networks.

183. With regard to money laundering and financing of terrorism it must be clearly understood that these are examples of organised crime, so that the ordinary schemes of investigation fall short or are insufficient for tackling and planning investigations into them. The picture before us is no longer one of a report of a crime or a conventional crime scene; now it is a question of power structures, organisations established legally to manage money of illegal origin, organisations which in many cases have direct influence on state bodies, for example financing of election campaigns, to cite just one instance. This reality requires that training at the level of the Ministerio Público should go beyond conventional training in criminal law, the theory of crime, the theory of prosecution and many other subjects which are nevertheless still important because of their fundamental character.

184. To combat this international scourge, training must be provided in subjects directly related to methods of money laundering, aspects of terrorism and its financing and, among many other thing, the management of evidence, which in a country governed by the rule of law, and in which due process prevails, as is the case in the Bolivarian Republic of Venezuela, is the basis for demonstration of the existence of the structures and allocation of functions, in order to determine guilt We consider that these needs are not met by the list of types of training indicated in the response from the country in its report. This is particularly because the subject of drugs continues to be confused with that of money laundering and financing of terrorism which, although they may have a direct relationship with drugs, go far beyond them.

185. In-depth study of predicate offences, typologies, and techniques for investigating and prosecuting these crimes is lacking, as are techniques for tracing property derived from crimes or which are intended for use in financing terrorism, and for ensuring that this property is frozen, seized and confiscated. There is also need to study more deeply the use of information technology, specifically the use of systems of criminal analysis and other related resources.

186. Finally, in order to properly establish training for staff in charge of these investigations, it is necessary to provide it for those officers who are operating in the specific field. It cannot be an all-embracing procedure because it would be of no use to a country for a prosecutor responsible for the investigation of sexual offences to have received a course in money laundering if that is not where that official is working.

187. What, however, it is important to recognise are the efforts being made by the National Anti-Narcotics Office to manage training involving prosecutors' offices and investigators or police forces, since because these must work as teams, they should also undergo joint training to enable their efforts to mesh.

188. According to the report from the country under evaluation and statements by the lady judges of the Higher Criminal Court who were interviewed, some judges have taken part in the training coordinated

through the National Anti-Narcotics Office and the Ministerio Público, which means that even though they were not numerous and not all the topics were covered, a participatory structure of training is being put in place.

2.6.2 Recommendations and Comments

189. On the basis of the on-site visit, in view of the paucity of controls as regards statistical input, the number of staff allocated to the small offices assigned to investigation of crimes such as money laundering and terrorist financing, in view of their recent creation, their dependence on offices responsible for investigation of crimes covered by the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, the following recommendations are made regarding the subject of Law Enforcement, Prosecuting and other competent authorities – the framework for the investigation and prosecution of crime and for confiscation and freezing (R27, 28, 30 and 32):

- Once again, this time based also on the requirements of Article 58 of the Organic Law against Organised Crime, which reflects the recommendations of the Palermo Convention and coincides with the first recommendations of the CAFTF and the FATF, and as was urged four years ago in the previous visit, it is considered important that a "Fiscalía" (prosecution unit) should be opened under the Ministerio Público to be responsible for handling solely offences of money laundering and terrorist financing, or, even better, as the Act itself suggests, a specialised department for investigating organised crime, and whose functions would include these two areas.
- Also reiterating the recommendation made during the previous visit, there should be a change in the philosophy which considers money laundering as an accessory offence and it should be treated with the importance it deserves, that is to say as a serious and independent offence.
- That the police and investigative authorities should place the offices responsible for investigating money laundering and terrorist financing as offices independent from those responsible for investigating the crimes covered by the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances. For this purpose the concept of organised crime could be used to give these investigations the relevance that they deserve.
- The investigative authorities, police or Ministerio Público, in order to become more efficient and effective in this type of investigation, should possess criminal analysis computer programmes and databases sufficient to enable them to understand the breadth of criminal networks and to facilitate the submission of cases to the judicial organ, which is the organ that will bring the case to its final conclusion.
- Training should be provided in this subject for investigation teams, that is to say police forces or investigating officers, analysts in the National Financial Intelligence Unit and Prosecutors as well as Judges. This training should not be restricted to a feather in the cap of the official who receives it, but must be put to use through officers capable of acting as a multiplier factor for the knowledge gained, and the training should be in the hands of persons in the offices themselves.

2.6.3 Compliance with Recommendations 27 and 28

	Rating	Summary of factors relevant to S2.6 underlying the overall rating
R.27	**PC**	The police units responsible for investigating these offences exist in the framework of anti-narcotics forces. Besides the lack of resources, the investigation of these offences remains linked to drug trafficking.
R.28	**C**	Powers conferred by the legislation on law enforcement authorities for the implementation of investigative operations.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

190. In Venezuela there has been exchange control since 2003, which makes the issue of exchange and cross border movement of foreign currency quite complicated.

191. The exchange control system was established, it is stated, for the following purposes:

- To prevent flight of capital abroad and thereby impede the drain on international reserves
- To avoid price increases that would result from devaluation of the national currency
- To defend the value of the Bolivar against speculative attack
- To exercise control over certain types of imports which could be considered non-priority
- To avoid demand for foreign currency in excess of the real needs of the national economy.

192. For these reasons purchase of foreign currency is subject to allowances. Since the establishment of exchange controls in the country, each Venezuelan is allowed 5,000 dollars per year for the use of his card abroad. 500 dollars a month of this amount may be withdrawn from automatic cash machines. It is also possible, before travelling, to request 600 dollars in cash or an allowance for internet purchases of 400 dollars per year, at an average official rate of 2.15 Bolivars to the dollar.

193. On the other hand, dollars are illegally offered for sale at almost twice the official rate. This practice is a crime, but cases are known of persons who travel only to obtain the dollars of their allowance to sell them illegally in Venezuela and profit from the difference in rates.

194. The control of trans-border movement of money in Venezuela is regulated by the Law against Exchange Offences. Article 4 of this Act stipulates that natural or legal persons who import or export foreign currency into or out of the territory of Venezuela to an amount in excess of ten thousand United States dollars (US$10,000) or the equivalent in other currencies, **are required to declare to the competent administrative authority the amount and type of the operation in question.**

195. However, the law also states that all foreign currency acquired by non-resident natural persons in transit or tourists on the national territory and whose stay in the country is shorter than one hundred and eighty continuous days is exempt from this obligation.

196. The CADIVI rules for exchange control are designed to control the outflow of foreign currency and not the inflow. There are no limits on the importation of dollars.

197. The outstanding exception regarding non-residents hinders mandatory frontier control.

198. From all of the above, it is understood that there does not exist an effective notification system. While in cases of entry through the international airport it is required to report entrance with more than $ 10,000, there are no measures to take against a false statement or omission, as the authorities would not have the authority to require and obtain more information from the airline regarding the origin of cash or bearer negotiable instruments and their intended use.

199. Neither is it possible to stop and seize cash or bearer negotiable instruments.

2.7.2 Recommendation and Comments

200. A rule should be adopted requiring persons, whether they are residents or not, to declare foreign currency brought into or taken out of the country below the threshold of $15,000. For this purpose, the exceptions in article 4 of the law on exchange offences should be amended.

2.7.3 Compliance with SR IX

	Rating	Summary of factors relevant to S2.7 the underlying overall rating
SR.IX	**NC**	No effective system for declaration of compliance has been established, with clear functions and powers of sanction

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer due diligence and record keeping

3.1 Risk of money laundering or terrorist financing

201. *No information was received about the enforcement of this type of risk-based measures*

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

RECOMMENDATION 5

202. The prohibition on the holding of numbered accounts in financial institutions is embodied both in a general framework Law against Organised Crime (Article 47) and by sector in Article 39 of Resolution 185-01 of SUDEBAN.[4] [3]
Article 47 of the LODCO *makes it mandatory for regulated entities to keep customer records, and also states that the regulated entities may not open or hold anonymous accounts or accounts with fictitious names. For this purpose the control, supervision and prosecution agencies (Superintendency of Insurance) shall specify such means as may be considered suitable for customer identification in addition to the identity card for natural persons, or documentation from the Commercial Register or the Civil Register in the case of legal persons, as well as official documents legalised by the relevant Consulates of the country of origin in the case of foreigners when they enter into or attempt to enter into business relationships or intend to carry out any kind of transaction such as opening accounts, establishing trusts, reningt safe deposit boxes, mainge purchases, taking out loans or carrying out transactions in cash or other monetary instruments. Infractions are punishable with a fine from the equivalent of three thousand tax units (3,000 T.U.) to the equivalent of five thousand tax units (5,000 T.U.)*

203. As regards the prohibition on the issue of bearer shares in securities and insurance, the regulations governing the sector do not mention any express prohibition on the opening of anonymous accounts, although it does make the Know your Client policy mandatory (Article 24 et seqq. of the Resolution and in Insurance Providencia 1.150, Article 24 etc.)

204. The prohibition on anonymous accounts is also embodied in the Andean Pact signed by Venezuela, but it has not been specifically transcribed into the regulations governing the securities or insurance sectors.

[3] The SUDEB monitors the following entities:, universal banks, commercial banks, mortgage banks, investment banks, development banks, second-tier banks, financial leasing, money market funds, savings and loan institutions, exchange houses, financial groups , border exchange operators, the operators and issuers of credit cards, mutual guarantee funds and mutual guarantees of the financial operations carried out by the general stores of deposits, savings and loan institutions.

205. Interviews with the private sector confirmed the non-existence of numbered or encrypted accounts, not only for clients after 2001, the year in which the Superintendencies' Resolution was published; in fact the sector makes it clear that "there are no numbered accounts even before that, since it has never been the banking practice in Venezuela".

206. Regarding adequate customer identification and the existence of customer records available to the Compliance Officer, Article 48 of the LOCDO stipulates that customer information must be available. Furthermore, the control and monitoring agencies, in accordance with the provisions of the LCDO, have issued regulations concerning the means they consider necessary for correct customer identification, viz:
Banking sector: Article 27 of Resolution 185-01
Security sector: Article 9 of Resolution 128-06 and Article 27 of Resolution 178-05
Insurance sector: Article 44 and 57 of Providencia 1.150.

207. With regard to the customer due diligence (CDD) measures to be established, Article 21 of the Law on the Illicit Traffic and Consumption of Substances stipulates that "…for the purpose of putting into effect the operational plan to prevent use of the banking system and financial institutions for the laundering of money and other economic assets derived from the offences embodied in this Act, or in activities related to it, the National Executive must establish general standards for identification of customers, records, limitations on banking secrecy, the duty of providing information, protection of employees and internal banking procedures and programmes, in accordance with the following provisions".

208. The standards developed by the supervisory organ of each sector include mandatory procedures for knowing the customer, by identifying him, maintaining records with up-to-date information on him and holding an interview at the moment of setting up the business relationship, the data and information obtained to be kept on a client file (Chapter III of the three sectoral sets of regulations).

209. The required CDD measures may be considered to be embodied in Article 211 of the LTICSE. For the separate sectors the aspects relating to **identification** are embodied in the standards for:

Banking sector and other institutions under the superivison of SUDEBAN

210. **Article 29 of R185-01** – *"Customer identification shall be carried out by means of the laminated identity card for Venezuelan natural persons and those resident in the country and by passport for foreign natural persons not resident. In the case of legal persons domiciled in the country, identification shall be made through the Tax Information Register (RIF), or the Personal Signature Register (RFP) and the certified copies issued by the Integrated National Customs and Tax Administration Service, by the Articles of Association of the firm, its statutes, together with amendments, duly inscribed in the Commercial Register or in the Civil Register. In the case of legal persons not domiciled in the country, the above mentioned documents, and the powers of their legal representatives, must be duly legalised by the Consulate of the Bolivarian Republic of Venezuela in the country concerned and translated by a public interpreter into Spanish".*

211. **Article 38 of R185-01** – *Regulated institutions must request the same information specified in Article 29 of this Resolution in cases of casual customers, or when business relationship or any kind of operations such as transfer of national or international funds, trust operations or operations in cash or rental of safe deposit boxes, are initiated or intended to be initiated.*

212. *Article 31 – When opening an account for a **natural person**, the financial institution must require, as a minimum, the following data and keep them in a "Customer Identification File" which must be placed in the customer's record and computerised.*
    1. *Reasons for requesting the services of the institution and the use to be made of the account*
    2. *Forenames and surnames*
    3. *Type and number of identity document*

4. *Place and date of birth*
5. *Nationality*
6. *Civil status*
7. *Home address and telephone number*
8. *Estimated average movement of funds in the account*
9. *Profession or employment*
10. *Occupation*
11. *Address and telephone number of the firm in which the client is employed*
12. *Amount of salary and other monthly income*
13. *Bank references (except for persons opening bank accounts for the first time), both commercial and/or personal*
14. *Accounts and other products customer may possess in the institution*
15. *The need to receive or send regular transfer into or out of the Republic, with indication of the country of origin or destination*
16. *Right hand thumb print, or failing that, the left hand thumb print whenever possible, of customers possessing the signature for the account*

213. *Article 32 – In the case of legal persons, the minimum data that must be recorded on the file are:*
    1. *Reason for request for the services of the institution and the use to be made of the account*
    2. *Name of the business*
    3. *Address and telephone number*
    4. *Related firms*
    5. *Volume of monthly sales and deposits expected to be made in cash or cheques*
    6. *Whether transfers into or out of the Republic are expected to be made, and the country of origin or destination*
    7. *Tax Information Register (RIF) or Personal Signature Register (RFP) number*
    8. *Professional, commercial or industrial activity and products and services offered*
    9. *Identity of the natural persons through whom financial relations will be maintained with the regulated entity, the same documents and information to be provided as those required for accounts in the name of natural persons.*

214. *Should the customer be unable to provide any of the abovementioned data, this shall be noted on the customer's file, along with the reasons preventing the provision of the information in question.*

215. *All the rules for identification of the customer, as well as the required supporting documents, must apply to all persons who have the signature for the account.*

Security sector:

216. Article 24 – **Records. Customer's File.** *The regulated entities must keep individual records for each of the their customers, for the purpose of obtaining and keeping up-to-date the information necessary for reliably determining the customer's identity and the economic activities in which he engages, with a view to creating his financial profile and adopting adequate parameters for determining the level at which the customers' operations are normally conducted and the characteristics of the market, or any other instrument of equal efficiency, by levels of investment, by type of product or any other criterion which may enable detection of unusual or suspicious operations. The data entered in the individual record and the documents obtained on the client and his activities shall constitute the Customer File.*

217. Article 27 – **Customer Identification.** *The identification of the customer shall be effected:*

1. *With regard to natural persons, either Venezuelans or resident foreigners, through the respective laminated identity card issued by the competent Venezuelan authorities.*
2. *For foreign non-resident natural persons, through a passport issued by the competent authority.*

3. *In the case of legal persons domiciled in country, identification shall be effected through the Tax Information Register (RIF), the Articles of Association of the firm and/or statutes, with amendments, duly inscribed in the relevant Commercial Register.*
4. *In the case of legal persons not domiciled in the country, these documents and the powers of their legal representatives must be duly legalised by the Consulate of the Bolivarian Republic of Venezuela in the respective country, or be accompanied bywith the apostille, and translated into Spanish by a public interpreter.*

218. *In the case of legal persons, there must be identification of the natural person who acts on behalf of the said legal person, the capacity in which he acts, the instrument by virtue of which he acts as representative, the provisions of numbers 1 and 2 of this Article being applicable, as the case may be.*

Insurance sector: Providencia 1,150

219. *Article 24 – The regulated entities must keep individual records for each of their customers, for the purpose of obtaining and keeping up-to-date the information necessary for reliably determining the customer's identity and the economic activities in which he engages, with a view to creating his financial profile and adopting adequate parameters for determining the level at which the customers' operations are normally conducted and the characteristics of the market, or any other instrument of equal efficiency, by levels of investment, by type of product or any other criterion which may enable detection of unusual or suspicious operations. The data entered in the individual record and the documents obtained on the client and his activities shall constitute the Customer File.*

220. *Article 25 – Regulated entities must possess individual information on each one of their customers, viz. insurance takers or subscribers or beneficiaries of policies, premium payers, guarantors, trustees and other confidential commissions and managed health care plans, in the form of customer records on physical, electronic or magnetic supports, and this must be available to the competent authorities. These records must include documents generated or received in consequence of the investigation and must be kept for at least five years from the date on which the relations with the customer are terminated. The information must include at least the following data: full name of the subscriber, person insured or beneficiary, or title of the legal person, the number of the identity card or passport or the Tax Information Register number, as the case may be, home and work address and telephone numbers, economic, commercial or professional activity, post held or occupation, with special mention of whether the customer is an independent professional or firm, an employee or a partner, and the economic and financial status not only of the business proposed but the group*
Article 25 – In the case of insurance policies the information referred to in Articles 25 and 27 of this Providencia shall be taken from the policy applications. The insurance provider, whether an exclusive agent, a broker or an insurance brokerage company, shall assume the obligation of obtaining total identification of the subscriber, insured person, beneficiary or contracting party and the insurance company must check that the information contained in the application has been fully supplied. In addition, at the foot of the application there must be a signed declaration by subscriber, insured person or beneficiary to the effect that the money used for the payment of the premiums of the policy, the premium financing contract, or other contracts, comes from lawful sources and therefore is not connected in any way with money, capital, goods, properties, values or titles derived from activities or actions referred to in Article 37 of the Organic Law on Narcotic and Psychotropic Substances or other conducts illegal under Venezuelan law.

221. *In cases where there is no intermediary, the responsibility shall fall upon the insurance or reinsurance company.*

222. *Article 27 - Customer identification shall be carried out by means of the laminated identity card for Venezuelan natural persons and those resident in the country and by passport for foreign natural persons not resident. In the case of legal persons domiciled in the country, identification shall be made through the Tax Information Register (RIF), or the Personal Signature Register (RFP) and the certified copies issued by the Integrated National Customs and Tax Administration Service, by the Articles of Association of the firm, its statutes, together with amendments, duly inscribed in the*

Commercial Register or in the Civil Register. In the case of legal persons not domiciled in the country, the above mentioned documents, and the powers of their legal representatives, must be duly legalised by the Consulate of the Bolivarian Republic of Venezuela in the country concerned and translated by a public interpreter into Spanish.

223. *In the case of legal persons there must be identification of the natural persons through whom relations are maintained with the insurance or reinsurance company, and the same documents as for natural persons shall be required.*

224. *Copies of the abovementioned identity documents shall be filed in the Customer File in the office or branch where the insurance, trust, premium financing contract, other confidential commissions and managed health care contracts were signed. The following must also be included in the Customer File:*

1. *The format of the application for insurance, trust, premium financing contract, other confidential commissions and managed health care contracts;*
2. *Insurance, guarantee, premium financing contract, trusts and other confidential commissions and managed health care contracts.*
3. *A sworn declaration of origin and destination of the funds;*
4. *Record of the initial and periodic checks carried out by the regulated entity;*
5. *All documentation that the regulated entity may consider necessary to keep in this file.*

225. *Article 28 – When it appears or is certain that the customers are not acting on their own behalf, precise information must be obtained on the identity of the representatives, persons empowered and persons authorised, and of the persons on whose behalf they act under the provision of this Article, as well as the documents accrediting them so to do*

226. *Article 29 – Should any of the data provided be shown to be false, after the insurance, guarantee, premium financing, trust or other contract is signed, the manager of the agency or branch, the Unit for Prevention and Control of Money Laundering and the Compliance Officer shall analyse the case and if they consider it advisable, shall report the situation as a Suspicious Activity to the Unit for Prevention and Control of Money Laundering of the Superintendency of Insurance, indicating the accurate data on the customer, if they have been able to obtain them; and the signed contract may be cancelled under the legislation governing insurance contracts.*

227. The above articles show that the regulations are clear as regards the documents to be used for proper customer identification.

228. Nevertheless, as regards the verification of the data supplied by the customer and the authentication of the documents received by the entity, the regulations become somewhat more diffuse.

229. The regulations require customer data to be verified, but do not specify in detail how this is to be done, or what should be the procedure followed to check the information received (official databases, telephone checks…). This is left to the discretion of the institution. Only insurance Providencia Article 58 mentions the obtaining of supplementary information through: communication media, international organisations, business associations…

230. In addition, the CNV Resolution makes regulated entities responsible for verification, and refers to the web pages of the SENIAT, Social Security, National Electoral Council…

231. We consider that adequate verification of data by the regulated entities is not ensured, since:

232. For physical persons:

- They do not have access to official document databases (National Guard, SENIAT, CPICP…)
- The declaration of the origin of the funds is a declaration made and signed by the same person who is supplying the data, and not a sworn declaration (for example, sworn before a notary).

- There is no computerised population census other than that of the National Electoral Council, in which there is only voluntary registration of persons who wish to vote or of political parties. It does not therefore embrace the whole of the population.
- There is no computerised civil or central notarial register, though efforts being made in this regard must be recognised.

233. As regards legal persons, it is very difficult to trace the beneficial owner or to obtain an account of the managers or representatives or various companies, or to track the changes in their membership, since, as we have already mentioned, a central computerised civil or notarial database has not yet been set up.

234. The regulations also do not mention any minimal period for updating of the documentation supplied.

235. With regard to legal persons or arrangements and the recommendations of international standards on:

- Identification of the beneficial owner in the case of companies and natural persons holding shares
- Identification of both the beneficiary and the trustee in cases of trusts
- In the case of transactions carried out through legal representatives, the identity of the person or persons on whose behalf the transaction is taking place.

the three sectoral sets of regulations state that *"in the case of legal persons the natural persons maintaining relations with the regulated entity must be identified. When it appears or is certain the customers are not acting on their own behalf information must be obtained on the identity of the representatives, persons empowered and persons authorised, as well as of the persons on whose behalf they act"*.

236. As regards legal persons, the regulated entities state that they obtain the social documents necessary for identifying the shareholders, but if these shareholders are also legal persons, they do not take the second step to identify the owners of these, in view of the difficulty in accessing the data, since there is no automated central register. (This amounts to a step backward in the determination of ownership, since the identity of the beneficial owner has not been discovered).

237. On the other hand, as already mentioned, the regulated entities state that the regular practice of the markets is not to issue bearer shares, but there is no specific reference in the law to prohibit it.

238. The same situation exists in the case of legal representatives and beneficial ownership.

239. As regards trusts, each institution is free to create them, since they are a service provided to customers. In Venezuela there are guarantee trusts, administration trusts, investment trusts or mixed trusts.

240. The amendment of July 2008 to the Banking Act embodies standards for management of these, and on information to customers and to the supervisory authorities, as follows:

Submission of information to the Superintendency

241. ***Article 65*** *The Superintendency of Banks and Other Financial Institutions may require financial institutions to submit periodic detailed reports of the assets held in trust*

242. With regard to the recommendation requiring financial institutions to determine whether the customer is acting on his own behalf or on behalf of some other person, the institution must take reasonable steps to identify this person, especially if it is a legal person, in which case it should be capable of discovering the control structure.

243. Both the SUDEBAN Resolution and the CNV and the insurance Providencia embody the steps to be taken and the minimal information to be obtained ONCE IT HAS BEEN DETERMINED THAT

THE CUSTOMER IS NOT ACTING ON HIS OWN BEHALF. Nevertheless, save for passing reference in Article 4 of the LOCDO ("anyone who on his own behalf or through an intermediary is the owner or possessor of funds…") there is no overarching legislative provision making it mandatory for the person on whose behalf the customer is acting to be identified. The evaluation team has doubts as to whether the Act gives the supervisors sufficient clear legal powers to implement and enforce this requirement, since no report was received during the on-site visit of any penalty having been imposed for non-compliance, or of control or supervision of compliance. iance We consider that this reference concretises the obligation, and should be included, since the Resolutions of the regulatory bodies are sectoral extensions of the overall legislation, and therefore may be more easily amended than the framework Law.

244. With regard to legal concepts such as beneficial ownership or trusts:
In the banking sector, the creation of a Trust must be authorised by SUDEBAN, but the evaluation team was not able to determine whether there exists a register, or how detailed it might be, on the real beneficiaries and constituent members of the Trust. Insurance companies, too, may create their own Trusts. Therefore, there is no central register of owners and beneficiaries of all the Trusts set up in the two sectors authorised to create Trusts.

245. In addition, once the ownership and control structure of the customer has been discovered, private institutions have stated that they possess means for going one step back in the reconstruction of the control structure of companies, but if they find that the owner is another legal person or legal arrangement, they state that they find difficulties going beyond the initial verification to the natural person who is the beneficial owner. In the case of firms quoted on the Stock Market there is more public information and these checks are therefore attended with less difficulty and are more feasible.

246. In the banking and insurance sectors it is apparent that the sectoral regulations concerning determination of the purpose and character of the commercial relationship are complied with and are manifested by the Customer File or record. In the securities sector, this is made legally mandatory by CNV Resolution 178-2005 Article 24, but it has not been possible to verify the effectiveness of this Regulation since no interviews were held with any private financial institution or its representatives, despite frequent requests.

247. As we have already mentioned, customer due diligence (CDD) measures are embodied in Article 211 of the Law on the Illicit Traffic and Consumption of Substances, which stipulates that "*…in order to implement the operational plan to prevent the use of the banking system and financial institutions for the purpose of laundering money and other economic assets that are the proceeds of offences mentioned in this Act or in related activities, the National Executive shall establish the general standards for identification of customers, records, limits to bank secrecy, the duty of reporting, protection for employees and institutions, and internal programmes, in accordance with the following provisions".*

248. Each set of regulations developed by the competent supervisory body of each sector includes the obligation to know the customer, identify him, keep a record with up-to-date information on him, and hold an interview at the time of establishing business relations, all the data and information to be entered into a Customer File (CHAPTERS III of the three sectoral sets of regulations). Thus, Article 27 of Resolution 185-01 for the banking and financial institutions sector embodies the requirement for keeping the information on the customer UP TO DATE for the purpose of determining his risk profile.

249. In the Securities sector, Article 24 also stipulates that *"The regulated institutions must establish individual records of each customer for the purpose of obtaining and keeping up to date the information necessary to reliably determine their identity and the economic activities in which they engage, for the purpose of defining their financial profile and adopting adequate parameters for classification and thus determine the level at which the customers' operations are carried out and the characteristics of the market, or by means of any other instrument of equal efficiency, by level of investment, by type of product or any other criterion conducive to identification of unusual or*

suspicious operations. The data included in the individual record, together with the documents obtained on the customer and his activities, shall constitute the Customer File". Finally in the insurance sector, Providencia 1,150-2004, Article 24, copies the same paragraph. Additionally, Article 56 stipulates that *"The regulated entity shall ensure that the internal audit and accountancy shall regularly monitor the instrumentation and operation of the system of risk prevention and control"*.

250. From the above it may be concluded that the obligation to keep customer documentation up-to-date is embodied in the sectoral regulations, although, in our opinion, it should be more clearly stated what this updating consists of and what its periodicity should be, i.e. whether it should be done each time the customer performs a transaction, or at specific periods of time or whether it should be left to be determined by the internal policy of each regulated institution.

251. We consider that it would be useful for the regulated institutions if it were stated precisely to which documents the updating required by customer identification due diligence applies and, if need be, whether there exists any difference between what is required in the case of physical persons and that of legal persons.

252. In addition, the Law on Illicit Traffic and Consumption of Substances should include an express reference to the importance of keeping the customer database up-to-date, and to the fact that this updating and monitoring is embodied among the measures for Continuous Due Diligence.

253. Sectors or customers that are more sensitive and more vulnerable to being used for purposes of money laundering and terrorist financing:

254. Resolution 185-01, in the sector relating to Banks and Other Financial Intermediaries, contains a Chapter IV entitled "Special or Differentiated Segments of Clientele", which makes it mandatory for regulated entities to observe and enhance due diligence for high-risk classes of customers, commercial relations or transactions. Articles 49 to 52, in particular, state:

255. Article 49 – The Board of Directors of the regulated entity must keep under particular supervision the activities of **corporate and private banking,** and shall for this purpose craft a document indicating the objectives and purposes of such activities, the sector basically concerned (in terms of minimum wealth, investable assets, products and services sought, and the type of customer to be accepted), the services offered, the financial objectives and acceptable risks, as well as responsibility in the management of risks, control functions and the establishment of multiple levels of approval for the acceptance of new customers.

256. Article 50 – The Board of Directors must intervene in the strategic operational planning of corporate and private banking, including objectives concerning income, assets managed, number of accounts, and audits and compliance inspections.

257. Article 51 – The provisions of the know your customer policy shall be implemented and applied in corporate and private banking, with particular attention to the origin of the customers' wealth and their line of business, the request for references and the creation of lists of warning signals and procedures for detection of suspicious operations.

258. Article 52 – The Compliance Officer for Prevention of Money Laundering of the regulated entity must ensure that the staff of corporate and private banks receive adequate training enabling them to efficiently discharge their money laundering prevention functions, taking into account the characteristics of the customers and the services they offer them. They shall also ensure the creation and enforcement of internal and external auditing methods to verify compliance with the laws and regulations in force, as well as the internal controls established by the institution.

259. *In addition, the amendment to the Banking Act contains specific chapters on virtual and internet banking (setting limits to the type of operations that may be performed by these means) and for trusts.*

Therefore, although these are not areas in which we understand that enhanced due diligence must be applied, the fact that the Act specifically includes them is an indication of their significance.

260. *The issue of PEPs does not apply, since as we have already pointed out, no official lists of these have been published.*

261. *The institutions state that in practice they apply enhanced due diligence for private, corporate, remote banking, trusts, transfers and correspondent banking.*

Superintendency of Insurance:

262. What we learned in this sector is embodied in the statement by SUDESEG concerning supervisory practice: *"The Unit for Prevention and Control of Money Laundering of this Superintendency of Insurance shall supervise compliance by the regulated entities, through on-site inspections and activities of prevention in insurance businesses and shall ensure that they systematically practice self-regulation as a sound risk prevention and control strategy.*

263. *Money laundering and terrorist financing prevention and control consists basically in detection and analysis of risks and their management. This depends on many factors, including the customer database, their geographical location, their products and services and the size of their institution. Due diligence with regard to risks identified in the business, products and services is a crucial step in money laundering and terrorist financing control within the institution.*

264. *Nevertheless, the regulated entities shall pay particular attention, as required by FATF Recommendation No.6, to new customers, persons considered to be publicly exposed, and those customers whose economic activity takes place within the following sectors*

1. Trade, export, import, distribution
2. Lawyers, accountants, economists, managers, notaries and related occupations
3. No information on economic activity
4. Mining, recycling of ferrous and non-ferrous materials
5. Medicine, pharmacy, medical products
6. Others"

Source: STR database maintained by the SUSESEG Money Laundering Prevention and Control Unit

265. The representatives of SUDESEG stated in the interview that they make no distinction among the products contracted, and therefore apply the same due diligence measures to each and every one of their customers.

266. With regard to the Securities sector, no reference was found to this issue in the Resolution, and no assessment can be made of the practice of the regulated entities, since no interview could be held, despite repeated requests, with any private sector institution or association.

Risk based approach

Banking sector and other financial institutions

267. The rules issued by the Superintendency of Banks and Other Financial Institutions include provisions that must be applied by the regulated entities for implementation of an adequate overall management of risk. The legal basis of these guidelines are Articles 51 and 52 of Resolution 185-01 and Resolution 136.03 of 29th May 2003, published in Official Gazette No.37,703 of 3rd June of the same year. The articles are as follows:

268. Article 51 – The provisions springing from the know your customer policy must be implemented and enforced in corporate and private banking, with special attention to knowledge of the origin of the

customers' wealth and their line of business, the request for references and the creation of lists of warning signals and procedures for detection of suspicious operations.

269. Article 52 - The Compliance Officer for Prevention of Money Laundering of the regulated entity must ensure that the staff of corporate and private banks receive adequate training enabling them to efficiently discharge their money laundering prevention functions, taking into account the characteristics of the customers and the services they offer them. They shall also ensure the creation and enforcement of internal and external auditing methods to verify compliance with the laws and regulations in force, as well as the internal controls established by the institution.

270. *Resolution 136.03: STANDARDS FOR ADEQUATE OVERALL RISK MANAGEMENT.*
On the one hand, as we have seen, this Regulation ***does not specifically include a risk-based approach,*** *mentioning only two areas of activity.*

271. The importance of an adequate segmentation of the clientele is mentioned only in Articles referring to Customer Identification (section III), Article 27 of which stipulates that *"The regulated entities shall establish individual records of each of their customers for the purpose of obtaining and keeping up-to-date the information necessary to reliably determine their identification and the economic activities in which they engage, in order to define their financial profile and adopt parameters for segmentation, or through any other instrument of equal efficiency,* ***by levels of risk, by type of product or any other criterion that enables unusual or suspicious activities to be identified. Adequate segmentation will make it possible to determine the level at which the customers' operations are normally conducted and the characteristics of the market.*** *The data included in the individual record and the documents contained concerning the customer and his activities shall constitute the "customer file".*

272. The remainder of the Regulation (136.3) and guidelines refer to overall management of the various risks of the institution: credit, liquidity, market… and their adequate management and control.

273. Entities in the private sector state that in this regard they normally go beyond the Regulation as regards setting up profiles and segmentation of customers. They also maintain that a risk-based approach should be legally developed, including non-financial sectors indirectly related to financial activity and vulnerable, as recognised by the LOCDO, to money laundering.

274. As regards the insurance and securities sectors, there is no segmentation of customers or products nor, therefore, any measures for simplified due diligence.

275. With regard to CDD guidelines on risk sensitivity, the Superintendency of Banks has not issued any

276. In the securities and insurance sectors, this is not applicable since there is no possibility of applying simplified due diligence to some kinds of customers.

277. The Superintendency of Banks' resolution, in Articles 28 and 36, specifies the customer documentation and information that must be obtained for opening an account for the first time, or for operating by internet or sending transfers or remittances through a bank or any other supervised financial institution. It also specifies the consequences of false declaration: Article 35. *Should any of the information supplied prove to be false, after an account is opened, the manager of the agency or branch, the Money Laundering Prevention Unit and the Compliance Officer for Money Laundering Prevention shall analyse the case and, should they see fit so to do, the latter shall proceed to submit a report on Form PMSBIF044/0497 "SUSPICIOUS TRANSACTION REPORT" to the National Financial Intelligence Unit of the Superintendency of Banks and Other Financial Institutions. The departure from normality concerned, the suspicious operations that might be taking place in this account, as well as the true information on the customer if it has been obtained; the account concerned may not be closed nor may the banking assistance requested be denied.*

278. However, it does not state anywhere that the documents in support of the data must be provided at the very moment of opening the account. In fact, Article 35 refers to the discovery of falsity of data once the account is opened, and this leads us to believe that the checks must be carried out during or after the establishment of the commercial relationship.

279. We assume this to be true also in the case of securities, i.e. that the checks can be carried out before or during the commercial relationship, although there is an article which refers to some cases in which PRIOR identification of the client is not required:

280. *Article 28 – **Cases in which prior identification of the customer is not required.** Prior identification of the customer as stipulated in sub-paragraphs 1,2,3 and 4, quoted in the previous article, shall not be required, in the case of:*

(i) Public sector agencies of the Bolivarian Republic of Venezuela
(ii) Foreign governments
(iii) Foreign public agencies of recognised solvency
(iv) Multilateral bodies
(v) Legal persons subject to the control of the following public agencies of the Bolivarian Republic of Venezuela: Superintendency of Banks and Other Financial Institutions, Superintendency of Insurance and the National Securities Commission itself
(vi) Foreign persons subject in their country of origin to the control of the Superintendencies of Banks, Securities or Insurance or similar agencies
(vii) When the regulated institution has the customer number identified in the bank or custodial agent or the bank account of the customer from which the customer is making the payment or to which the customer orders the payment to be deposited.

281. *In such cases, customer identification shall be performed after* the operation in question, for which the customer need only give the relevant instruction in writing.

282. For the Insurance sector, Article 29 of the Providencia stipulates that: *Should any of the information provided prove to be false, after an account is opened, the manager of the agency or branch, the Money Laundering Prevention Unit and the Compliance Officer for Prevention of Money Laundering, shall analyse the case and, if they see fit, the latter shall proceed to submit a report on Form PMSBIF044/0497 "SUSPICIOUS ACTIVITY REPORT" to the National Financial Intelligence Unit of the Superintendency of Banks and Other Financial Institutions. The report shall refer to the departure from normality, the suspicious operations that might be carried out to this account, as well as the true information on the customer if it has been obtained. The relevant account may not be closed and the banking assistance requested may not be denied.* In this case too it seems that the check of the information supplied can be done afterwards.

283. Furthermore, the private sector institutions interviewed have confirmed this. Thus the documents supporting the information supplied by the client and to be presented by him when an account is opened, except for identification documents, vary according to the policy of the institution, and **no regulation specifies either a prohibition on opening a business relationship** if any of the documents required to prove the accuracy of the data requested for completion of the customer file, as required by the sector regulations, is missing.

284. There seems to be a serious incompatibility among the provisions of the three sectoral sets of regulations concerning cases where data is proved to be false after the commencement of the commercial relationship. The supervisory entity must be informed but the financial service may not be denied (Article 35 of Resolution 185-01 of SUDEBAN, Article 29 of Providencia 1150 of SUDESEG) but Article 56 of the Law against Organised Crime stipulates that in the case of such a suspicion on the part of the institution, the financial service requested must be denied. It is recommended that this point be clarified as soon as possible, in order to eliminate the incompatibility of the rules. The Insurance sector, in particular, requires amendment to Providencia 1.1150, its

adaptation to the habitual practice of the sector and its present condition, as well as the adoption of framework law for this sector.

285. As we have already mentioned, all three regulations include the requirement for making a Suspicious Operations Report if there are doubts on the identity of the customer or the information supplied. No specific mention is made of a prohibition on opening an account or initiating commercial relationship if the customer is not able to supply full information.

286. There is no requirement in this area with regard to the relationship of one financial entity with another.
For the rules concerning the relationship of an institution with its customers, we refer to the content in the point on Recommendation 5.14.
Provisions do exist in all three sets of regulations stating that the customer must not be informed that he is under suspicion or being investigated.

287. The sectoral regulations apply to the entire customer base of financial institutions subject to regulation with regard to money laundering prevention
The institutions interviewed stated that they have revised their customer base and brought all information on them up to date. In addition, external auditors include old customers in their sampling.

Recommendation 6

288. Regarding this Recommendation, which concerns **Politically Exposed Persons (PEPs),** *the Superintendency of Banks is in the process of revising Resolution 185-01 "Standards for Prevention, Control and Prosecution of Money Laundering Operations Applicable to Institutions Regulated by the Superintendency of Banks and Other Financial Institutions", to adapt it to international standards in risk prevention and management, as regards money laundering and financing of terrorism, recommended by the International Financial Action Task Force (FATF)".*

289. There is no legal obligation of this kind either for the securities or the insurance sector.

290. In practice, efforts by private insurance and banking institutions to improve internal practices in this area must be recognised. These institutions carry out searches for names and identification in newspapers or on the internet. The wealthier institutions, on their own initiative, have purchased the World Compliance software which provides a global list for identification of persons who in their own countries work or have worked in the official sector and have a record of administrative corruption. They also put together an internal database with additional information provided by the supervisory agencies or other institutions authorised to do so

In the public sector, a step forward is the project launched for a computerised system in the National Electoral Council for the purpose of checking and following up of financing of political organisations at the national and regional level, as well as a database containing data on the voters and political candidates of the country

The offence of corruption was included in the Organic Law against Organised Crime, although no suspicious transaction report has been made to the FIU on these grounds.

Recommendation 7

291. No regulation has been issued concerning **correspondent banking**, since the Superintendency of Banks is at present in the process of revising Resolution 185-01 "Standards for Prevention, Control and Prosecution of Money Laundering Operations Applicable to Institutions Regulated by the Superintendency of Banks and Other Financial Institutions" to adapt it to international standards.

292. The institutions themselves state that this is a subject in which they go beyond the requirements of the law, since in many cases they have had to adopt best practices with regard to correspondent banking in order to comply with the standards imposed on them by institutions belonging to other FATF countries.

293. Although it is not the habitual practice of the sector, there are in fact some institutions which, in order to establish correspondent relationships with other institutions abroad, have included in their policy the practice of sending the Wolsberg correspondent banking questionnaire to those foreign institutions with which they wish to open a business relationship or exchange access codes.

294. As far as working with **shell banks as correspondent banks** is concerned, some financial institutions, as **best practice** in their procedures for opening correspondent accounts with foreign banks, require the bank to prove that it is not a shell bank. For this purpose they are requested to produce the licence they have to operate as a financial institution in their country of origin; the constituent document of the bank and its subsequent amendments, and declarations by the Board of Directors authorising the opening of the account and the identification of the persons who will be using it; these to be translated into Spanish by a public translator, where necessary, and legalised by the Venezuelan Consulate in the country of origin, or failing that, be authenticated with the apostille. In Venezuela, the Tax Information Register (RIF), completion of the identification form for legal persons; references, copy of the Tax Declaration and completion of the due diligence document for correspondent operations of the Wolsberg Principles are required.

295. Some institutions have acquired the Bankers Almanac software, through which they can check whether it is a duly constituted foreign bank, whether it complies with money laundering prevention and control processes and that it has not been the subject of money laundering investigation.

Recommendation 6

296. Regarding the established policies and measures for preventing the improper use of modern technologies in money laundering or terrorist financing schemes:

Superintendency of Banks: *Under Article 28 of Resolution 185-01, to open bank accounts for the first time in a financial institution an indispensable requirement shall be the holding of a personal interview with the applicant or with persons authorised by the applicant, including those accounts which will later be managed through electronic banking services, such as "home banking" or "internet banking" and "online banking services". Payroll accounts shall be exempt from this requirement, always provided the information is formally provided by the respective employers.*

Likewise, sub-paragraph 3 of Article 29 of Resolution 185-01 stipulates that regulated entities must periodically check the identification data of customers mentioned in the heading of the previous Article. Specifically, it states:
"A copy of the abovementioned identity documents shall be placed in the Customer File held in the office or branch in which the account was opened. The Customer File must, in addition, include the following:
…3. Evidence of the initial and periodic verification measures taken by the institution".

Superintendency of Insurance:

297. For the Venezuelan insurance sector, Providencia Administrativa No. 1150 sets out in general terms the obligation of regulated entities to acquire computer equipment or any other up-to-date technological method for perfecting the systems for financial analysis of customers and suspicious activity subject to mandatory report.

298. Furthermore, Article 12 of the Providencia Administrativa in question stipulates that the Prevention and Control Unit of the regulated institution must be endowed with the material and technical resources and training necessary for the discharge of its functions.

299. CNV: There is no specific legislation on this.

3.2.2 Recommendations and Comments

RECOMMENDATION 5

- **Anonymous Accounts**. These are prohibited in the framework law against organised crime. With regard to the regulation of securities and insurance this prohibition is not expressly mentioned, but the article does include the mandatory nature of the know your client policy (Article 24 etc of the Resolution and Article 24 etc of the Insurance Providencia 1150). We nevertheless consider that express mention should be made of it in the sectoral regulations for securities and insurance.

- **Verification of Customer Identity**. As described in the analysis of Recommendation 5.3, we believe that adequate verification of data by the regulated entities is not guaranteed, since:

300. For physical persons

  - There is no access to databases of official documents (National Guard, SENIAT, CPICP…)
  - The declaration of origin of funds is a declaration made and signed by the same person providing the information
  - There is no automated population census beyond that of the National Electoral Council, which only contains data voluntarily provided by persons who wish to vote or by political parties, and therefore does not embrace the whole population
  - There is no automated civil or central notarial register, although the efforts that are being made in this regard are recognised.

301. The regulations also do not specify the minimal period for updating of the documentation supplied.

302. It is therefore recommended that adequate procedures be established to ensure access to the necessary valid information in order to ensure greater certainty of the authenticity of the data supplied by the customers.

- Regarding the process of Continuous Due Diligence, sectoral regulations require customer documentation to be kept up-to-date, but in our opinion there should be greater details as to what this updating consists of and what its periodicity should be, i.e. whether it should be done each time the customer performs a transaction or at specific intervals, or whether it should be left to the internal policy of each regulated institution.

303. In addition, it should be made clear to which documents updating of information under customer identification due diligence applies, and whether differences can be made, if necessary, between customers who are physical persons and those who are legal persons.
The Law on the Illicit Traffic and Consumption of Substances should include an express reference to the importance of keeping the customer database up-to-date, referring also to the fact that this updating and monitoring is part of Continuous Due Diligence.

- Regarding risk and enhanced due diligence, we consider it important to define clearly for the three financial sectors those areas or segments of customers to whom enhanced due diligence ought o be applied because, either for the complexity of their operations of the correct identification of the real customer, they are more vulnerable to use for money laundering or terrorist financing.

- Concerning risk based approaches and the application of different due diligence measures to the customer base: It would be useful to develop in the regulations a risk-based approach for the three sectors based on the experience of supervisors and supervisees, which when applied would enable simplified measures to be used for customers shown to be less at risk of money laundering.

304. This would enable human and technical resources of the institutions to be directed towards the monitoring, tracking and control of those customers, segments or operations which may be more vulnerable to being used for money laundering and terrorist financing, thereby achieving a more efficient prevention system.

- **Concerning checking of customer data**

  - It should be legally specified which verification documents may be supplied afterwards and which not.
  - There seems to be a serious incompatibility between the provisions of the three sets of sectoral regulations, concerning proof of falsity of data after the initiation of the commercial relationship, in which case the supervisor must be informed but the financial service cannot be denied (Article 35 of Resolution 185-01 SUDEBAN, Article 29 of Providencia 1150 of SUDESEG) and the Law against Organised Crime, which stipulates that when there is such suspicion on the part of the institution, the financial service requested must be denied

305. It is recommended that this point be clarified as soon as possible, because of the incompatibility between the laws.

Summary regarding Recommendation 5.

For physical persons.

- There is no access to data bases of official documents (Guardia nacional, Seniat, CPICP) for verification of information supplied;
- The origin of funds declaration is made and signed by the person supplying the data, and does not become a public document (for example, by notarization); nor is there any other means of verification.
- There is no computerised population census other than that of the National Electoral council, in which only persons desiring to vote, or political parties, are voluntarily registered. It does not therefore cover the entire population.

There is no central computerised civil or notarial register, though efforts being made in this direction are recognised

306. For legal persons, it is very difficult to trace the beneficial or final owner or obtain details of any interlocking of directorates of the various companies, or trace the changes in their membership, since as we have already mentioned, a central computerised civil or notarial register has not yet been set up.

307. In this regard, the regulated institutions, particularly loan institutions, have said that they obtain the public documentation in order to know the shareholders, but that if the latter are also legal persons, in view of the difficulty of obtaining data, further steps are not taken to find out the owners, since there is no central computerised civil or notarial register. (This in fact only a step backward in the reconstruction of ownership, since the beneficial owner is not discovered).

308. A risk-based approach (RBA) has not been developed.

309. Regarding the timing of the verification: there seems to be a serious inconsistency in the provisions of the regulations of the three sectors, concerning proof of falsity of information after the initiation of the business relationship. Art. 35 of SUDEBAN Resolution 185-01 and 29 of Providencia 1.150 of the SUDESEG stipulate that the supervisory body must be informed but the financial service may not be denied, while article 56 of the law against organised crime makes it mandatory to deny the service when a suspicion exist.

310. Finally, the law does not specify any minimum time for updating the documentation supplied.

RECOMMENDATION 6

311. The sectoral regulations should include, as a CDD process, specific instructions for the regulated entities to establish special procedures for checking and managing the greater risk potential associated with this customer.
At the same time procedures should be put in place to ensure that the regulated entities, regardless of their sector of origin or the economic resources at their disposal, can have access to sufficient information to enable them to identify correctly, in their due diligence procedures, a politically exposed person. It would be desirable to create a central register of trusts to include all those set up, regardless of the financial sector in which they originate.

RECOMMENDATION 7

312. Correspondent banking consists in the provision of banking services by one bank (corresponding entity) to another (represented entity). These services may be provided by opening correspondent accounts which enable an entity to operate and provide services to its customers in locations where it does not possess branches, or with the simple exchange of codes among institutions for payment purposes.

313. We consider that:
314. - Specific rules should be developed to enable all financial entities to comply with international standards and observe due diligence in business relationships established with correspondent institutions and their customers.

315. - In this regulation special attention should be paid to risk related to the use of correspondent accounts by third parties for their own businesses, correspondent accounts linked to the provision of services in jurisdictions in which the represented banks do not have a physical presence or where there are specific laws on bank secrecy or full exchange of information among the institutions in the relationship is not ensured.

316. - An institution should break off business relations with a correspondent entity if the latter is not capable of providing relevant data for customer identification upon the request of the represented institution.

317. - The establishment of correspondent relations should in all cases be subject to approval by senior management of the institution, legally authorised to approve such decisions.

RECOMMENDATION 8

318. From routine practice and as a result of the information supplied by the various savings and loan institutions interviewed, and in view of the customer identification requirements, it is possible to say that in practice remote banking in the strict sense of the term does not exist. This service is offered to customers as a supplement to other traditional (face-to-face) channels. In other words, an internet or telephone customer is an already identified previous customer.

319. Subsequently, virtual banking is regulated in Decree Nº 6,287 with rank, value and force of law that artially amends the Law of the General Law of Banks and Other Financial Institutions, dated the 31st July 2008 , (rticles 71, 72 and 73), and it describes what is meant by virtual services. However, a procedure for the identification and verification of clients' electronic bank data is not required, nor have been described any enhanced diligence measures. The authorities have stated that in Venezuela no banks operate online via Internet or telephone and this service is offered as an additional service to traditional clients.

320. In the securities sector and insurances, specific legislation does not exist

321. At present, the possibility of using this method as a complement to the more traditional methods offered is recommended to clients of organizations. However, in view of the continual progress in universal bank communications and services and since this sector of the business may develop independently and become an independent process of attracting clients rather than a complementary technique to the more traditional ones, we recommended that a specific ML and FT prevention regulation should be developed. It should include an enhanced due diligence, since the operation and the benefit of services through techniques do not imply the physical presence of parties; it favors anonymity and it is especially vulnerable to the risk of being used for the legitimation of capitals and financing terrorism. It is recommended consulting , in the case of electronic services, the document issued by the Brazilian Committee "Risk Management for Electronic Banking" dated July 2003.

322. In addition, sectoral regulations should be developed for securities and insurance that takes into account the particular characteristics of the operational practices of each of these financial sectors.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	- ML and FT prevention legislation in the securities sector is poorly developed- Need to improve certain aspects of identification and knowledge of customers and verification of data submitted by them, as well as updating of this information. Adequate segmentation of customers including enhanced due diligence for higher-risk activities, profiles or categories. The evaluation team was not able to verify the effectiveness in the application of the existing regulation in the securities sector, since no interviews with representatives of the private securities sector or any regulated entity were held, despite repeated requests - There is no certainty of adequate identification and knowledge of the final or beneficial owner of: Trusts and usufructs Legal persons with complex share structures - No risk-based approach (RBA) has been developed
R.6	**NC**	With regard to PEPs there is no legal obligation and no regulations have been developed for this, since the Superintendency of Banks is in the process of revising Resolution 185-01 "Standards for Prevention, Control and Prosecution of Money Laundering Operations Applicable to Entities Regulated by the Superintendency of Banks and Other Financial Institutions", to adapt it to international standards.
R.7	**NC**	No regulations have been developed for **correspondent banking** since the Superintendency of Banks is in the process of revising Resolution 185-01 "Standards for Prevention, Control and Prosecution of Money Laundering Operations Applicable to Entities Regulated by the Superintendency of Banks and Other Financial Institutions", to adapt it to international standards.
R.8	**PC**	No regulations have been developed for **remote banking** since the Superintendency of Banks is in the process of revising Resolution 185-01 "Standards for Prevention, Control and Prosecution of Money Laundering Operations Applicable to Entities Regulated by the Superintendency of Banks and Other Financial Institutions", to adapt it to international standards.

		Nor is there any regulation for the remainder of the financial sectors.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

323. There is no reference to third parties and introduced business in the law, nor in Resolution 185-1 of SUDEBAN, nor in Resolution 178-2005 of the Superintendency of Securities nor in the Insurance Providencia.
There is also no specific prohibition on doing business through third parties.
In the MEQ we were informed that the Superintendency of Banks is in the process of revising Resolution 185-01 to adapt it to international standards.

3.3.2 Recommendations and Comments

324. The banks interviewed and the AVB state that the institutions do not contract third parties to recruit customers. There are institutions which have representation offices abroad to capture foreign trade business (they do not open accounts). The offices of representation abroad are regulated by the money laundering laws of the countries in which they operate.

325. - If financial institutions are allowed to use intermediaries or other third parties to carry out any of the components of the CDD process (Criteria 5.3 to 5.6) or to present business, then they must comply with the following criteria, otherwise the law must include specifically a prohibition on doing business introduced by third parties.

326. - Financial institutions using a third party must be required to obtain immediately from that third party the necessary information[4] on certain elements of the CDD process (Criteria 5.3 to 5.6).

327. - Financial institutions should be required to take adequate steps to ensure that the third party hands over without delay, upon request, copies of the identification and other relevant documentation demanded by CDD.

328. - Financial institutions should be required to ensure that the third party is regulated and supervised (pursuant to Recommendations 23, 24 and 29), and that it has established measures for compliance with CDD requirements in R.5 and R.10.

329. - Upon determining in which countries the third party complying with these conditions may be located, the competent authorities must take into account the information available on whether these countries adequately enforce FATF[5] recommendations or not.

330. - The principal responsibility for customer identification and verification should remain within the financial institution making use of the third party.

331. - In practice, this reliance on third parties frequently takes place through introductions made by another member of the same financial services group, or, in some jurisdictions, from another financial institution or third party. It may also occur in commercial relations between insurance companies and insurance brokers/agents, or between mortgage providers and brokers. Therefore, although the use of insurance intermediaries is permitted, as regards the duty to apply CDD in the know your client policy, the effective measures to be taken by the institutions to comply with international standards both in the insurance and securities sector should be developed and described, for cases in which they are applicable.

[4] Copies of the documentation need not be obtained.
[5] The countries may refer to AML/CFT repoSTR, evaluations or revisions published by the FATF-style regional bodies, the IMF or the World Bank.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	There is no specific prohibition in the Law but also no regulations have been developed that comply with international standards.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

332. This is specifically mentioned in Article 51 of the Organic Law against Organised Crime, as follows:

> ***"Article 51. Bank secrecy and due confidentiality.*** *All entities regulated under this Law, when they suspect that the funds, capital or goods involved in an operation or transaction within the scope of their business may be the proceeds of an illicit act under this Law, must make an immediate and mandatory report of the relevant content of the respective suspicious activity reports to the decentralised body responsible for combating organised crime, which together with the National Financial Intelligence Unit of the Superintendency of Banks shall analyse them, record them and forward them to the Prosecutor of the Ministerio Público in order that the latter may order the required criminal investigation. Failure to comply with this regulation shall be punishable with a fine equivalent to between four thousand tax units (4,000 T.U.) and six thousand tax units (6,000 T.U.), without prejudice to any criminal liability.*
> *Neither bank secrecy nor the rules of business confidentiality, nor any regulations on privacy that may be in force, may be invoked for the purpose of evading civil or criminal liability. No contractual undertaking of confidentiality or secrecy of bank operations, relations or business, nor any custom or habit related to these concepts, may be alleged in civil, commercial or criminal proceedings, with regard to the submission of information under the terms of this Act. Failure to comply with this Regulation shall be punishable with a fine equivalent to between four thousand tax units (4,000 T.U.) and six thousand tax units (6,000 T.U.), without prejudice to any criminal penalty that may apply".*
> In addition, Article 252 of General Decree with Force of Law 1526 on Banks and Other Financial Institutions stipulates that bank secrecy, professional secrecy or due confidentiality may not in any way be invoked to deny requests for information from the Superintendency of Banks and Other Financial Institutions in the discharge of its functions. These concepts are echoed in the sectoral regulations of the three financial sectors (Article 65 of 185-01 for banks and other financial institutions; Articles 54 and 55 of the CNV and Article 42 of the insurance administrative Providencia).

333. The evaluation team received contradictory information regarding access to information on customers of the subsidiaries of financial institutions in other countries (for example a bank branch), in cases in which the laws of the host country do embody bank secrecy or any other rule of confidentiality concerning customer data. There are therefore doubts regarding the effectiveness of the recommendation in cases of this kind.

3.4.2 Recommendations and comments

This Recommendation is completed

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

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

3.5.1 Description and Analysis

Recommendation 10

334. There is a reference to conservation of transactions of customers in Article 48 of the Law against Organised Crime, which stipulates:
"The regulated institutions must keep for at least five years all records of national or international transactions carried out that enable them to comply in an effective and timely fashion with requests for information from the competent authorities".
This obligation is also mentioned in the sectoral regulations as follows:

335. - For banks and other financial institutions under the supervision of the SUDEBAN it is mandatory to retain for five years documents or records of operations and business relationships of the customers of the institution, as well as documents required for identification of the customers who may have carried them out or who may have opened such business relations with the regulated entity. The period shall date from the day on which relations with the customer are terminated, in the case of documents regarding identification, and from the date of execution of each operation in the case of documents relating to it and in the case of suspicious activities reports. *Article 41 of Resolution 185-01.*

336. - For the securities sector, Article *25 of Resolution 178-2005* requires regulated entities to retain for five years a record of operations with individual information on each of their customers, that is to say, those who make investments in securities, certificates, or investment units. This information must be organised by means of registers on physical, electronic or magnetic supports, and must be available to the competent authorities.

337. - For regulated entities in the insurance sector Article 25 of Providencia 1150 requires separate records on each customer to be kept, i.e. insurance takers or subscribvers, persons insured or beneficiaries of policies, premium financers, guarantors, trusts, other confidential commissions and managed health care plans. These records to be held on physical, electronic or magnetic supports, and must be available to the competent authorities. The period of five years is counted from the day on which the relations with the customer are terminated.

338. With regard to the data that these records must contain, the Law against Organised Crime contains a list of documents or data which may be requested by the competent authorities and which the regulated entities therefore should possess and keep on file.

By sector:

339. - The SUDEBAN Resolution makes it mandatory (Article 41) to know the identity of the customer, the date of the transaction, the character type and quantity of money (…) and by reference back to Articles 19 and 31, the detailed information necessary for the identification of the customer, among them name and domicile.

340. - The CNV Resolution makes a generic reference to the obligation for the archive to contain the data which identify the customer, and quotes Article 27 to 29 regarding what this identification consists of.

341. It should be mentioned that in the case of natural persons the Act mentions only the laminated identity card issued by the competent Venezuelan authorities and for legal persons the constitutive document or the RIF (Article 27).

342. - The SUDESEG Providencia sets out in detail the minimum data that must be retained such as: full names of the subscriber, person insured or beneficiary or the name of the legal person, the number of the identity card or passport or the number of the Tax Information Register (RIF) according to the case; home and work addresses, as well as telephone numbers and economic, commercial or professional activities, post or occupation in which the customer is engaged, mentioning particularly whether the person is in private practice, an employee or a partner and the economic and financial status not only of the business proposed but also of the group.

343. The institutions have made reference to the difficulty, in practice, of obtaining full data and information for all customers in order to complete the customer file. This statement is confirmed by the fact that one of the greatest shortcomings in compliance that the sectoral supervisors have detected is the absence of some customer data in the files kept by the regulated institutions. Record-keeping in securities intermediaries could not be verified because the mission was unable to visit any of these private institutions.

344. Both the framework Law against Organised Crime (Article 48) and the sectoral regulations developed by each supervisory body, make reference to the availability of this information, in a timely fashion, for the authorities.

345. In practice, agreements for cooperation and exchange of information among the three supervisory bodies have been signed, and these ensure availability of information.
However, with regard to requests for information from other authorities that are not sectoral supervisory agencies (for example the Ministerio Fiscal) to regulated institutions, it is not so clear that all the documents and information are in fact available, since they are sent directly to the requesting body without passing through the supervisory agency, for which reason the requesting agency cannot be certain that the regulated entities have responded fully to their request.

346. In this regard, the FIU of the Superintendency of Banks has designed a new acknowledgement of receipt form for the Ministerio Fiscal which includes the list of the regulated entities under its supervision from whom a response should be received. It has not been possible to assess the effectiveness of this measure in view of the fact that it was only recently introduced.

Special Recommendation VII

347. The legal basis for the duties specified in this Recommendation on wire transfers, both internal and cross-border, is to be found in Article 61 of Resolution 185 of the Superintendency of Banks and Other Financial Institutions (henceforth R185-1)

348. ***Article 61 -*** *The regulated entities shall submit to the Superintendency of Banks and Other Financial Institutions within the fifteen days following monthly closure, by electronic means, a report of operations of purchase, sale and transfer of currency, as well as electronic sale of foreign currency, as follows:*

1. *Purchase or sale of foreign currency equal to or in excess of Ten Thousand United States Dollars (US$10,000) or the equivalent in other currencies.*
2. *Transfers equal to or in excess of Ten Thousand United States Dollars (US$10,000), or the equivalent in other currencies into or out of the Bolivarian Republic of Venezuela*

3. *Transfers equal to or in excess of Three Thousand United States Dollars (US$3,000) or the equivalent in other currencies, to or from territories or regions with the following characteristics:*
    a. *Those specified in Article 70 of this Resolution*
    b. *The frequency with which they are mentioned in Suspicious Transaction Reports*
    c. *Susceptibility to being used, even without knowledge or consent, as a transfer point or bridge on the illicit drug traffic routes through Venezuela from the main production centres in the American continent towards world or regional centres of consumption.*
    d. *The existence of offshore banking and free zones*
    e. *Geographic location in relation to major centres of consumption, production and transit of illicit drugs*
    f. *Such other characteristics as the Superintendency of Banks and Other Financial Institutions may consider desirable.*
4. *Transfers equal to or in excess of Seven Thousand United States Dollars (US$7,000) or the equivalent in other currencies from or to the main drug producing regions or zones situated on the American continent.*
5. *Electronic sales of foreign currency by means of "Stored Monetary Value Cards" to customers regardless of amount.*

349. *The Superintendency of Banks and Other Financial Institutions will inform the regulated entities of the data to be contained and the technical characteristics of this report, through the respective Technical Manual.*

350. *The Superintendency of Banks and Other Financial Institutions may issue circulars to regulated entities, specifying the zones or territories to or from which transfers shall be reported according to amounts indicated in numbers 3 and 4 of this article, based on the analysis and studies carried out by The Superintendency, the opinion of international bodies, mutual evaluations of countries and territories that are members of international money laundering prevention organisations, as well as any other instrument that such Body may consider appropriate.*

- Under this Article 61, taken together with Article 48 of the Law against Organised Crime, institutions keep records of transfers made.

- Despite this Article we must point out that:

351. The US$10,000, US$3,000 and US$750 limits are for information to SUDEBAN; it is not specifically stated that their purpose is identification of the originator of the transfer, as recommended by SRVII.

352. It is true that in order to report to SUDEBAN customer information must be held, and that there is a circular of 22nd April 2005 which sets out the data which suspicious operation report must contain.

353. In addition, Article 70 specifies that *"Regulated entities shall pay particular attention, and create internal procedures and standards for prevention and control of, business relationships and transactions of their customers with natural and legal persons based in regions, zones or territories with strict legislation on banking, registration or commercial secrecy, or which do not apply, or apply insufficiently, anti-money laundering regulations similar to those in force in Venezuela. When such transactions seem to have no justifiable purpose, they shall be subject to meticulous examination and, should they be classifiable, in the opinion of the regulated entity, as suspicious operations, the results of such analysis must immediately, and in writing, be placed at the disposal of the National Financial Intelligence Unit.*

354. The prevention and control standards and procedures for these transactions and business relationships must contain at least the following
1. *Whatever is necessary for correct identification of the customers requesting the services of the institution to effect remittances of money or goods to the abovementioned zones or regions, by means of wire, electronic or any other means, by demanding the identification documents specified in Article 20 of this Resolution.*

2. *Recording of the name and address of the beneficiary of the transaction, as well as his account number should the said beneficiary be a customer of the bank receiving the transfer abroad.*

3. *Internal auditing mechanisms, designed to verify compliance with controls and procedures by staff, branches, agencies and offices.*

4. *Procedure to be followed by the Money Laundering Prevention Compliance Officer, the Unit and the Committee for Money Laundering Prevention and Control, whenever an operation is detected that is assumed to be linked to money laundering, in order to report it to the Superintendency of Banks and Other Financial Institutions by electronic means and on Form PMSBIF044/0497 "Suspicious Operation Report".*

The Superintendency of Banks and Other Financial Institutions may inform the regulated entities of the list of countries and territories to which this article refers.

355. In 2005, SUDEBAN issued circular SBIF 17962, in pursuance of the provisions of Article 61 of Resolution 185.1, listing the zones or territories transfers to or from which must be reported. In this list, SUDEBAN based itself on analysis and studies carried out by FATF, naming as **Non-Cooperative Territories: Myanmar, Nauru and Nigeria.**
In addition, based on the results of studies carried out by international organisations, it identified as **drug producers: Bolivia, Colombia and Peru.**

356. Subsequent to this circular;

- There has been no further updating, and therefore the industry has stated that it understands this circular to be no longer in force, since the list of countries and territories referred to in Article 70 is now void, since it consisted of the non-cooperative countries identified by FATF.

- There has been no further communication from SUDEBAN listing countries or territories that:
  - i Are frequently mentioned in Suspicious Activities Reports
  - ii Are susceptible to being used, even without knowledge or consent, as transfer points or bridges in the illicit drug traffic routes through Venezuela from main areas of production on the American continent towards world or regional centres of consumption
  - iii There is a greater probability of the existence of offshore banking and free zones
  - iv Geographic location in relation to major centres of consumption, production and transit of illicit drugs
  - v Which are the main drug production centres on the American continent

- The institutions have also not been informed that there exists a new document issued by the FATF, mentioning territories that have been the subject of revision, such as, for example, Northern Cyprus or Afghanistan (FATF statement, 2008).

357. In conclusion, as a result of the above and of interviews with the private sector, it may be deduced that:

- The limit for identification (as described by Article 20 of the Resolution), would be a threshold of US$10,000, far from the US$1,000 recommended by the international standard.

- Further, there is no specific reference in the legislation to information on the originator that must be incorporated in a cross-border wire transfer. The institutions state that the minimum data is the name and country of the originator and the name and account of the beneficiary, but not all the information included in Special Recommendation VII.

- With regard to transfers within the country, no reference in keeping with the FATF recommendation has been found.

- In addition, no system of procedures to be adopted by the institutions has been developed, nor has there been developed, for use by the institutions, any risk-based system of procedures for identifying and dealing with wire transfers not accompanied by complete information on the originator.

3.5.2 Recommendations and Comments

RECOMMENDATION 10

358. A uniform list should be drawn up, for all regulated entities, of the minimum information to be filed to ensure reconstruction of transactions and serve as evidence in cases of criminal prosecution.

359. Regarding access by competent authorities to the filed information, deadlines for receipt should be established depending on the amount concerned and the type of information requested, in order to ensure the usefulness of such information.

360. Mechanisms should be set up to ensure that access has been obtained to all available and filed information from all of the regulated institutions, regardless of which competent authority has requested the information. It is our opinion that the process of computerisation of many of the records will be helpful for this purpose.

SPECIAL RECOMMENDATION VII

A threshold of US $1,000.00 should be set for customer identification.

361. Specify the minimum information that must be included in cross-border wire transfers on originator and beneficiary. Stipulate the means whereby this information shall be maintained throughout the entire chain of payment.

362. Lay down mechanisms and procedures to be adopted by the institutions, regarding providers of payment services, for dealing with wire transfers not accompanied by complete information on the originator. These procedures should be set up in accordance with a risk-based approach.

363. In view of the confusion existing among the regulated entities regarding the territories or countries referred to in Articles 61 and 70 of R185-1 and the lists that are no longer in force, it is recommended that a circular should be issued to clarify the criteria and territories to be considered as falling under these Articles.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**PC**	It was not possible to assess compliance with this recommendation in the securities sector, since the mission could not visit any private institution in this sector. With respect to the authoritie's access to the information kept in those records ,we consider that information the is useful if it is submitted in time and in the correct form and by all relevant regulated institutions, but there is no administrative control to assure that that has been the case. $10,000 threshold for maintaining registries by wire transfers
SR.VII	**NC**	The identification threshold of US$10.000.00, far from the $1,000.00 recommended by the FATF.

		There is no legislation for transfers within the country. No risk-based system of procedures for adoption by the institutions has been developed for dealing with wire transfers not accompanied by complete information on the originator. There is no specific reference as to what information on the originator must be included in a cross-border wire transfer.

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11

364. Recommendation 11 is covered in Chapter IX, Articles 66 and 67 and subsequent and similar articles, of the same text of Resolution 185-01 of The Superintendency of Banks and Other Financial Institutions, Article 49 of the Organic Law against Organised Crime, Article 44 of Resolution 178-2005, Article 211 sub-paragraph 3 of the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, in Administrative Providencia No.1150 of the 1st October 2004. These legal instruments establish guidelines for detection, analysis and reporting mechanisms with regard to unusual and suspicious operations. They specify what kind of operations are unusual and which are suspicious, how they should be dealt with in analysis as regards minimum form and content, as well as the information that the entities must include in the respective reports. All the information underpinning the analysis and Suspicious Operation Report must remain available to the authorities for at least five years or as specified by the periods of limitation laid down in Resolution 185-01 of the Superintendency of Banks, the Organic Law against Organised Crime, the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, Administrative Providencia No.1150 of 1st October 2004.

365. As mentioned above, the various Acts, Resolutions and Providencias stipulate that the regulated entities must pay particular attention to operations which by their volume, nature, frequency or the characteristics of the persons performing them, may give rise to suspicion that they are linked to money laundering, as well as to any complex, unusual or inhabitual operation in order to determine if the latter may show evidence of being derived from money laundering activities. Particular attention must be given to tracing cash deposits, cash withdrawals, national or international transfers, operations in foreign currency, credit and debit notes in significant amounts, when their justification is not apparent.

366. The texts also define the obligations of the regulated entities to set up mechanisms to enable them to know of and control any complex, inhabitual or unconventional transaction, with or without apparent economic purpose.

367. Articles 67 and 68 of Resolution 185-01 specifies which operations must be categorised as suspicious or unusual. It also makes it mandatory for the Compliance Officer to submit this type of report on the relevant formula "SUSPICIOUS TRANSACTION REPORT" to the National Financial Intelligence Unit of the Superintendency of Banks, and this report also defines a safe haven for regulated entities.

368. The Suspicious Operation Report forms shall be accompanied by a copy of the customer identification sheet and the documentation supporting the assumption of suspicious activity, as well as everything considered necessary to facilitate the evaluation and analysis of facts, operations or activities reported.

369. Article 211(3), paragraph 2 of the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, Article 50 of the Organic Law against Organised Crime, and in the insurance sector, Article 42 of Administrative Providencia No.1150, stipulate the following:
The purpose and destination of such transactions shall be subjected to meticulous examination and any discovery or conclusion must be preserved in writing and be available for the supervision and control bodies, the auditors of the Superintendency of Banks, the competent Ministry in the area of finance, and the Criminal Investigation Police agencies.

370. Regarding retention of documents, a minimal period of five years is stipulated in Resolution 185-01 in the Organic Law against Organised Crime, and the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances, and in Administrative Providencia No.1150.

371. It should be mentioned that a series of regulations exist in Venezuela that demand financial institutions to pay special attention to all complex transactions, unusually big, or to unusual patterns of transactions that do not have an apparent or visible economic or licit objective. In also requires that financial institutions examine, whenever possible, the background and the objective of those transactions. Nevertheless implementation of these regulations is lacking in foreign exchange offices and foreign exchange dealers who are located mainly in the border zones.

Recommendation 21

372. Article 70 of Resolution 185-01, Article 54 of the Organic Law against Organised Crime, Article 43 of Resolution 178-2005 stipulate that regulated entities shall pay particular attention and create internal prevention and control procedures and standards for the business relationships and transactions of their customers with natural or legal persons based in regions, zones or territories with strict banking, registry or commercial secrecy laws, or which do not apply, or apply insufficiently, anti-money laundering regulations similar to those in force in Venezuela. When such transactions have no apparent justification or purpose, they must be subjected to meticulous examination and if, in the opinion of the regulated entity, they are categorised as suspicious activities, the results of such analysis shall immediately and in writing be placed at the disposal of the National Financial Intelligence Unit.

373. In its Mutual Evaluation Report the Bolivarian Republic of Venezuela replies that it applies the same article set out in the response to C E: 21.1, as to whether there are established effective means to ensure that the financial institutions are informed of concerns about the weaknesses in AML/CFT systems of other countries, but in the on-site visit we were not able to detect internal prevention and control procedures and standards. Therefore we consider that there are no established effective means for this. Nor is there any supplementary procedure for informing the financial institutions. We consider that this leaves the financial institutions with very little information, since if the transactions originate from countries that are non-compliant, they will be unable to supply sufficient information about the customer in the other country and his relationship with Venezuela.

374. Articles 49 and 50 of the Organic Law against Organised Crime stipulates that the regulated institutes covered by that Act shall establish mechanisms to enable them to know of and to control any complex, inhabitual or unconventional transaction, with or without apparent or visible economic purpose, as well as transactions in transit or those of which the volume, in the judgement of the institution or at the behest of the National Executive, require it. They also make suspect activity reporting mandatory, stipulating that the purpose and destination of the transactions described in the previous article shall be subjected to meticulous examination, and any discovery or conclusion must be kept in writing and be available for the auditors of the supervision and control bodies and other competent authorities, and be reported to the respective control, supervision, prosecution and monitoring body.

375. If there is a suspicion that the transactions constitute illicit activities or are related to such, the institutions must report them. Article 68 of Resolution 185-01 describes the treatment and content of the unusual and suspicious operation reports, which must be available to the competent authorities.

376. As mentioned in C E: 21.1 and 21.1.1, in the response of the Bolivarian Republic of Venezuela on the Mutual Evaluation report outline, concerning countries that continue not to apply, or apply insufficiently, the FATF Recommendations, countries must be capable of applying appropriate countermeasures. Nevertheless, we were not able to discover, in the on-site visit, internal prevention and control procedures and standards, and we therefore consider that there are no, or insufficient, established effective measures.

377. The regulated institutions informed the evaluating team that the Superintendency of Banks and Other Financial Institutions emitted circular SBIF 17962 in accordance with what was established in Article 61 of Resolution 185.1 grouping zones or territories whose transfers will be the object of a report. The SUDEBAN based this list on the analysis and studies carried out by FATF naming for example non-cooperating territories like: Myanmar, Nauru and Nigeria. In addition, taking the results of the studies conducted by international organisms, it identified drug producers like: Bolivia, Colombia and Peru.

378. After that circular:

- - There has been no other update on why the industry has showed that it thinks this circular is no longer in force since the list of countries and territories, to which Article 70 talks about, is at present blank given that the non-cooperating countries were identified by FATF.

- - There has been no further communication in which the SUDEBAN lists countries or territories that:

- * are frequently mentioned in Suspicious Activities Reports
  * are susceptible of being used, still without its knowledge or consent, like a scale or bridge in illicit drug trafficking routes that occur in the Bolivarian Republic of Venezuela because of the main producing zones located in America, to world-wide or regional centers of consumption.

- - It still has not communicated to institutions that a new document issued by FATF exists in which territories to be revised like for example the North of Cyprus or Afghanistan are mentioned. (Statement from the 2008 FATF)

3.6.2 Recommendations and Comments

379. Various Laws, Resolutions and Dispositions have been recently promulgated in Venezuela for the purpose of strengthening the money laundering prevention and repression regime, and they set out and expand the list of regulated entities. However, in our on-site visit we were able to determine that despite the number of regulations promulgated, they are not adequately implemented. Therefore, not all the regulated entities of the country are paying special attention to all complex transactions, unusually big, or to unusual transactions that do not have an economic, apparent or visible licit objective and they do not examine, whenever possible, the background, as well as the main objective of those transactions, mainly in foreign exchange offices and dealers who are located mainly in border zones

380. The existing regulations should be applied more effectively to the regulated institutions in order to comply with anti-money laundering laws, regulations and standards, and that they are not being exposed to manipulation by money launderers, which will happen if they do not possess the tools to prevent it.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating

R.11	**LC**	The effectiveness of the transaction monitoring requirement could not be tested, since many of these processes were only recently introduced.
R.21	**PC**	Prevention and control procedures and policies within institutions to ensure compliance with these requirements of Venezuelan law could not be assessed.

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

3.7.1 Description and Analysis

Recommendation 13

381. The legal obligation to report suspicious transactions is based on the law against organized crime, art 51 provides that all regulated entities when they suspect that the funds or property involved in an operation may originate from an illegal activity must be informed immediately to the decentralized agency responsable for the fight against organized crime and the National Financial Intelligence Unit of the Superintendency of Banks, who will analyze file or forward to the Public Prosecutor's Office so that the corresponding criminal investigation can be instigated.

382. Also the offense of Financing Terrorism is contained in Article 7 of the LOCDO and all subjects regulated by this law shall immediately inform by STR STRto the UNIF and the same "decentralized agency in charge of the fight against organized crime"

383. This duality of STR recipients (UNIF and "decentralized agency") is not in agreement with the FATF Recommendations. According to information provided by the Venezuelan authorities, only UNIF receives STR because the "decentralized agency" mentioned in the law has not been created. Nevertheless the law already considers this agency and if at any time it becomes operational, it would cause a series of complications for the regulated institutions and for UNIF, thus the authorities would have to modify this law in their Article 51 to clarify that only UNIF will receive the STR from the regulated institutions.

384. Resolution 185-01 further clarifies the obligation of only preparing and sending the STR to the UNIF. Nevertheless this resolution has neither the scope nor the rank of a law, and therefore it does not eliminate the problem of possible duality of authorities foreseen in Article 51 of the Law against Organized Crime

385. The financial institutions release their STRs to UNIF in accordance with what is established in Article 68 of the Resolution 185-01 of the Banks and Other Financial Institutions. This Resolution is not applicable to insurance and securities activities

386. In addition, Article 51 of the Law against Organized Crime lays down the time limit for the institutions to submit the reports, which must be not more than thirty (3) calendar days. It is considered that the institutions' having such a long time to report may have repercussions on the effectiveness of the ML prevention system.

387. Article 2 of Circular No. SBIF-UNIF-DIF-3759 of 9th April 2003 describes to the regulated entities how to distinguish financing of terrorism from other criminal situations and what to do when a terrorist organisation has opened an account, or when there has been a transaction between one of these persons or organisations and a customer of the financial institution. After the suspicious or

unusual operations have been submitted to analysis, those that are suspected to be connected with terrorist activities must be reported to the National Financial Intelligence Unit.

388. Article 71 of Resolution 185-01 tells the financial institutions what to do when a customer requests the performance of a particular operation or transaction which the customer only intends to perform, but does not finally perform.

389. Despite what is mentioned in previous paragraphs, there is no regulation under law, regarding prevention of terrorist financing and the obligation to report suspicious operations related to terrorist financing, that embraces all supervisory bodies and all regulated entities, since Resolution 185-01 of the Superintendent of Banks excludes from this regulation activities of financial institutions in the securities and insurance sectors.

390. In addition the financial institutions' duty to make STRs for prevention of financing of terrorism is embodied in a FIU circular, when it should be derived from a law covering the entire sector, and that law should lay down the relevant administrative and criminal sanctions for submission of these reports.

391. The suspicious transactions that must be reported are those that are performed outside habitual transaction patterns, and those that are not large but are regular, and without obvious economic or legal purpose. All these requirements apply to the offences and conditions set out in Resolution 185-01, the Organic Law against Organised Crime, the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances and in Administrative Providencia No.1150.

392. The response of Venezuela regarding these criteria is based on Article 16 of the Organic Law against Organised Crime. However, this Article refers to predicate offences against organised crime, to which this essential criterion does not exclusively relate. Article 68 of Resolution 185-01 is the Article referring to the reporting of suspicious cases and activities relating to money laundering. However this article gives the power to the regulated entities to decide whether or not to report suspicious or unusual activities.

Special Recommendation IV

393. The crime of Financing Terrorism is reflected in Article 7 of the LOCDO and all institutions regulated by this Law will have to mandatory and immediately report when there are suspicions that funds, capitals or goods involved in an operation or business of their resort come from an illicit activity according to this Law.

394. With the promulgation of this law, the Venezuelan Government achieved significant progress in the CFT fight. Nevertheless there some weaknesses were found, for example the ones mentioned in Recommendation 13 on the communication of the STR to the decentralized agency in charge of the fight against organized crime and to the National Financial Intelligence Unit. As mentioned in the previous Recommendation, this organ is not at the moment operating, but it would generate a series of complications at the moment that it initiates its functions entrusted by this law

395. Another point is the present writing of Article 51 of the LOCDO, since the STR that are filed by regulated institutions are those based on suspicions in which funds, capitals or goods involved in an operation or line of business can come from an illicit activity. Hence, STR could not be carried out when resources come from a licit activity, which constitutes a weakness when it is dealing with FT.

Recommendation 14

396. This Recommendation envisages legal protection for the regulated entity against all liability vis-à-vis a customer or third party for submitting an STR, and at the same time forbids it to disclose that a report is being made

.

397. According to what is revealed by Venezuelan authorities, the justification for the compliance with this Recommendation is outlined in Resolution 185-01 of the Superintendency of Banks, Resolution 178-05 of the National Securities Commission and Article 51 of the Law against Organised Crime.

398. However, what this Act indicates is where suspicion arises that the funds, capitalor goods may be proceeds of an illicit activity, as described in the Act. Financial institutions must submit mandatory and immediate reports, in STRs, to the FIU. It also stipulates that bank secrecy may not be invoked in the submission of information in terms of this Act. What it does not mention expressly is protection through the concept of safe haven for financial institutions. Only in Resolution 185-01 is it expressly indicated that a report is not a criminal denunciation, does not involve the formalities and requirements of such a procedure, and does not carry criminal or civil liability for the regulated entity and its employees or for the person signing it. However, this Resolution is not a law and we therefore consider that the criterion is not satisfactorily complied with.

399. The second point embodied in this Resolution is also not satisfactorily complied with since the prohibition on disclosing a STR or any type of information related to FIU investigations based on Resolution 185-01 and not on any law. The Act stipulates that the employees of the regulated institutions may not tip off a customer regarding the submission of information related to a criminal investigation, nor deny him banking or financial assistance, nor suspend relations with him, nor close his accounts, without prior authorisation by a competent judge, on pain of criminal liability. However, an STR is not considered information within a criminal investigation. Therefore this law does not meet the requirement of forbidding tipping-off a customer that a report is being submitted. The Law establishes that the reporting institutions are legally protected when providing this type of information to the UNIF, as is mentioned in Article 51 of the LOCDO.

400. "Banking secrecy will not be invoked; neither the rules of business confidentiality, nor the rules on privacy or intimacy/confidence with the intention or objective of avoiding civil or penal responsibilities. No commitment of contractual nature related to the confidentiality or secrecy of banking or business operations or relations, nor any use or convention related to such concepts can be alleged for the purposes of exercising civil , mercantile or penal actions, when it deals with an information provided in the terms of this Law"

401. Finally, no regulation or law was obtained which reliably indicates that the names and personal details of the employees of the financial institutions that make a STR are maintained in the FIU under conditions of confidentiality. We therefore consider this additional element as not complied with.

Recommendation 25

402. We consider that this essential criterion is largely complied with, as stated by Venezuela in the outline sent to the CFATF, in which it states that the FIU is developing half-yearly feedback reports published on the web page and that such reports cover the following categories:

403. Number of Suspicious Activity Reports by System, by Regulatory Body, by Quality of Report, by Period of Time, by Origin, by Geographical Location, by Reporting Institute, by Identity of Persons Reported, by Economic Activities, among others. The National Financial Intelligence Unit supplies financial institutions regulated by the Superintendency and other reporting bodies with a quarterly report containing the status of Suspicious Operations Reports (acknowledgement of receipt) sent individually by each body. This information was corroborated by the evaluation mission in the on-site visit.

404. In addition, the National Anti-Drug Agency carries out trainings directed to other DNFBPs in order to familiarize them in fulfilling the law in AML and CFT matters, especially taking into account that these other institutions are regulated in the LOCDO. Nevertheless, this law has not succeeded in being regulated, thus the reason why they are implementing stable workshops, trainings, seminars and others in order to sensitize these sectors in this matter.

Recommendation 19

405. Articles 60 and 61 of Resolution 185-01 expressly stipulate that the regulated entities shall submit to the Superintendency of Banks and Other Financial Institutions within fifteen (15) calendar days of monthly closure, by electronic means, a report of all transactions performed by their customers in their current or savings accounts, liquid asset funds or other similar products, equal to or in excess of four million five hundred Bolivars (Bs. 4,500,000). The data to be contained in these reports and their technical characteristics shall be transmitted to the financial institutions by the Superintendency of Banks and Other Financial Institutions.

406. In addition, regulated entities must submit to the Superintendency of Banks, within fifteen (15) calendar days following monthly closure, by electronic means, a report on operations of purchase, sale and transfer of foreign currency.

407. The regulated institutions (insurance companies) supervised and controlled by the Superintendency of Insurance are required to send to that body all transactions and business operations in excess of the amount set out in Article 49 of Administrative Providencia No.1150 of 1st October 2004. No regulation on this subject has been issued by the National Superintendency of Securities.

408. The Superintendency of Banks and Other Financial Institutions and the National Financial Intelligence Unit have put in place the necessary coordination for reception and entry into their data base of information in periodic and suspicious transaction reports received by other supervisory bodies.

Recommendation 32

409. The National Financial Intelligence Unit submitted the following statistics: STRs by year from 2004 to 2007, of which 3,098 were received. There is no information on the result of the STRs, for instance how many of them have been turned into money laundering cases and taken to court.

CHART IV (32,2)
Suspcious Operations Reports received and distributed by the FIU to the Ministerio Publico
2004 - 2007

Reports	Year				Total
	2004	2005	2006	2007	
Reports received by the FIU	584	843	1,021	1,234	**3,098**
Reports distributed by the FIU	308	282	332	529	**1,143**

Source: National Financial Intelligence Unit

SUSPICIOUS OPERATIONS REPORTS FORWARDED TO THE MINISTERIO PUBLICO

	Year 2004	Year 2005	Year 2006	Year 2007	TOTAL
January	26	19	18	69	132
February	40	20	79	67	206

March	23	6	19	58	106
April	16	6	58	65	145
May	24	15	5	50	94
June	66	6	55	40	167
July	30	0	4	41	75
August	33	107	0	37	177
September	23	60	0	31	114
October	36	0	0	27	63
November	14	39	0	11	64
December	7	4	94	33	138
TOTAL	**338**	**282**	**332**	**529**	**1481**

410. The following are the figures for on-site supervisions from 2004 to 2007

2004	124
2005	73
2006	45
2007	44

411. Number of administrative procedures applied for non-compliance with Resolution 185-01 from 2004 to 2007

Year	Approved	Denied
2004	2	2
2005	10	2
2006	15	3
2007	19	11

412. Fines levied for non-compliance with Resolution 185-01 (expressed in thousands of Strong Bolivares)

2004	57
2005	57
2006	577
2007	723

413. Fines levied for non-compliance with Resolution 185-01 (expressed in thousands of US Dollars)

2004	27
2005	27
2006	268
2007	336

414. No figures were submitted for transactions in national or foreign currency in excess of US$10,000, by single or multiple operations, or for product or instrument used. There are also no statistics on cash operation reports by year.

415. In the STRs by year from 2004 to 2007 there is no information on the result of the STRs, in the sense of how many became money laundering cases and were taken to court.

416. There are no figures for cooperation with other national agencies such as the Ministerio Público and other police agencies specialising in the subject.

3.7.2 **Recommendations and Comments**

417. To eliminate from the Law, the obligation of sending STR to the "decentralized agency" in addition to the UNIF, although this agency does not exist, it could cause future problems

418. To reduce the time allowed to present the suspicious operations report

419. The obligation to make a suspicious operation report on operations related to the financing of terrorism must be reinforced by demanding, via law, that all suspicious operations aimed at the financing of terrorism be reported (at the moment the law only requires the reporting of operations related to funds of an illicit origin).

420. There is no legislation as such providing a safe haven for financial institutions, their managers, officials and employees who submit suspicious or unusual transaction reports

421. The same applies to the prohibition on financial institutions and their employees on disclosing an STR or information related to any investigation which the FIU may be conducting. Once again, this prohibition is embodied in a Resolution and not a Law which would make it possible to punish, administratively and criminally, institutions and officers who disclose STR information or information in any way related to FIU investigations

422. No regulation or law was discovered that clearly demands maintaining the names and personal details of staff of financial institutions making an STR shall be kept confidential

423. We consider that the recommendation concerning feedback that should be provided for the financial institutions by the FIU is fully complied with.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (Criterion 25.2) and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	The law establishes an obligation to inform the FIU jointly with another entity that has not been established, which could affect its implementation as the legislation remains unclear. The regulations are clear and applicable to the institutions under the responsibility of the Superintendency of Banks, but they do not cover securities and insurance, among others.
R.14	**PC**	It is not clear that there is any provision for protection for financial institutions, their management, officers and employees with regard to criminal and civil liability for suspicious transaction reports which they must send to the FIU. There is no regulation expressly prohibiting managers, officers and staff, whether permanent or temporary, of a financial institution to disclose that a suspicious transaction report has been forwarded.
R.19	**C**	
R.25	**LC**	The FIU complies satisfactorily with the processes of feedback to the financial institutions, including civil society, which in this section could count as compliance with R.25. but there is no feedback to DNFBPs (See Section 4)
SR.IV	**PC**	There is no legal obligation for the regulated entities to report operations related to terrorist financing, since, as in Recommendation 13, the financial institutions make and base their reports on Resolutions and Circulars issued by the Superintendency of Banks and the FIU.

Internal controls and other measures

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

3.8.1 Description and Analysis

Recommendation 15

424. International standards require financial institutions to establish and maintain anti-money laundering and anti-terrorist financing policies and controls and that these policies and controls must be known by their staff. They are also required to designate a responsible person (compliance officer) with an adequate profile for checking the processes set up for this purpose, and with the rank, function and independence necessary to obtain access to information and data on the identification of customers, files and other relevant information. By sector:
Banking Sector: Articles 4, 5, 9 and 10 of Resolution 185-1 of SUDEBAN meets international standards regarding policies and controls and the existence of a structure for control, analysis and processing of information on customers.
Insurance Sector: Providencia 1150 of the SUDESEG, Articles 4-10, contains similar provisions.
Securities Sector: Likewise, in Articles 4-10.

Effectiveness

425. From interviews with the private sector, we were able to confirm, for banks, bureaux de change, and insurance companies, compliance with these standards and the existence of a compliance officer with functions and responsibilities as laid down in the sectoral standards.We should point out that the majority of the regulated entities in the insurance sector state that they have requested an exception in that the compliance unit in the area of prevention be staffed by fewer than four people as required by Article 13 of the Providencia. This indicates either that the regulation is not in keeping with the reality of the sector, or that the regulated entities are underestimating the risk, and the controls necessary for preventing money laundering in the products of the sector.
Since we have not been able to examine data, despite having requested it, with any representative of the private sector in the securities industry, neither compliance with nor effectiveness of this standard could be assessed.

426. With regard to the maintenance of an INTERNAL **audit department**, independent and endowed with sufficient resources, and with powers of review including the area of money laundering prevention, we must point out that in the three sectors the regulations refer to an EXTERNAL audit (Article 56 SUDEBAN, Article 41 CNV and Article 40 SUDESEG), although none of the sectoral regulations mentions that the internal audit of each institution should also extend to the examination of the prevention department or unit. This is touched on lightly only in Article 70 of Resolution 181-1.
The evaluating team was able to confirm the existence of an official register of external auditing firms, and that the regulated entities (banks and insurance companies) undergo these reviews every six months.
In the banks, it was also confirmed that in at least some of them, the internal audit of central offices and services include a clause on compliance with money laundering prevention with regard to the know your customer policy.
Compliance with this standard in the securities sector could not be assessed because no interview was held with representatives of the regulated entities in this sector, despite repeated requests.

427. As regards **training of staff** in the regulated entities this is covered within the "Annual Training Programme" which the regulated entities must undergo: Article 41 of Resolution 185-1 (banks), Article 5.33 and 34 of Resolution 178-2005 (securities) and Article 30 of the insurance Providencia.
It was not possible to verify attendance by the representatives of the regulated entities at the typology exercises organised for banking institutions by SUDEBAN and for the securities sector by SUDESEG.

As regards background checks for staff of the institutions, for banks this is mentioned in Articles 47 and 18 of the Resolution and for the insurance sector in Article 32 of Providencia 1150. No reference to this was discovered in the securities sector. The Sudeban has given statistics on the training of employees, delivered in 2000-2009

RECOMMENDATION 22

428. Banking sector: References to control of foreign subsidiaries are to be found in Article 55 of Resolution 185-1, under which banks and financial institutions must ensure that the provisions for anti-money laundering prevention and control embodied in Venezuelan regulations are applied abroad. And if the laws of the host country make this impossible, the branches and subsidiaries must inform the Head Office in order that a system for tracking movements of money may be established.
Article 19 also considers the possibility of a compliance officer for the entire group, that is to say the Head Office and foreign subsidiaries and branches.
Article 70 also requires particular attention to be paid *"to business relationships and transactions of their customers with natural and legal persons based in regions, zones or territories with strict banking, registration or commercial legislation, or which do not apply, or apply insufficiently, anti-money laundering regulations similar to those in force in the Bolivarian Republic of Venezuela... the Superintendency shall issue the list of countries or territories to which this Article refers"*.
This list coincided with the list of non-cooperative countries issued by the FATF, which is now void. The Superintendency had not provided information on the document published on countries where the measures are weakest and which are being monitored (FATF statement 2008).

429. Article 52 of Providencia 1150 in the insurance sector stipulates "*Regulated institutions which have branches, agents and/or related companies based abroad shall have a system of communication and information which makes possible tracking of movements of money related to activities covered by the Organic Law on Narcotic and Psychotropic Substances and other rules embodied in Venezuelan legislation on the subject"*.

430. Article 53 in securities sector focuses on monitoring systems as follows: *The regulated entities which have branches, agencies and/or companies based abroad, shall have a communication and information system that permits tracking of movement of money related to activities covered by the Organic Law against Organised Crime and the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances"*.

431. From the sectoral regulations it may be concluded that the regulated entities are required to check compliance in foreign branches and subsidiaries with the AML/CFT measures of the group.

432. At the present time many Venezuelan institutions have branches or subsidiaries in countries around the Caribbean basin such as Curacao or Panama. Interviews with the institutions and representatives of the financial sector reveal the existence of a compliance officer at the group level. However, compliance with AML standards of the country of origin, in this case Venezuela, and access to all information on the customer and on money movements, depends on whether the subsidiary is a branch or an affiliate, and whether the customers with accounts opened in the host country are considered customers of the head office or not. If not, they will fall under local laws and the Venezuelan AML standards may not be complied with in cases in which the host country has specific laws on bank secrecy or different anti-money laundering standards. The evaluating team learned that no STRs have been made regarding operations by customers with accounts in subsidiaries.

433. The evaluating team has received contradictory information on the access to information on clients of secondary financial organizations in other countries (for example a banking branch) in case the laws of the host country discovers the banking secret or another Law on the confidentiality of clients' data. Thus the reason why there are doubts about the effectiveness in this practice if this case occurs.

3.8.2 Recommendations and Comments

RECOMMENDATION 15

434. Regulations in all three sectors (banking, securities and insurance) should stress the importance of the extension of the scope of internal audit to the area of money laundering and terrorist financing prevention.
In the insurance sector it is recommended that the apparent inconsistency between the requirements of Article 13 and the reality of the sector be reviewed and analysed.
The importance should be emphasised of anti-money laundering and terrorist financing should be continuous and should embrace the entire staff of the regulated entities. This training should be adequate and should be designed in keeping with the profile and functions in the institution of the staff member who receives it.

RECOMMENDATION 22

435. Develop in a law the home/host PLC policy, specifying in which cases AML standards of the country of origin and which in the destination country shall be applied, and making a clearer distinction between cases concerning a subsidiary (independent legal person), a branch (Venezuelan legal person) or office of representation abroad.

436. In view of the responsibility of the head office to ensure compliance with group money laundering prevention, and of the reputational risk implied by use of subsidiaries or branches abroad, the institutions should have not only control and communication systems to allow cash movements to be monitored, but also conclude conventions or procedures at the group level to ensure total and unrestricted access to information on customers and the operations being carried out by the foreign branch which, in addition to complying with local anti-money laundering laws, must also comply with those of the head office.

437. Rules should be established specifying what effective and efficient measures should be adopted by the institutions in order to comply with the established standards.

438. Since more than 37 institutions have stock market companies, laws should also be adopted in this area to be applied in stock market ambit (for example, contracting for or subscription to securities from foreign subsidiaries).

439. It is recommended clarifying and defining the scope of the powers to obtain and exchange information on the clients from organizations in the case of setting up agencies in territories where they have more lenient AML legislation or in which there is excessive secrecy.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**LC**	- Legislation is less well developed in the securities sector. Effectiveness of measures in the securities sector could not be assessed because no meeting was held with the private sector
R.22	**PC**	- The legislation is very general. It requires the maintenance of control and communication systems to enable cash movements to be monitored, but does not specifically mention the requirement to apply the highest standard, nor that consistent CDD measures should be applied at the group level - The effective and efficient measures to be adopted by the institutions for

		the purpose of complying with the established standards should be specified Legislation poorly developed in the securities sector

3.9 Shell Banks (R.18)

3.9.1 Description and Analysis

440. In order for a financial institution to be able to operate in the Bolivarian Republic of Venezuela it must be governed by the provisions of Articles 2 and 7 of Decree with Force of Law 1526, amending the General Law on Banks and other Financial Institutions, as follows:

Article 2*: This Decree Law governs all-purpose banks, commercial banks, mortgage banks, investment banks, development banks, second-tier banks, leasing companies, money market funds, savings and loan institutions, bureaux de change, financial groups, frontier exchange operators, as well as credit card issuers and operators. Also subject to inspection, supervision, monitoring, regulation and control of the Superintendency of Banks and Other Financial Institutions shall be reciprocal guarantee associations and national mutual guarantee funds. All banks, credit and loan institutions, other financial institutions and businesses mentioned in this Article are subject to inspection, supervision, monitoring, regulation and control of the Superintendency of Banks and Other Financial Institutions; to such rules as may be laid down by the National Executive; to such prudential standards as shall be established by the Superintendency of Banks and Other Financial Institutions; and to the prudential resolutions and standards of the Central Bank of Venezuela.*

For the purposes of the present Decree Law prudential standards issued by the Superintendency of Banks and Other Financial Institutions shall be understood to be all those mandatory directives and instructions of a technical accounting and legal nature issued, by means of general resolutions, or through circulars, to banks, savings and loan institutions, other financial institutions and businesses subject to its control. This Decree Law shall not be applicable to the Banco del Pueblo Soberano, C.A. and the Women's Development Bank, which shall be governed by the provisions of their respective founding documents; nor shall it apply to all those institutions established or to be established by the State, the purpose of which is to create, stimulate, promote and develop the microfinance system of the country, to serve the popular and alternative economy, pursuant to special legislation adopted for the purpose. In addition the provisions of the present Decree Law shall not be applicable to legal persons in public law of which the purpose is financial activity, save for any contrary provision contained in this Decree Law. Consequently, for the purposes of the present Decree Law, reference to persons subject to control of the Superintendency of Banks and Other Financial Institutions, or any similar expression, excludes the entities referred to the in the present paragraph.

Article 7*: The promotion of banks, savings and loan institutions, other financial institutions and bureaux de change shall require authorisation by The Superintendency of Banks and Other Financial Institutions. The relevant decision shall be handed down within three months from the date of the acceptance of the request for promotion. This period may be extended once, for a similar length of time, when in the opinion of the Superintendency of Banks and Other Financial Institutions this may be necessary. Applicants shall attach to the respective application a sworn declaration containing the following information:*

1. Full name, domicile, nationality and curriculum vitae showing experience in the economic and financial field, in activities related to this sector, as well as balance sheets and a copy of income tax declarations for the previous three years of the promoters, the number of whom may not be less than ten (10). The same information must be supplied for any possible shareholders who have declared their intention to acquire five percent or more of the capital.

2. If the promoters and possible shareholders are legal persons, the respective documentation must be accompanied by the Articles of Association and Statutes, duly updated, financial statements

audited by certified public accountants, and copies of the income tax declarations for the previous three years. Detailed information on main shareholders must also be supplied, and if these are also legal persons, the necessary documents for identifying the natural persons who hold effective control of the institution promoted and for whom the applicants must also submit the information set out in paragraph 1 of this Article.

3. Information and documentation to enable determination of the honesty and moral and economic solvency of the promoters and possible main shareholders; the relations among them, including relationships of blood or marriage, joint participation in the ownership of capital, businesses, associations or civil and commercial societies, joint operations and contracts.

4. The code of the bank, savings and loan institution or other financial institution which it is intended to establish, its trade name and domicile.

5. The amount of capital, the percentage of this that will be paid up when operations commence and the origin of the resources that will be used for this purpose.

6. Drafts of the Articles of Association and Statutes, and an economic study justifying the establishment of the institution, including business plans and operational programmes demonstrating the viability of such plans.

7. Any other documents, information or requirements that the Superintendency of Banks and Other Financial Institutions may consider necessary or useful, through general or specific provisions.

The Superintendency of Banks and Other Financial Institutions shall establish the standards and procedures applicable to requests for promotion authorisation. Once the data supplied have been checked and the requirements of these rules have been met, the Superintendency of Banks and Other Financial Institutions shall approve the application. Should the application be refused, the applicants have the right to be informed in writing of the reasons for the refusal.

3.9.2 Recommendations and Comments

441. The articles cited before, guarantee Fictitious Banks do not operate in the National Financial System, be it domestic Venezuelan banks or respondent financial institutions in another country

442. The banks interviewed state that they do not operate with shell banks. This prohibition is included in their manuals of policy and procedure.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	The articles quoted above ensure that no shell banks can operate in the national financial system

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system – competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Recommendation 17

443. The regime for administrative penalties is governed by the Organic Law against Organised Crime, the General Law on Banks and Other Financial Institutions, as well as Resolutions 178-2005 and 185-01, and Providencia 1150. These cover all staff of regulated institutions, and of the Superintendencies. It also provides sufficient mechanisms for ensuring that there are efficient and proportionate criminal, civil or administrative penalties applicable both to the regulated entities and to civil servants involved in money laundering and terrorist financing.
Nevertheless, all these types of sanctions are mainly directed to the normal and business operations of a financial institution. There is therefore no chapter of sanctions designed and directed chiefly to money laundering and financing of terrorism covering regulated entities.

444. Article 4 of the Law against Organised Crime lays down the basis for administrative and criminal sanctions for money laundering, and Article 5 specifies that when the offence covered by Article 4 is committed through negligence, carelessness, inexperience or inattention to the law on the part of employees or management of the regulated entities mentioned in Article 43, the penalty shall be from one to three years' imprisonment.

445. In concordance with the previous essential criterion, Articles 45 and 46 of the Organic Law against Organised Crime specifies the control, supervision, prosecution and monitoring bodies for the regulated entities in this area, as well as their obligations and the powers of the competent authorities in their capacity as control, supervision, prosecution and monitoring bodies.

446. Articles 423, 424 and 427 of the General Law on Banks lay down the administrative penalties for natural persons, chairman, shareholder, management, commissioners, auditors and other employees and officers of the bank, when these hinder or impede the work of inspection, supervision or monitoring, and also when without due cause, they fail to submit in the form and within the specified time limit the information or documentation required during an inspection visit, as well as when without reasonable cause they do not submit or refuse to submit it to the Superintendency of Banks and Other Financial Institutions.

447. Criminal sanctions are set out in Article 5 of the same Act, and stipulate that when the offence mentioned in Article 4 of the Act is committed through negligence, carelessness, inexperience or disregard of the law on the part of employees or management of the regulated entities covered by Article 43 of the Act, the penalty shall be from one to three years' imprisonment.

448. Under Article 235 of the General Law on Banks and Other Financial Institutions, the Superintendency of Banks and Other Financial Institutions shall:
License the promotion or opening of banks.
License the establishment in the country of branches or offices of representation of foreign banks and financial institutions.
Order the suspension of illegal, or unauthorised operations, or operations that constitute a high level of credit risk.
Order suspension or revocation of the licences referred to in Nos.1 and 2 by means of a duly motivated decision.
Order the nationalisation of, or intervention in, banks, credit and loan institutions, other financial institutions and their related businesses, as well as approving their rehabilitation or liquidation. Modify the minimum capital required for constitution and functioning of banks, savings and loan institutions, other financial institutions and other businesses under its control, taking into consideration the macroeconomic variables governing the country.
Promulgate prudential standards necessary for the achievement of its objectives and, in particular: procedures for application for promotion and functioning of banks, savings and loan institutions, financial institutions and all those businesses governed by this Decree Law.
Inspect, supervise and monitor banks, credit and loan institutions and other financial institutions, financial groups, bureaux de change, frontier exchange operators, credit card issuing and operating businesses, and other persons referred to in Article 216 of this Decree Law.
Inspect, supervise, monitor, regulate and control, as it may deem necessary, natural or legal persons referred to in Articles 2 and 4 of this Decree Law.

Inform the Fiscal General de la Republica (Accountant General) of the imposition of the administrative measures embodied in this Decree Law.
With regard to the licensing of branches of foreign banks and financial institutions in the country, the Superintendency of Banks and Other Financial Institutions shall take into account the provisions of Article 174 of the Decree Law.

449. Likewise, Article 56 of the Organic Law against Organised Crime deals with the imposition of sanctions.

450. The duties and functions of the competent authorities in their capacity of control, supervision, prosecution and monitoring bodies are basically the following:
To regulate, supervise and penalise administratively the regulated entities subject to their control, supervision, prosecution and monitoring…"

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451. Additionally, according to what was decided in the plenary session of CFATF which took place in Trinidad & Tobago in May of 2009, the Venezuelan authorities provided the following statistical data on the sanctions applied in the Insurance Sector. Nevertheless they did not contribute any data on sanctions applied in the Securities Sector

INSURANCE COMPANIES (50)				
	2004	**2005**	**2006**	**2007**
INSPECTIONS	18	12	04	45 **(*)**
ACTS MENTIONED	18	12	04	32
ADMINISTRATIVE INQUIRIES	_____	_____	04	_____
) ADMINISTRATIVE PROVIDENCES (DECISION)	18 (Compliant)	12 (Compliant)	02 (Fiscal/Economic)	32 (Compliant)

(*)The increase in inspections during 2007, is due to the entry of personnel into the Unit, previously it use to comply, since 2004, with 5 people. At present, 15 people have integrated the Unit.

INSURANCE & REINSURANCE BROKERAGE COMPANIES			
	2005	**2006**	**2008**
INSPECTIONS	01	06	18 **(*)**
ACTS MENTIONED	01	06	18
ADMINISTRATIVE INQUIRIES	01	05	_____
ADMINISTRATIVE PROVIDENCES (DECISION)	01 (Fiscal/ Economic)	05 (Fiscal/ Economic)	18 (Compliant)

(*)The increase in inspections during 2007, is due to the entry of personnel into the Unit. Previously, since 2004, it was comprised of 5 people. At present, 15 people have integrated the Unit.

Recommendation 23

452. In matters concerning money laundering and terrorist financing prevention and control, the Organic Law against Organised Crime applies to the following, among others:
1. The Superintendency of Banks and Other Financial Institutions
2. The Superintendency of Insurance
3. The Central Bank of Venezuela
4. The National Securities Commission
5. The Ministry of the Interior and Justice, through its competent bodies
6. The National Integrated Customs and Tax Administration Service
7. The Ministry of Energy and Petroleum, through its competent bodies
8. The Ministry of Finance, through its competent bodies
9. The National Casino, Bingo Hall and Slot Machine Commission

453. In addition, the obligations of the Law are applicable to all entities and businesses that are part of financial groups supervised by the abovementioned bodies.

454. Which institutions are regulated entities, and are subject to the provisions of the Resolution, is mainly defined in Resolution 185-01.

455. **Article 1** – For the purposes of the present Resolution, the term "Regulated Institutions" shall be understood to apply to: the Deposit Guarantee and Bank Protection Fund, general-purpose banks, commercial banks, mortgage banks, investment banks, development banks, second-tier banks, the National Savings and Loan Bank, leasing institutions, money market funds, savings and loan institutions, bureaux de change, municipal credit institutes, municipal credit enterprises, representation offices of foreign banks established in the country and financial groups regulated by the General Law of Banks and Other Financial Institutions, frontier exchange operators and other businesses governed by special laws and resolutions, subject to inspection, supervision, monitoring, regulation and control of the Superintendency of Banks and Other Financial Institutions.

456. Also, to a lesser extent and somewhat more specifically, Resolution 178-05 and Providencia 1150 define regulated entities in the fields of securities and insurance.

457. Article 217 of the General Law of Banks and Other Financial Institutions stipulates that the inspection, supervision, monitoring, regulation and control exercised by the Superintendency of Banks and Other Financial Institutions shall include, as a minimum, the following aspects:
1. Ensuring that the banks, savings and loan institutions and financial institutions have adequate systems and procedures for monitoring and controlling their activities at the national and, where applicable, international level,.
2. Obtaining information on the financial groups through regular inspections, audited financial statements and other reports.
3. Obtaining information on transactions and relations among businesses of the financial group, national and where applicable international.
4. Receiving consolidated financial statements at the national and, if necessary, international level, or comparable information, to permit analysis of the status of the financial group in a consolidated manner.
5. Evaluating the financial indicators of the institution and the group.
6. Obtaining information on the respective shareholding structures, including data enabling precise identification of the natural persons who are beneficial owners of the shares or the companies that hold them.
7. Obtaining the necessary information through on-site and off-site inspections to verify that the agencies, branches, offices, subsidiaries abroad of Venezuelan banks and financial institutions comply with the regulations and provisions applicable in the location in which they operate.
8. Making sure that banks, savings and loan institutions, financial institutions and other enterprises subject to this Decree Law, have adequate systems and procedures to avoid being used for laundering the proceeds of illicit activities.

458. Article 236. The Superintendency of Banks and Other Financial Institutions shall issue orders for the prudential standards necessary to avoid the use of the national banking system as a means for laundering of the proceeds of illicit activities of any kind, in accordance the provisions of the special laws.

459. Article 45 (4) of the Organic Law against Organised Crime empowers the National Securities Commission to act as a control, supervision, prosecution and control body in the area of money laundering.

460. In relation to the present Recommendation, the provisions of Article 59 of Administrative Providencia No.1150 of the 1st October 2004 should be pointed out. This stipulates:

461. The Money Laundering Prevention and Control Unit of this Superintendency of Insurance shall supervise the compliance by the regulated entities with the terms of the present Providencia.

462. Article 12 of the General Law on Banks and Other Financial Institutions: The following shall not be promoters, principal shareholders, directors, managers or advisors to banks, savings and loan institutions, other financial institutions, bureaux de change and frontier exchange operators:

1. Those who occupy public office, except for teaching posts or short-term missions abroad.

2. Persons under beneficio de atraso (temporary suspension of debts) or bankruptcy judgements, or undischarged bankrupts.

3. Persons who have been the subject of a final criminal conviction implying deprivation of liberty.

4. Persons under a final custodial sentence by a criminal court.

5. Persons who have been chairpersons, directors, managers, counsellors, advisors or commissioners of banks, savings and loan institutions and other financial institutions that have been taken over, nationalised or liquidated, or which have been the subject of measures set out in Articles 235, sub-paragraph 4, 243 and 244 of this Decree Law.

6. Persons who do not meet the requirements of experience, honesty and solvency of the banking milieu.

7. Securities and broking and stockbroking companies. Banks, savings and loan institutions and other financial institutions may not act as promoters for institutions of the same type, nor can anyone who exercises the functions of management in banks, savings and loan institutions and other financial institutions of the same class as the institution being promoted. The same applies to frontier exchange operators.

463. For the purposes of this Article principlal shareholders shall be considered to be those who possess, directly or indirectly, in accordance with such guidelines as The Superintendency of Banks and Other Financial Institutions shall issue, shareholding equal to or in excess of ten percent of the capital or of the voting rights of the assembly of shareholders of the bank, savings and loan institution or other financial institution, bureau de change or frontier exchange operation. If, following the licensing of a bank or financial institution to operate, a person becomes principal shareholder through inheritance or donation or other cause, it shall be for the Superintendency of Banks and Other Financial Institutions to ensure compliance with the requirements of the provisions of this Article.

464. In the case of non-compliance with these provisions, The Superintendency of Banks and Other Financial Institutions shall order the shareholder to sell the relevant shares within a period of three months, which may be extended once for an equal length of time.

465. When any of the persons indicated in the heading of this Article falls within any of the categories indicated in this provision, that person must immediately quit his post and sell his shares within a period of three months, which may be extended once and for an equal period of time. No fewer than

half plus one of the main directors or the chief members of the boards of directors of the institutions governed by the present Decree Law shall be resident on the national territory. Minor shareholders have the right to be represented on the Boards of Directors of banks, savings and loan institutions and other financial institutions governed by the present Decree Law. For this purpose any group representing at least twenty percent (20%) of the capital shall have the right to elect at least one member of the Board of Directors and an alternate. The same procedure shall apply for the election of alternates if this election takes place separately. In any case this percentage shall be equal to that laid down for the purpose in the Capital Market Act.

466. Furthermore, Article 55 of the Organic Law against Organised Crime stipulates that the control, supervision, prosecution and monitoring bodies shall adopt the necessary measures to avoid the acquisition of control or significant participation in the capital of the regulated entities by natural and legal persons linked to the offences mentioned in the Act. Likewise, the National Securities Commission has issued an Instruction on Procedure for Acquisition of Shares in Brokerage Companies or Stock Market Agencies, in order to authorise and have full knowledge of the person intending to acquire shares in these companies.

467. Article 49 of the Insurance and Reinsurance Companies Act stipulates that the National Executive shall take into consideration the general and local economic and financial conditions, the honesty and economic solvency of applicants, directors and managers of an insurance or reinsurance company.

468. The General Law on Banks and Other Financial Institutions makes it mandatory to register and obtain the necessary licence in order to function.

469. Article 10. Banks, savings and loan institutions, bureaux de change, and other financial institutions must obtain the respective operating licence from the Superintendency of Banks and Other Financial Institutions. For this purpose the promoters, through a sworn declaration shall:
1. Supply the information indicated in nos. 1, 2 and 3 of Article 7 of this Decree Law, concerning shareholders, directors, management, counsellors, advisors and commissioners.

2. Make known the shareholding structure of the institution for which a licence is being applied, including data that will enable precise identification of the natural persons who are the beneficial owners of the shares or the companies that hold them.

3. Specify the origin of the resources and provide the necessary information for verification of this. If these resources come from legal persons, the activities in which they are engaged must be precisely described and also the origin of the resources that constitute its capital.

4. Prove that the resources contributed by the shareholders are located within Venezuelan territory.

5. Bring up to date all the information referred to in Article 7 of this Decree Law, when it has undergone modification in the lapse of time between the promotion licence application and permission to operate.

6. Submit the plans for internal, accounting and management control that are to be established.

7. Submit plans for joint operation or conventions or agreements with other institutions or financial groups already in operation, where necessary.

8. Submit an example of the Articles of Association and the Statutes.

9. Any other information that the Superintendency of Banks and Other Financial Institutions, through general or specific regulations, may consider necessary.

470. The General Law on Banks and Other Financial Institutions regulates the operations of branches and agencies abroad in the following Articles.

471. Article 90. Opening, transfer or closure of offices, branches or agencies abroad of general purpose and commercial banks constituted in Venezuela shall require the authorisation of The Superintendency of Banks and Other Financial Institutions.

472. Article 172. The establishment or opening of banks, savings and loan institutions and other financial institutions that are the property of foreign banks or investors, or the establishment of branches of banks constituted abroad, to operate in the country, shall require the authorisation of The Superintendency of Banks and Other Financial Institutions, subject to the binding decision of the Central Bank of Venezuela.

473. Likewise, Resolution No. 185-01 of 12th September 2001 of The Superintendency of Banks and Other Financial Institutions sets out the regulations to which foreign banks based in the country must submit.

474. Article 42. The representatives of foreign banks based in the country shall be subject to the rules laid down in this Resolution in all respects in which they may apply to them, as well as to the control mechanisms to be established by the Superintendency of Banks and Other Financial Institutions. In addition, offices or branches must inform their head offices that in order to exercise representation they must subject themselves to this Resolution and any other regulations that may be applicable.

475. Article 55 of the Law against Organised Crime mentions the enforcement of money laundering prevention, control and prosecution regulations.

476. The representatives of foreign banks or financial institutions must inform their head offices, offices or branches that to exercise representation in the Bolivarian Republic of Venezuela they must be subject to these provisions.

477. Article 4 of Resolution 185-01 stipulates that regulated entities must, for faithful compliance and enforcement of caution and security standards, design and develop a "integral prevention and control system" including appropriate, sufficient and effective measures to avoid being used, in any financial operation, as an instrument for concealing the illicit origin, purpose or objective or destination of funds, by placement, transfer, conversion or investment, including sale and purchase of securities, or the use of money or other property in any manner at all. Despite this, what is certain is that prevention of this type of action is based on the effectiveness and controls of each financial institution and is not an integral and systematic programme enabling the detection of specific patterns, the use of systematic warning signals, fractioning or smurfing, frequency, among other things.

478. The FIU publishes a half-yearly feedback report on its web page, including the following subjects:

Number of Suspicious Operation Reports by Systems, by Regulatory Body, by Quality of the Reports, by Period of Time, by Origin, by Geographical Location, by Reporting Body, by Identity of Persons Reported, by Economic Activities Reported, among others. The National Financial Intelligence Unit provides the financial institutions regulated by the Superintendency and other reporting bodies quarterly report on the status of Suspicious Operation Reports (acknowledgement of receipt), sent individually by each body. This information was corroborated by the evaluation mission during our on-site visit.

Recommendation 29

479. Article 216 of the General Law on Banks and Other Financial Institutions assigns to the Superintendency of Banks the task of inspection, supervision, monitoring, control and, in general, the powers indicated in Article 235 of this Decree Law, in consolidated form, embracing all banks, savings and loan institutions and other financial institutions and enterprises, including their subsidiaries, affiliates and other related firms, whether based in the country or not.

480. Additionally, Venezuelan authorities gave this evaluating group a list of the administrative sanctions applied by the SUDEBAN to the regulated institutions for the non-compliance of AML/CFT norms, by which we can observe that the corresponding sanctions are being applied effectively. Nevertheless we could not actually state that sanctions in insurance and securities were applied

481. Resolution 178-05 likewise empowers the National Securities Commission to ensure compliance by regulated institutions with money laundering regulations, including on-site inspections.

482. The Superintendency of Banks shall apply the sanctions laid down in the Insurance and Reinsurance Companies Act and the other regulations embodied in Venezuelan law in this area, to regulated entities who fail to comply with the terms of Administrative Providencia No.1150 of 1st October 2004, without prejudice to any civil or criminal liability of the regulated entity or any of its members.

483.

484. The General Law on Banks and Other Financial Institutions defines the functions of the Superintendency.

485. Article 235. The Superintendency of Banks and Other Financial Institutions shall:

11. Determine any information that must be submitted by institutions subject to its inspection, supervision, monitoring, regulation and control, as well as the form and content of such information.

486. Scope of the Inspection Function

487. Article 249. The Superintendent and the inspection staff of the Superintendency of Banks and Other Financial Institutions shall have in the exercise of their functions the broadest powers of inspection, monitoring, supervision and control, including review of all existing books, whether or not prescribed by the Commercial Code, as well as information systems, databases, devices for access to magnetic or electronic storage of data, electronic or printed correspondence, and other documents related the activities of the firms and persons subject to its monitoring and control. The minutes kept during a process of inspection or for the purpose of such process, shall be fully admissible as evidence as long as they are not invalidated by competent jurisdictional bodies.

488. Resolution 178-2005 empowers the National Securities Commission to carry out on-site inspections to ensure compliance with the regulations by its regulated institutions.

489. The Money Laundering Prevention and Control Unit of the Superintendency of Insurance shall supervise compliance by the regulated entities. By virtue of the above, Article 49 of Administrative Providencia No.1150 includes among the functions of the Unit the carrying out of on-site inspections of insurance companies and stipulates that the latter must systematically employ self-regulation as a sound risk prevention and control practice.

490. The General Law on Banks and Other Financial Institutions lays down administrative sanctions for non-compliance with **[Translators Note: This sentence is incomplete]**

491. Article 422. Banks, savings and loan institutions, financial institutions, bureaux de change and other enterprises subject to the present Decree Law shall be liable to a fine from zero point one percent (0.1%) to zero point five percent (0.5%) of their paid up capital when:
1. They fail, without due cause, to submit, within the time limit set by the Superintendency of Banks and Other Financial Institutions, or do not submit, the information, reports, documents and other data referred to in Articles 249, 250, 251 and 252 of this Decree Law, or do so incompletely. The fine shall be increased by ten percent (10%) for every day that the submission of the required information is delayed.

2. Supply data by computer, electronic or magnetic means different from those requested or previously laid down by the Superintendency of Banks and Other Financial Institutions.

3. Institutions which hinder or impede the work of inspection, supervision, monitoring and control referred to in Article 213 of this Decree Law or who disregard or fail to comply with the measures adopted by The Superintendency of Banks and Other Financial Institutions pursuant to Chapter IV, Title II of this Decree Law.

4. Fail to prepare in a timely fashion the documentation that they must submit during inspections carried out by the Superintendency of Banks and Other Financial Institutions.

5. Regulated institutions subject to payment of the contribution laid down in Title II of this Decree Law which, without due cause, fail to submit within the indicated period, the information requested by the Superintendency of Banks and Other Financial Institutions pursuant to Article 270 of this Decree Law.

6. Those who carry out operations requiring approval procedures by the Superintendency of Banks and Other Financial Institutions, without the latter having completed such procedures or reached a decision.

492. Impeding the work of the Superintendency

493. Article 423. Natural persons which impede or hinder the work of inspection, supervision, monitoring and control referred to in Article 213 of this Decree Law, or who fail to observe or comply with the measures adopted by the Superintendency of Banks and Other Financial Institutions, shall be liable to a fine of up to ten percent (10%) of the total annual income earned in the immediately preceding year as remuneration. In cases in which the offender has received no remuneration during the preceding year the fine shall be equivalent to forty (40) times the minimum wage set for urban workers.

494. Refusal to supply information during inspections

495. Article 424. The chairperson, shareholders, directors, managers, commissioners and other employees and officers of the banks, savings and loan institutions, other financial institutions, bureaux de change or other enterprises subject to the control of the Superintendency of Banks and Other Financial Institutions, who without due cause, fail to submit in the form and in the specified time period, the information or documentation required during an inspection visit, shall be liable to a fine of up to ten percent (10%) of the total annual income received in the immediately preceding year as remuneration from the respective financial institution. In cases where the offender has not received any remuneration in the preceding year, the fine shall be equivalent to forty (40) times the minimum wage established for urban workers.

496. Article 427. The shareholders, directors, managers, auditors, commissioners and other employees and officers of banks, savings and loan institutions, other financial institutions, bureaux de change and other persons subject to control of the Superintendency of Banks and Other Financial Institutions by virtue of the present Decree Law, as well as receivers and liquidators, who without reasonable cause fail to submit or refuse to submit to the Superintendency of Banks and Other Financial Institutions the information and documents it requests shall be liable to a fine of up to ten percent (10%) of the total income received in the year immediately preceding as remuneration of the post or position for which that person was required to supply the information. In cases in which the offender has received no remuneration in the preceding year, the fine shall be the equivalent of forty (40) times the minimum wage established for urban workers.

497. For its part, the National Securities Commission possesses broad powers of implementation and sanction, under the Provisions of Article 62 of Resolution of 178-2005, as well as under Title VII of the Capital Market Act and the Organic Law of Administrative Procedures.

498. The Superintendency of Insurance shall apply the sanctions laid down in the Insurance and Reinsurance Companies Act and other regulations embodied in Venezuelan law to regulated entities which fail to comply with the provisions of Administrative Providencia No.1150 of 1st October 2004, without prejudice to civil or criminal liabilities which may be imposed on the regulated entity or any of its members for failure to comply with the legislation governing the sector.

Recommendation 30

499. The Superintendencies of Banks, Securities and Insurance do not have enough staff to carry out on-site inspections. The number of staff available to carry out the respective inspections has recently been reduced, and in fact the National Securities Commission has a single Compliance Officer for Money Laundering Prevention and Control.

500. The Superintendencies do not possess up-to-date computer resources or software to enable them to exercise the necessary control over the operations of their respective sectors. They also do not have specialised software for the analysis of operations and to facilitate the processes of supervision and control.

501. The servers are protected with firewalls, information is encrypted, and there are tools for protection in the case of an attack on the computer systems, and they are divided for protection against any viruses that could enter in email or the web page. However, the servers have the great weakness of not being located in the same building as the Superintendency, and access from the Superintendency to the location in which the servers are to be found is by means of a dedicated line, and this leaves the information storage platform of the institution vulnerable.

502. In several of the on-site visits, the evaluation mission was informed that the institutions have an adequate professional level and also procedures for selection and appointment of technical and professional staff needed for the various posts and functions. However, we are not in possession of documents that would enable us to determine whether there are high levels of professionalism, including standards of discretion, integrity and skills.

503. Officers directly involved in AML/CFT supervision and control and related regulations have received ongoing training in money laundering and terrorist financing, both in the national and international spheres. This training is budgeted for yearly by each institution. These persons have trained other staff members of each Superintendency in their turn. The number of training activities by year is shown below:

Year	Number of Training Events
2004	21
2005	16
2006	18
2007	23
2008 (*)	6

(*) to 30th May 2008

504. In the various areas of training, the staff of the Prevention and Control Unit of the Superintendency of Insurance has attended a variety of conferences, workshops, advanced programmes and study days in money laundering and terrorist financing prevention and control, both at the national and international

level. In addition, internal policy has been instituted to the effect that in cases where the rest of the staff of the institution has not been able to attend, the information on that particular training is published on the intranet of the organisation.

Recommendation 32

Month	Year				Total
	2004	2005	2006	2007	
Number of ML/FT on site inspections carried out in financial and non-financial supervised institutions	124	73	45	40	282
Total	124	73	45	40	282

Source. National Financial Intelligence Unit
The inspection visits were carried out in the following regulated institutions:
1) All-Purpose Banks
2) Commerical Banks
3) Investment Banks
4) Development Banks
5) Savings and Loan Institutions
6) Leasing Companies
7) Money Market Funds
8) Municipal Popular Credit Institute
10) Deposit Guarantee and Bank Protection Fund (FOGADE)
11) Bureaux de Change

AML/CFT
2004 - 2007

Penalties		Año				Total
		2004	2005	2006	2007	
Penalties imposed by SUDEBAN for non-compliance with ML/FT regulations	Approved	2	10	15	19	46
	Denied	2	2	3	11	18
	Fines in thousands of BS.F	57	57	577	723	1,414

Source. National Financial Intelligence Unit
Inspection visits carried out in regulated institutions

505. The web page also gives addition statistics from the various Superintendencies on, for example: Number of Suspicious Operation Reports by System, by Regulatory Body, by Quality of Reports, by Period of Time, by Origin, by Geographical Location, by Reporting Institution, by Identity of Persons Reported, by Economic Activities Reported, among others. The National Financial Intelligence Unit provides financial institutions regulated by the Superintendency and other reporting bodies with quarterly report on the status of Suspicious Operations Reports (acknowledgement of receipt), sent by the individual bodies.

506. Among the statistical data that was provided to us, there are relatively few figures on the carrying out of inspection and supervision of financial institutions. We are awaiting various statistical data that were requested during our on-site visit, but which to date have not been received.

3.10.2 Recommendations and Comments

507. There is no chapter defining administrative penalties imposed within the area of money laundering and terrorist financing on the financial institutions, or stipulating that they should be imposed on regulated entities. The sanctions at present in force are directed mainly at normal business operations of financial institutions, and this does not totally cover the CFATF Recommendations.

508. In the three financial sectors, banking, securities and insurances, there is a lack of the minimum resources to perform inspection and supervision of regulated institutions. There are not enough technological tools, equipment, and software to support the work. There is not enough personnel in

the inspection, supervision, monitoring, regulation units and control of the banks. For example, the foreign exchange offices on the border have not been supervised in the last few years and the CNMV has only one supervisor specialized in prevention

509. With respect to the cross border foreign-exchange offices regulated by the Res 006-0596, the lack of supervision and control by the Superintendence as well as the activities that are carried out (they have not been supervised in situ since 2004) imply a weakness in the System of Preventing Money laundering and the Financing of Terrorism of the Bolivarian Republic of Venezuela

510. Venezuelan law includes tools for adequate regulation and supervision of financial institutions, but supervision by the competent authorities is not so effective as regards inspections to ensure adequate compliance with AML/CFT regulations. This is shown by the figures on inspections carried out in previous years and last year. One of the factors accounting for the limited operational capacity to carry out on-site inspections is the fact that during the same period staff responsible for this work was reduced.

511. The Superintendencies of Banks, Securities and Insurance do not have enough staff to carry out on-site inspections, and in fact the staff available for this purpose has been reduced, and the National Securities Commission has in fact a single Money Laundering Compliance Officer.

512. The Superintendencies do not have up-to-date computer resources or software to enable them to supervise the operations of the sectors for which they are responsible. They do not have specialised software to analyse operations and so facilitate the processes of supervision and control.

513. A money laundering and terrorist financing prevention system requires the supervision and control bodies to be supplied with greater resources. Although there are a number of laws to facilitate their work, they are not provided with the tools for the work, and without these it will not be possible to put the existing laws into effect.

514. Very few figures were supplied on the work done in inspection, control and supervision of the financial institutions. We are awaiting certain statistical data that were requested during our on-site visit, but which to date have not been received.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of the factors relevant to S3.10 underlying overall rating
R.17	**LC**	There is a need for a chapter on penalties directed mainly at money laundering and terrorist financing prevention, applicable to all regulated entities
R.23	**PC**	Despite the availability of tools for effective regulation and supervision, there is poor operational capacity for carrying out on-site supervision.
R.25	**LC**	The FIU complies satisfactorily with the processes of feedback and guidelines to assist financial institutions (the rating of only this section would be C).
R.29	**LC**	There is a need for a chapter on penalties directed mainly at money laundering and terrorist financing prevention, applicable to all regulated entities

3.11 Money or value transfer services (SR.VI)

515. This section should very briefly summarise and cross reference the description and analysis that has been made elsewhere in Section 4 on money or value transfer services. It should then set out in full any recommendations or comments, and the material concerning the compliance rating.

3.11.1 **Description and Analysis (summary)**

516. As explained in Section 2, there is an exchange control regime in Venezuela. The supervising entity responsible for currency control and licensing is CADIVI.
Activities in the area of wire money transfers are limited to the spheres laid down by CADIVI, viz:
- Family remittances
- Student remittances
- Special cases
- Retirees and pensioners

517. These services are provided solely for natural persons, upon presentation and verification of the mandatory requirements laid down by CADIVI, which must be submitted to the bureaux de change or the frontier exchange operators.

518. Foreign currency exchange is also carried out by these two types of operators. It must be emphasised that both the bureaux de change and the cross-border foreign exchange operators are supervised by the Superintendency of Banks.

519. The exchange control led to the closure of many of the bureaux de change in Venezuela, leaving only eight in operation at the present time, and these are checked annually by SUDEBAN and audited every six months.

520. From the aforementioned, it is presumed that Venezuela has designated the competent authorities to register and/or authorize the physical and legal persons who provide services like wiring money or security titles (TDV service operators), and these authorities maintain an updated list of names and addresses of dealers of registered and/or authorized TDV services as well as their agents. This activity is also supervised

521. Nevertheless and in relation to the 40 Recommendations and Special Recommendation VII, there seem to have serious deficiencies, especially with respect to information collected on the client of the transfers by an amount inferior to $10.000

522. These operators are based along the frontier with Colombia (for example in the state of Táchira) and the Superintendency states that they have not been inspected since 2004, as a result of which they are considered to be a **great weakness and high risk** for the Venezuelan anti-money laundering and anti-terrorist financing system.

3.11.2 Recommendations and Comments

523. Although the money remittance system is controlled, the official rate of exchange may lead to illegal practices as regards the receipt of money from abroad and particularly in the frontier region.

524. The poor supervision and control of cross-border exchange operators by the Superintendency implies a great weakness for the Venezuelan anti-money laundering and anti-terrorist financing system.

525. The Recommendation requires ensuring that this type of business complies with Recommendations 4 to 11, 13 to 15 and 21 to 23, and in particular SRVII. For this reason it is considered that the problems encountered for the rest of the regulated entities persists in this sector, particularly with regard to compliance with Special Recommendation VII concerning information on the originator of wire transfers.

3.11.3 Compliance with Special Recommendation VI

	Rating	**Summary of factors underlying rating**

SR.VI	**NC**	Deficiencies in information concerning the client of wire-transfer services and transfer of funds, especially below the threshold of $10.000 ROS of money remitters have not been received.

4 PREVENTIVE MEASURES – DESGINATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record keeping (R.12)

(Applying R5, 6, 8 to 11 & 17)

4.1.1 Description and Analysis

526. The Law against Organised Crime states in its Article 43.
"In accordance with the provisions of the Annual Operational Plan issued by the decentralised body responsible for combating organised crime, the following shall be considered regulated entities:
1. Banks, businesses, natural persons and financial institutions, governed by the General Law on Banks and other Financial Institutions, special laws and resolutions, and by the framework Decree with Force of Law which regulates the Public Financial System of the Venezuelan state.
2. Insurance and reinsurance firms, insurance producers, reinsurance brokerage companies, and other persons and businesses governed by the Insurance and Reinsurance Companies Act.
3. Sociedades anónimas de capital autorizado, mutual investment funds, management companies, public securities brokers, intermediaries, the stock market, transfer agents and other natural and legal persons offering services to the public, governed by the Capital Market Act.
4. Natural or legal persons engaged in professional or business activities, such as:
a) Gaming houses, bingo halls and legally established casinos
b) Persons engaged in activities of real estate promotion and trade in real estate
c) Construction firms
d) Jewellers and other establishments trading in metals and precious stones
e) Hotels and tourist businesses and centres licensed to carry on money exchange operations
f) Traders in ships, aircraft and motor vehicles
g) Traders in sale of vehicle parts and used vehicles
h) Antique dealers, traders in objest d'art or archaeological items
i) Merchant shipping firms
5. Foundations, civil associations and other non-profit organisations.

527. This formally identifies and subjects to money laundering prevention rules established in Articles 4 and 5 of the abovementioned Act, including in principle non-financial institutions in Section 4.

528. However, the same Article adds: *"The decentralised body responsible for combating organised crime may extend by Regulation the category of regulated institution to other actors as it sees fit, and shall lay down the obligations, functions and duties relevant to their economic activity and subject to the administrative and criminal penalties embodied in this Act, and shall establish the respective control, supervision, prosecution and monitoring body"*. This would assign the development and formalisation of identification, analysis and suspicious operation reporting to the competent authority, for subsequent legislation tailored in principle to each type of subject and to the characteristics of the activity engaged in.

529. As regards non-financial businesses and professions, Venezuela has legislated only for the requirements applicable to gaming houses, bingo halls and casinos. The basic regulation of these institutions in the area of prevention is to be found in Administrative Providencias No.5192 and 193,

which names as the governing body for these activities the National Commission for Casinos, Bingo Halls and Slot Machines. Article 2 of the Providencia sets out the money laundering prevention obligations of the entities supervised by this Commission.

530. *ARTICLE 2: "Licensed commercial companies and natural or legal persons who manufacture, import, sell or provide maintenance services for articles or implements, machines or apparatus for authorised games are required, with regard to prevention, control and detection of the offence of money laundering*
1. To establish internal policies, procedures and mechanisms for prevention, control and detection of money laundering in their overall prevention and control systems, under the principle of enhanced due diligence
2. To designate a Compliance Officer who shall report directly to the highest management level of the regulated institution and its respective money laundering prevention, control and detection unit
3. To adopt a code of ethics, knowledge of which and compliance with which shall be mandatory for all staff
4. To accept in writing a commitment, applicable to the entire institution, to prevention of money laundering
5. To develop a money laundering prevention and control manual of policies, standards and procedures
6. To adopt know your customer, know your employee, know your legal framework and know your operation or transaction policies
7. To train staff by means of a money laundering prevention and control training programme
8. To carry out two (2) annual external audits for the assessment of their internal prevention, control and detection risk management system

531. *ARTICLE 3: The institutions mentioned in the previous article shall submit to the National Casino, Bingo Halls and Slot Machine Commission reports on suspicious, unusual or inhabitual operations, to be forwarded by the Commission to the National Anti-Narcotics Commission.*

4.1.2 Recommendations and Comments

532. With respect to the regulation of casinos and slot machines the evaluation team is unable to express an opinion with regard to compliance or the present state of effectiveness of any activity to prevent these businesses being used for money laundering or financing of terrorism, since, for reasons outside the control of the evaluators, it was not possible to carry out any personal interviews with any member or representative of the sector, because the interview with the National Casinos Commission scheduled in the initial programme for 12th of August was unilaterally cancelled without any alternative date being proposed.

533. With regard to the rest of the "non-financial regulated entities", such as the reporting institutions mentioned in Article 43 of the Law against the Organized Crime, there has not been any legislative development in obligations in prevention such as identification, analysis, report of suspicious activities, etc, because in practice there is not, at the moment, defined legal obligations in the matter of prevention. The decentralized organ in charge of receiving communications from these subjects has not been created although it is mentioned in the Law

534. However, progress made in money laundering prevention must be recognised (although for the moment it consists more of moral undertakings and good practices at the level of the various professional associations or their members). A special mention is due to the efforts of the Venezuelan Federation of Colleges of Administrators, the Federation of Public Accountants and the Chambers of Construction. Recognition is also due in this regard to the efforts to raise the consciousness of non-financial regulated entities by the National Anti-Narcotics Office (ONA). Despite the above, the evaluation team was not able to determine the existence of specific legislation setting out and developing specific prevention obligations for the rest of the groups mentioned in Article 43.f. This Recommendation is therefore considered not to have been complied with. (the old 494)

535. It is recommended that rules of the regulated non-financial institutions be developed in order to create a prevention system for DNFBPs.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	No effective AML/CFT control system was detected in the casino sector due to the incompletion of the expected interviews neither with the supervisor nor with some representative of the sector For the rest of the DNFBPs, normative development of obligations in preventing money laundering still does not exist

4.2 Suspicious transaction reporting (R.16)
(applying R13 to 15, 17 and 21)

4.2.1 Description and Analysis

536. No suspicious operations reporting system has been established in the DNFBP sector

4.2.2 Recommendations and Comments

537. Adapt the law to apply controls to the DNFBPs

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying the overall rating
R.16	**NC**	No effective AML/CFT control system was detected in the sector

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

538. Countries must ensure that there is a designated competent authority with responsibility for the AML/CFT regulatory and supervisory regime for DNFBPs.

539. They should also provide information and feedback on compliance with the reports that the sector must submit.

4.3.2 Recommendations and Comments

540. At the present time the sector possesses no competent authority for regulation, supervision and monitoring of AML/CFT regulations in any of the sectors under reference.

541. An authority to regulate the sector has been legally appointed but it has not developed any regulations.

542. With regard to feedback, since there is no rule for reporting, feedback does not exist.

4.3.3 Compliance with Recommendation 24 and 25 (criterion 25.1, DNFBPs)

	Rating	Summary of factors relevant to s.4.3 underlying the overall rating
R.24	**NC**	There is no authority to regulate and supervise the sector
R.25	**LC**	No evidence of an effective AML/CFT control system in the sector (the rating for this section alone would be NC)

4.4 Other non-financial businesses and professions Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

543. Countries are urged to consider applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial professions (different from DNFBPs) that are at risk of being improperly used for money laundering or terrorist financing. They are also urged to take measures to foster development and use of modern secure financial operations techniques that are less vulnerable to money laundering.

544. No sectors different from DNFBPs with AML/CFT controls in operation were found, nor was any information received on modern means or techniques of control over financial operations that might be less vulnerable to money laundering.

4.4.2 Recommendations and Comments

545. The possibility should be considered of carrying out a study to extend control measures to activities and professions other than DNFBPs that run a money laundering or terrorist financing risk.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**NC**	No study for application of controls in other sectors could be detected

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

546. The Bolivarian Republic of Venezuela, pursuant to the provisions of Title II of the 1955 Commercial Code, has established different categories of commercial companies regulated by law. (*Sociedad o compañía anónima de responsabilidad limitada, en nombre colectivo, en comandita simple* or *en comandita por acciones*) as well as the formalities for their setting up, operation and existence (name, Articles of Association, Statutes, objectives, minimum capital required, etc.).

547. For purposes of money laundering control, it is important that this regulation should include:

- mandatory identification, and the determination of the domicile, the *comanditario* partners in the case of *Compañía por comandita simple* (Article 212 of the Commercial Code)

- identification, domicile and nationality of the partners and the legal representatives as well as the number and type of shares held by them, in the case of the *Sociedad anónima* and the *Sociedad comandita por acciones* (Article 213 of the Commercial Code).

- identification, domicile and nationalities of the founding partners in the case of the *Sociedad de responsabilidad limitada.*

548. Furthermore, although the Articles of Association of the company may be a public or private document, the law requires that within fifteen days following the signature of the contract, a copy of the Articles of Association together with a copy of the legal statutes shall be submitted. Once this documentation has been checked, it shall be published and entered in the Commercial Register.

549. The law requires the company to approach a banking institution to request the opening of an account in the name of the company and to deposit in that account the amount of capital contributed.

550. Analysis of the rules of the Commercial Code indicates that the setting up and registration of legal persons in Venezuela is regulated, and that the identification of the partners and their contributions is mandatory.

551. However, while recognising the effort and initiative represented in this regard by the publication of the law for notarial registration in 2006 and the importance of the computerisation project of the SAREN, the fact that this programme of computerisation has not yet been completed reduces the practical effectiveness of the law.

552. The non-existence, for the moment, of a computerised register of data on registered companies, and the lack of a database containing data from notaries and registrars, make it very difficult to identify the precise number of companies sharing the same founder, shareholder or legal representative, and therefore to achieve transparency and adequate information to prevent the illicit use of legal persons for money laundering purposes.

553. Regarding the prohibition on issue of bearer shares, although this is embodied in the Andean Pact signed by Venezuela, this prohibition has not been specifically included in the sectoral regulation of securities or insurance.

5.1.2 Recommendations and Comments

554. The project for computerisation of existing data in commercial and notarial registries is vital for control and identification of the true shareholders of companies. This computerisation must be used to create a national database containing the information in each document and each computerised register, in such a way that it will be possible to obtain information broken down by interests, and that the SAREN computerisation may become an efficient tool and source of anti-money laundering data.

555. It is recommended that a specific mention of the prohibition on issue of bearer shares be included in the law.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**NC**	At present there is no system to enable the physical person in control of a company to be identified in all cases. Nor is there a national register containing all the required details on ownership and control of registered

		companies.

5.2 Legal arrangements – access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

556. Venezuelan law contains provisions concerning the institutions which may operate trusts in the country, and these are limited to banks and insurance companies (Article 12 of the Trust Act of 1956).

557. In Venezuela there are guarantee trusts, management trusts, investment trusts or mixed trusts. Each institution is free to create trust, since it is a service to customers.
Banks are required by law to request prior authorisation by the Superintendency to set up trusts, and the law also lays down the obligations of the institutions towards their customers (Articles in the Banking Act) and on the enforcement of customer identification regulations (Section III of Resolution 185-01).

558. The July 2008 amendment to the Banking Act contains rules for management of trusts and information on customers and supervisory authority, as follows:

Submission of information to the Superintendency
Article 65. The Superintendency of Banks and Other Financial Institutions may require the financial institutions to submit periodically a detailed report on the resources received on trust.
Submission of financial statements to the Superintendency

Article 66*. The institutions authorised to act as trustees shall submit to the Superintendency of Banks and Other Financial Institutions, in accordance with established rules, the financial statements of the Trust Department, audited by certified public accountants registered with the Superintendency of Banks and Other Financial Institutions.*

- The customer identification rules in Providencia 1150 are also applied to companies in the insurance sector, although we have found no written reference to a system of prior authorisation, nor of a central register of insurance trusts in SUDESEG.

559. The above articles indicate that there is a register of trusts created by banks in the Superintendency, but this register does not receive information on trusts set up by insurance companies. There is therefore no central national register of trusts. The evaluation team was not able to examine detailed information (and the treatment of it) contained in the SUDEBAN register. That is to say whether it is a simple list of the trusts existing or, on the contrary, contains information on the persons setting up the trusts and the beneficial owners.

560. According to data given to the evaluating team, the importance of trusts (fideicomisos), constituted by the banking sector of Venezuela, is increasing, as shown:

Trust Market in Venezuela

Volume per Origin and Type

Bolivares (millions)	dec-07	dec-06	dec-05	Dec-04	dec-03	dec-02	dec-01
Total Assets of the Trusts	**70.637**	**71.370**	**61.866**	**23.178**	**16.159**	**14.798**	**9.449**
Total Private Trusts	17.229	18.213	15.010	11.883	8.718	7.389	5.079
Total Public Trusts	53.408	53.157	46.856	11.295	7.441	7.409	4.370
Investment Trusts (FI)	**7.583**	**13.540**	**6.501**	**5.113**	**2.903**	**2.027**	**1.503**
F.I. Private	3.474	6.418	4.511	4.034	2.449	1.892	1.432
F.I. Public	4.109	7.122	1.990	1.078	454	135	72
Guarantee Trusts	**3.872**	**3.164**	**4.233**	**3.897**	**2.967**	**2.793**	**1.268**
F.G. Privarte	3.699	3.150	4.208	3.490	2.801	2.603	1.147

F.G. Public	173	15	25	406	166	190	121
Management Trusts	**57.755**	**53.449**	**50.062**	**13.785**	**10.087**	**9.224**	**6.198**
F.A. Private	9.288	8.112	5.906	4.185	3.374	2.413	2.188
F.A. Public	48.467	45.337	44.156	9.600	6.713	6.811	4.010
Mix-nature Trusts	**449**	**570**	**628**	**114**	**61**	**659**	**394**
F.C.M. Private	172	187	237	42	40	442	239
F.C.M. Public	277	382	391	73	20	217	155
Other Trusts	**978**	**647**	**442**	**270**	**141**	**96**	**86**
O.F. Private	595	346	147	132	53	40	74
O.F. Public	382	302	294	138	88	56	12

Note 1: For Dec -07 and Dec 06, fiduciaries for publishing information are missing
SOURCE SAIF- ABV

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561. Dissagregated data on the importance of trusts in the insurance sector are not known.

562. The supervisory authorities explained that in spite of not having a centralized registry , information on settlors and beneficiaries of trusts, can be suitably obtained during an inspection of a regulated financial institution or by legal requirement

563. It is not clear for the evaluating team the adequacy of access to information when trusts are formed by clients of a Venezuelan financial institution but from a branch located in other countries, where the legislation of that country in this respect is different from that of Venezuela or banking secrecy is present.

5.2.2 Recommendations and Comments

564. It is recommended that the Trust Act be updated in accordance with the normal practice of the sector and the important role that trusts play in the financial sector at present. The new regulations should ensure complete knowledge by the authorities of persons involved in all the trusts (trustees, persons whose resources are held in trust, and beneficial owners).

565. A central register should be created to include all trusts set up regardless of the financial sector in which they originate, and incorporating detailed information on the persons involved and the funds managed. This would be an effective tool for controlling trusts for purposes of combating money laundering.

566. Legislation should be developed for the sectors authorised to create trusts.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**PC**	There is no central register encompassing all trusts set up by banking and insurance institutions. The effectiveness of this rule could not be determined, nor was it possible to discover what information the registers of the competent authorities contained. It is not clear for the evaluating team the adequacy of access to information when trusts are formed by clients of a Venezuelan financial institution but from a branch located in another country in which the legislation in this respect is different or where banking secrecy is excesive.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

567. The regulations include no specific mention nor enhanced due diligence measures for these types of organisations.

568. Some of the public agencies as well as private sector institutions recognise the vulnerability of these organisations and the high risk they pose for both money laundering and terrorist financing. In fact in practice they have been considered to be a high risk category of customers, though this is not stipulated in the regulations.

569. With regard to the control by public authorities of the ownership of these organisations and the projects they engage in, the evaluation team was not able to obtain evidence of any central national register of these organisations, of their sphere of operation or their owners or founders.

570. Only the SENIAT has claimed to possess some data received regarding tax exemption by reason of non-profit status. However, at the date of drafting of this report, no additional figures or information have been received that might assist the evaluation team to have a better view and a more firmly grounded opinion on the checks and controls exercised over these organisations.

5.3.2 Recommendations and Comments

571. Develop the necessary regulations to ensure adequate knowledge and control of the ownership and activities of these organisations, in accordance with the provisions of Special Recommendation VIII.

572. A central register of these organisations would be advisable.

573. The sectoral regulations should include enhanced due diligence measures in order to enable the financial institutions with which they operate to have full knowledge of the ownership structure, founders, origin and flow of funds managed by them, as well as the projects and activities they engage in.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**NC**	The evaluation team was not able to obtain evidence of the existence of a central national register of these organisations, their sphere of operation and

		their owners or founders. The evaluation team was not able to obtain evidence of the existence of any public control over the projects in which these organisations engage nor of the funds that they manage

6 NATIONAL AND INTERNATIONAL COOPERATION

6.1 National Cooperation and coordination (R.31)

6.1.1 Description and Analysis

574. The principle of national cooperation and coordination in Venezuela is amply covered in the following regulations: Articles 44, 45 and 46 of the Organic Law against Organised Crime; Article 207 of the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances; Article 11 of the Organic Law of the Ministerio Público; Article 11 of the Organic Law of the Police Service and the National Police Corps and Article 226 of the General Law on Banks and Other Financial Institutions.

575. The abovementioned regulations stipulate that the various national authorities responsible for enforcing AML and CFT policies and mechanisms must coordinate, exchange, and cooperate formally and operationally to strengthen prevention and detection, and investigation of recorded cases, locate and provide the relevant evidence. These are authorities or institutions which under the legislation are coordinated or headed by the National Anti-Narcotics Office (ONA), and are also part of the National Anti-Money Laundering Network.

576. However, despite the existence of adequate legal instruments, it is apparent that in practice there is not good communication or coordination for the advancement of exchange of information among the various agencies concerned with prevention and repression of these offences. In this regard it was learned that if an investigative body such as the Scientific, Criminal and Criminalistic Investigation Corps (CIPC), any branch of the Bolivarian National Guard or the Ministerio Público itself, need information from one of the regulated entities, they may not request it directly from that institution but must do it through the FIU.

577. Furthermore, it was not clear that there was good communication and coordination in information exchange and feedback on the information generated, for example with regard to the Suspicious Transaction Reports (STRs), sent by the FIU to the Ministerio Público. The Unit is unaware of the final result of these reports, i.e. whether they are used as grounds for prosecution or whether they are simply filed. Likewise, there is no feedback between the FIU and the regulated entities, or between the Ministerio Público and the FIU regarding the quality of the STRs, or whether they have led to prosecutions. Nor was any direct communication detected regarding the reports between the Criminal and Financial Investigations Directorate and the Anti-Narcotics Command (investigative units of the Bolivarian National Guard) and the FIU. As a result no information was obtained on how many investigations were launched by these specialist investigation bodies on the basis of the STRs.

578. The National Anti-Narcotics Office (ONA), the duty of which is to establish and apply ML and FT prevention and repression mechanisms, is the only authority that has established any coordination with the other institutions composing the Money Laundering Prevention Network, but it has not managed to achieve any more direct and dynamic coordination among these institutions at the same time. In this regard it was learned that the ONA has held a series of meetings and seminars with the other authorities and institutions of the Network in an attempt to ensure effective compliance with Venezuelan law and the CFATF recommendations on prevention and repression of these offences.

579. The authorities reported that the Public Ministry is training and meeting with the ONA and the

investigative bodies. However, it has not be confirmed that there exists a good communication and coordination, which facilitates the exchange of information and activities between the different institutions regarding the processes of prevention and repression AML / CFT.

580. There is some coordination, but these are insufficient because they do not include other necessary bodies such as UNIF. Moreover, no mention has been made as to if the investigating authorities have the power to request information and other direct evidence from the regulated entibies on certain subjects or suspicious activities.

581. In particular we find that the UNIF conducts the process of feedback to the regulated entibies, as are banks, exchange houses, Superintendent of Insurance, National Securities Commission, etc. However, if we did not find that the UNIF receives feedback from the Public Ministry, related to the quality of the RAS or if they served as a basis in legal proceedings or were simply filed.

582. In relation to the same reports that there was no direct communication between the Directorate of Criminal and Financial Investigations and the Anti Drug Command (research bodies of the Bolivarian National Guard) and the UNIF, information was not allowed on many investigations were extended on the RAS by these special investigations.

6.1.2 Recommendations and Comments

583. It is recommended that the National Anti-Narcotics Office (ONA) should study, together with the member agencies of the Money Laundering Prevention Network, the established legal mechanisms and how they may be developed to achieve effective cooperation and coordination among the different agencies. These mechanisms might include the possibility of direct operational exchange of information, feedback, and agreement on the types of statistics that might be collected to measure the effectiveness of the enforcement of prevention policies and CFATF recommendations.

6.1.3 Compliance with Recommendations 31 & 32 (only criterion 31.1)

	Rating	Summary of factors underlying rating
R.31	**LC**	The principle of national cooperation and coordination in Venezuela is embodied in general form in various laws such as The Organic Law against Organised Crime; The Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances; The Organic Law of the Ministerio Público; the Organic Law of the Police Service and of the National Police Corps and the General Law on Banks and Other Financial Institutions However, these legal mechanisms have not been adequately applied, as pointed out above, and for this reason there should be a study by all the various institutions of the best way of developing them in the interest of greater effectiveness.

6.2 The Conventions and US Special Resolutions (R.35 and SR.I)

6.2.1 Description and Analysis

584. In the visit carried out as part of the second round of mutual evaluations, it was learned that the Bolivarian Republic of Venezuela has ratified the United Nations Convention against the Illicit Traffic of Narcotics and Psychotropic Substances (1988 Vienna Convention), as published in Official Gazette 34,741 of 21st July 1991. The legislature has also approved the United Nations Convention against Transnational Organised Crime (2000 Palermo Convention) published in Official Gazette 37,357 of 4th January 2002. It has also ratified the United Nations New York Conventions of 1997 and 1999 on Suppression of Terrorist Bombings and Repression of the Financing of Terrorism respectively. The Inter-American Convention against Terrorism was ratified in October 2003. However, up to that time time no specific domestic law had arisen out of these international instruments.

585. During the present visit it was learned that in addition to the general validity conferred by the ratification by the legislature of the abovementioned Conventions, from October 2005 onwards they were endowed with force by specific laws such as the Organic Law against Organised Crime (LOCDO) and the Organic Law against the Illicit Traffic and Consumption of Narcotic and Psychotropic Substances (LOCTISEP), which criminalise and penalise money laundering and financing of terrorism, and established special investigative techniques, confiscation of property and freezing of bank accounts, among other aspects. In addition, during this period the new Criminal Code, the Organic Law of the Police Service and the National Police Corps and the Organic Law for the Supreme Court of Justice of the Bolivarian Republic of Venezuela were promulgated, which contain provisions relating to the enforcement of the Conventions.

586. To illustrate the article 51 of the Organic Law Against Organized Crime, states that "All persons bound by this law when they have suspicions that the funds, funds or property involved in a transaction or business may be derived from unlawful activity under this Act, and must immediately inform which is conducive for the respective reports of suspicious activities to the decentralized agency responsible for fighting organized crime and the National Financial Intelligence Unit of the Superintendency of Banks who analyzes, files or forwards to the Public Prosecutor's Office so that the criminal investigation can be instigaged .... " In this sense, reports of suspicious activities on Terrorist Financing is also included. Additionally, the SUDEBAN issued Circular No. SBIF-UNIF-DIF-3759 of 9 April 2003 entitled guide for Financial Institutions in Detecting Terrorist Financing Activities.

587. Monthly reporting to the Vice-Ministry of Public Safety who is the sole authority on terrorism, on the activities carried out by the FIU in this matter. "

588.

6.2.2 Recommendations and Comments

589. The evaluation group was not able to determine the mechanism used by the central authority responsible for compliance with United Nations resolutions, particularly 1267/99 and 1373/2001, to review within the financial institutions the lists generated by these Resolutions and provide the relevant responses.

590. To ensure compliance with the above, it would be advisable to establish a mechanism for distributing and collecting information in the national financial system, from requests for revision of lists and the responses to be given to the United Nations Security Council.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**C**	
SR.I	**PC**	No system for applying the United Nations Resolutions on Financing of Terrorism has been created

6.3 Mutual Legal Assistance (R.36-38, SRV)

6.3.1 Description and Analysis

591. In Venezuelan laws Mutual Legal Assistance is called *Asistencia Judicial Recíproca* (Reciprocal Judicial Assistance) and is adequately embodied in Articles 62-69 of the LOCDO. These articles, in general, enshrine all the elements indicated in the Recommendations. The central authority responsible for compliance is the Ministerio Público. The system includes cooperation in ML (R 36 - 38) as well as with respect to the Financing of Terrorism (RE V) for which the same norms apply.

592. The Ministerio Publico, as part of its powers as lead agency in investigation and prosecution, may secure movable and immovable property, as well as bank accounts of natural and legal persons involved in offences related to organised crime. . Article 21 states that during the course of a penal investigation of any crime committed by a criminal organization, the Public Prosecutor of the Ministry will be able to ask the Judge authorization to block or immobilize preventively bank accounts that belong to the members of the investigated organization.

593. In this sphere of mutual legal assistance, the Venezuelan state has signed and ratified six bilateral treaties with as many countries, eleven multilateral treaties or conventions, inter-American or with the United Nations. At the same time, the Ministerio Público, as central authority, has signed four memoranda of understanding with its counterparts in Bolivia, Brazil, People's Republic of China and Italy. Likewise, the FIU has signed information exchange memoranda with its counterparts in eighteen countries, all of which are designed to ensure and streamline the handling of and responses to active or passive requests.

594. Comments where made with respect to Recommendation 3 about possible problems to identify assets of criminal origin due to the non-automation of registries, The same problems would occur when a request is received from a foreign country that aims to identify goods of a certain person in the country

595. The legislation includes a particular form of cooperation called "Financial Investigation of the Suspect" in Article 61. It establishes that "when there are elements of conviction that a person located in the country belongs to an association of organized crime, the Public Ministry, through the competent direction of the Ministry of Finance, will investigate administratively on that person's lifestyle, financial means and patrimony, in order to know their source"

596. In addition this same article sets out that against such assets the authorities will be able declare "a preventive measure by request from the Public Ministry or the penal investigation bodies. The investigation can be extended to the spouse, the children and those that in the last 5 years have lived with the person being investigated as well as with respect to the physical, legal persons, associations or entities whose patrimonies the investigated person can dispose of wholly or partly, directly or indirectly." This type of assistance broadens the capacity to collaborate in matters of ML and FT investigations even more

597. Special circumstances arise with respect to the seizure of goods of corresponding value where, although non existent in the national procedures, it is possible to obtain such seizures based on international cooperation. Article 71 establishes that with regard to international cooperation the Venezuelan State will adopt the measures that are necessary to authorize the seizure or the confiscation "of the product resulting from crimes demonstrated in this Law or of goods whose value is equivalent to that product"

598. Finally Article 73 establishes as a general principle that "the Venezuelan State will adopt measures that are necessary to allow their penal tribunals or penal investigation organs, to identify, detect and preventively seize the product, goods, instruments or any other elements subjected to seizure or confiscation in the mutual legal assistance. In order to apply the measures mentioned in the present article, the Venezuelan state will be able to authorize its penal tribunals to order the presentation or seizure of banking, financial or commercial documents, asked for by the requesting State, and it will not be able to refuse the application of the dispositions of the present Chapter by protecting itself in the banking secret."

599. There have not been agreements with other countries to coordinate the seizing actions.

600. The effectiveness of implementation of mutual legal assistance during the period of the evaluation may be judged from the following data:

- 14 exchanges of intelligence with Australia, 12 of them initiated by Venezuela. The 2 initiated by Australia were responded to.
- The Cayman Islands responded to 7 requests for information from Venezuela. One (1) request from Venezuela in May 2008 for mutual legal assistance is in process.
- Panama expressed its satisfaction with the full cooperation provided by this country.
- The Grenadines have had difficulties obtaining responses from Venezuela.

601. The evaluated country supplied the following figures, without any further explanation. The statistics are partial and did not allow a full assessment of the effectiveness of legal the measures in the matter of international cooperation:

Number of Rogatory Letters

Year	No of Rogatory Letters
2004	04
2005	10
2006	07
2007	04
2008	12
Total	**37**

6.3.2 Recommendations and Comments

602. During the on-site visit satisfactory statistics were not obtained, which affects the assessment of the implementation of these recommendations, including Special Recommendation V. It is therefore advisable for the lead agency in future, together with the Ministerio Público as the central authority, to establish a format for statistics that would break them down into active and passive (sent and received), as well as responses by country. They should also show some results of confiscations, detentions and/or prosecutions generated by the mutual assistance.

603. On the other hand, mention is made of the obstacles to identify goods of people due to the present way in which the registries are maintained. There should be possible to determine in a truthful and

appropriate manner the goods of which a person is holder, situation in which Venezuela is working by advancing a digitalization process of all the manually maintained information.

604. To establish an effective mechanism of freezing financial accounts

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**	Problems in identifiying goods, as indicated in Recommendation 3
R.37	**C**	
R.38	**PC**	Problems to identify goods Lack of Agreements to share assets The effectiveness of the possible measures of cooperation in the LOCDO could not be confirmed
SR.V	**LC**	The factors determined for R 36 and 38 are repeated

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

605. The offences of money laundering and financing of terrorism are extraditable, and are covered by the provisions of the Constitution of the Bolivarian Republic of Venezuela, of the Criminal Code, of the Organic Code of Criminal Procedure and other special laws, by the terms of extradition treaties signed by Venezuela with other states and the principles of international law, particularly international custom and reciprocity.

606. Particularly relevant among the applicable laws are Articles 23, 69 and 271 of the Constitution, Article 6 of the Criminal Code, Articles 391-399 of the Organic Code of Criminal Procedure, Article 5.38 of the Organic Law of the Supreme Court of Justice and Article 25.15 of the Organic Law of the Ministerio Público.

607. The system established in the matter of ML (R 36 - 38) and with respect to the Financing of Terrorism (RE V) is the same, the same rules for a case of ML the FT are being applied

608. The Venezuelan State has signed eleven bilateral and multilateral extradition pacts, chief among them the Code of Private International Law and the Inter-American Convention on Extradition (1981 Caracas Convention).

609. Venezuela does not permit extradition of its nationals. However, the law permits them to be prosecuted at the request of the injured party or of the Ministerio Público if the offence of which they are accused is punishable in domestic law.

610. Under Article 271 of the Constitution of Venezuela, in no case may the extradition of foreigners be denied. The proceedings relating to the offences in question shall be public, oral and brief, due process must be respected, and the court has the power to make provisional orders against the property of the accused to ensure his possible civil liability.

611. Notwithstanding the arrangement in the previous numeral, there is a rule in Venezuela by which it is not possible to extradite anyone, a national or foreigner whose sentence could surpass 30 years. This principle is coherent with the system to apply criminal penalties in Venezuela and other countries. Nevertheless many countries do not have the same system for dealing with concurrent crimes as Venezuela has, therefore in some cases the penalty for money laundering can have sanctions of more than 30 years (even though subsequent benefits may reduce the actual years of imprisonment). Although in those cases the person would be tried in Venezuela, the fact of denying the extradition of a non-national person by this rule fails to fulfill the standards determined in the 40 + 9.

612. In the interest of due process, the Constitutional provision is reinforced by the second paragraph of Article 6 of the Venezuelan Penal Code, which stipulates that: "Extradition of a foreigner shall not be granted for any act which is not classified as a criminal act in Venezuelan law. However it is not necessary for the offence to be called by the same name in the legislation of the requesting and responding countries".

613. With regard to the assessment of the effectiveness of enforcement of these recommendations, the Supreme Court of Justice stated that in the period to which this evaluation applied, it received four requests for extradition for money laundering offences, of which one was decided positively in favour of the United States and in three of which the decision is pending, one of them because the requesting state has not adequately complied with the established requirements and two of them because the persons whose extradition is sought have not been located in Venezuela.

6.4.2 Recommendations and Comments

614. The statistics on effectiveness were obtained from the summary of the decisions supplied by the Supreme Court of Justice. It would therefore be adequate for the lead agency to establish a statistical system of control and to determine the institution to operate it, in order to have a historical record.

615. The rule that prevents the extradition of national or foreign persons capable of receiving a sentence greater than 30 years must be reviewed

6.4.3 Compliance with Recommendations 37 and 39 and Special Recommendation V

	Rating	Summary of factors relevant to s6.4 underlying the overall rating
R.39	**LC**	Venezuela cannot extradite nationals or foreigners when the sentence could surpass 30 years of prison
R.37	**LC**	Venezuela cannot extradite nationals or foreigners when the sentence could surpass 30 years of prison
SR.V	**LC**	While in the Venezuelan legislation, there are mechanisms in place to implement the RE.V of the 192 requests received and / or sent, and the answers provided (outcome) for the country, could not be determined the amount corresponding to FCT, to assess more accurately the effectiveness of the RE. Same factors determined in Recommendations 39 and 37

6.5 Other forms of International Cooperation (R.40, SR.V)

6.5.1 Description and Analysis

616. As regards other forms of international cooperation, the Venezuelan Ministerio Público, as the central authority for mutual legal assistance, is a member of the Hemispheric Cooperation Network of the OAS, the Ibero-American Cooperation Network (IberRed), of the Ibero-American Association of Ministerios Públicos (AIAMP) composed of 37 countries. The FIU, for its part, has signed

memoranda of understanding with FIUs of other countries, as well as the declaration of principles of the Egmont Group. In this regard both the legislation and these agreements endow Venezuela with an appropriate framework for providing adequate cooperation in keeping with the CFATF recommendations.

617. As pointed out, the FIU, as the principal provider of international administrative cooperation, is a member of the Egmont Group, which ensures that it is part of an international network designed for effective compliance in the sphere of international cooperation among equals.

618. The Bolivarian Republic of Venezuela has also established information exchange with eighteen countries, with which it has signed memoranda of understanding, among them: Spain, United States, Colombia, Panama, Argentina, Australia, Belgium, Bolivia, Guatemala, United Kingdom, Korea, Portugal, Russia, Albania, Finland, Cuba, Peru and Curacao.

619. Effectiveness:
Information subsequently provided by the governing body of AML / CFT policies (ONA), in relation to the effectiveness of these recommendations, we verify that the UNIF through the mechanisms established for the Egmont Group and in compliance with other forms of cooperation in period from 2004 to 2008 received 192 requests for information, which gave positive responses to 88 and 104 of which no information was found or remains in the process of locating them. Moreover, in the same period 17 UNIF requests were made. Among the countries that conducted an Exchange of information exchange are: Guatemala, Mauritius, Spain, Cayman Islands, Panama, Jersey, Georgia, Portugal, Colombia, Luxembourg, Nigeria, Albania, Brazil, Macedonia, Saint Vincent and the Grenadines, France, Taiwan, Australia, Costa Rica and Qatar. However, of these requests, it could not be determined how many were for terrorist financing, related to Special Recommendation V.

620. Requests sent and received via the secure network of the Egmont Group, presented the following yearly activity

Años Years	Total X Year	Acknowledgment without information	Acknowledgment with response information	Requests made by the UNIF
2004	43	22	21	6
2005	31	18	13	5
2006	45	23	22	1
2007	39	21	18	4
2006	34	20	14	1
Total Gral.	192	104	88	17

6.5.2 Recommendations and Comments

621. In this case the information concerning the cooperation obtained is the same as that which was presented within the general framework of mutual legal assistance regarding the 37 Letters Rogatory issued by Venezuela, but which did not give much detail on the results, and also did not specify whether requests were received and whether specific responses were given. These aspects ought to be overcome in the coming months by keeping records of the requests received and responses given.

622. Administratively speaking, the exchange of information seems to be fluid and to be achieved through efficient mechanisms. However, there are no data or statistics to enable the efficiency of the cooperation to be fully verified.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V and R.32

	Rating	Summary of factors relevant to s.6.5 underlying the overall rating
R.40	**PC**	The evaluation group was not able to see any data to demonstrate effectiveness in the application of this recommendation
SR.V	**LC**	The evaluation group was not able to see any data to demonstrate effectiveness in the application of this recommendation

7 OTHER ISSUES

7.1 Resources and statistics

623. 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.

	Rating	Summary of factors relevant to Recommendations 30 and 32 underlying the overall rating
R.30	**NC**	Concerning the supervision of the regulated institutions , deficiencies were detected in the number of staff, the specialisations of the personnel and knowledge in codes of conduct In the three financial sectors, banking, securities and insurance, authorities do not have the minimum capacity required to fulfil the functions of inspection and supervision of the regulated entities. Technological tools, equipment and software to facilitate the work are lacking. There is a shortage of staff in the inspection, supervision, monitoring, regulation and control units of the banks. For example the foreign exchange businesses that operate in the borders have not been supervised since 2004 and the CNMV has only one supervisor specialized in prevention.

R.32	**NC**	An evaluation on the efficiency of the system has not been carried out. Only in the area of the UNIF there are complete statistics available. . With respect to the information on investigations, convictions, seizures etc, the information is partial or unavailable. In the matter of international cooperation, statistics were not adequate in order to evaluate its effectiveness

7.2 Other Relevant AML/CFT measures or 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.

7.3 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

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).

Forty Recommendations	Rating	Summary of factors underlying rating[6]
Legal systems		
1. ML offence	LC	It does not cover some prior crimes. Problems as far as the effectiveness of the norm goes, reflected in lack of convictions
2. ML offence – mental element and corporate liability	LC	Despite the number of investigations, sufficient statistics have not been provided on convictions to verify the effectiveness of criminal procedures and penalties. There have been no reports of convictions of Legal Persons
3. Confiscation and provisional measures	PC	The lack of case law makes it impossible to verify the effectiveness of precautionary measures and confiscation Data in records are not computerized which makes it difficult to trace the assets. The lack of specific statistics on seizures and precautionary measures in cases of LA make it impossible to assess the effectiveness of the measures.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	
5. Customer due diligence	PC	-ML and FC prevention regulations poorly developed in the securities sector. -The team was unable to verify efficacity of enforcement of exiting regulations in the securities sector, since no interviews with representatives of the private securities sector or with any regulated entity were held, despite repeated requests. -There is no certainty regarding adequate identification of beneficiary or beneficial owner of trusts and usufructs legal persons with complex share structures no Risk Based Approach (RBA) developed
6. Politically exposed persons	NC	There is no legal obligation regarding PEPs, and no regulations have been developed, since the Superintendency of Banks is in the process of revising Resolution 185-01, “Standards for

[6] These factors are only required to be set out when the rating is less than Compliant.

		Prevention, Control and prosecution of Money Laundering for Institutions Regulated by the Superintendency of Banks and other Financial Institutions", to adjust it to international standards.
7. Correspondent banking	NC	No regulations have been developed for correspondent banking, since the Superintendency of Banks is in the process of revising Resolution 185-01, "Standards for Prevention, Control and prosecution of Money Laundering for Institutions Regulated by the Superintendency of Banks and other Financial Institutions", to adjust it to international standards.
8. New technologies & non face-to-face business	PC	No regulations have been developed for remote banking, since the Superintendency of Banks is in the process of revising Resolution 185-01, "Standards for Prevention, Control and prosecution of Money Laundering for Institutions Regulated by the Superintendency of Banks and other Financial Institutions", to adjust it to international standards. Nor are there any regulations for the other financial sectors.
9. Third parties and introducers	NC	There is no specific prohibition of this in the law, and no development of regulation in keeping with international standards.
10. Record keeping	PC	No verification of compliance with this Recommendation in the securities sector was possible, since no private entity in this market was visited. With respect to obtaining information registered in those registries, the information would be useful only if provided in a timely manner and by all the corresponding regulated entities. However, there is no administrative control that can give any assurance that this is the case. Threshold of $10,000 for record-keeping on wire transfers.
11. Unusual transactions	LC	The effectiveness of actions in this area could not be completely quantified, since the processes were only recently put in place.
12. DNFBP – R.5, 6, 8-11	NC	An effective AML/CFT system of control for casinos could not be verified due to the lack of interviews with any of the expected supervisors and representatives of the sector For the rest of the DNFBPs, regulatory development of prevention obligations in money laundering still does not exist
13. Suspicious transaction reporting	PC	- The law establishes an obligation to inform

		the FIU jointly with another entity (which has not been created), and this could affect implementation as the legislation remains unclear. - The regulations are clear and applicable to the institutions under the responsibility of the Superintendency of Banks, but they do not cover securities and insurance, among others.
14. Protection & no tipping-off	PC	It is not clear that there is provision for protection from criminal and civil liability of financial institutions, directors, officers and employees for suspicious operation reports sent to the FIU. There are no rules expressly forbidding, directors, officers and employees, temporary or permanent, of a financial institution to disclose that a SOR has been made.
15. Internal controls, compliance & audit	LC	The legislation in the securities sector is less developed. The effectiveness of measures in the securities sector could not be assessed, since no meeting with the private sector was held.
16. DNFBP – R.13-15 & 21	NC	No evidence of an effective AML/CT system created for the DNFBP sector.
17. Sanctions	LC	A specific chapter devoted mainly to ML/FT prevention, and applicable to all regulated entities, is necessary.
18. Shell banks	C	
19. Other forms of reporting	C	
20. Other NFBP & secure transaction techniques	NC	No examination of the enforcement of controls in other sectors was possible.
21. Special attention for higher risk countries	PC	No evidence of procedures and policies for prevention and control within the supervised institutions which ensure compliance with this obligation under the Venezuelan regulations.
22. Foreign branches & subsidiaries	PC	The legislation is very general. It mandates the maintenance of control and communication systems enabling cash movements to be monitored, but it makes no specific mention of any requirement to apply the highest standard, nor to enforce consistent CDD measures at the group level. *It is necessary to determine what efficient and effective measures are implemented by the entities to comply with established standards.* Poorly developed legislation for the securities sector.
23. Regulation, supervision and monitoring	PC	Tools exist in Venezuelan legislation to put in place adequate regulation and supervision of the financial institutions, but supervision by the competent authorities responsible for ensuring adequate compliance with AML requirements is not as effective, and one result could be limited operational capacity for on-site supervision.

24. DNFBP - regulation, supervision and monitoring	NC	There is no authority regulating or supervising this sector.
25. Guidelines & Feedback	LC	Unable to demonstrate an effective AML/CFT system of control implemented in the DNFBP sector.
Institutional and other measures		
26. The FIU	PC	Lack of independence and autonomy of the FIU, directly manifested in the sphere of human and material resources. Vulnerability of the information held on computers not owned by the FIU. Slight contribution of FIU to analysis and processing of inputs from regulated entities to become expert forensic reports to law enforcement authorities.
27. Law enforcement authorities	PC	The investigation of ML is excessively linked to the investigation of drug-related crimes, and there are not enough resources assigned to it.
28. Powers of competent authorities	C	
29. Supervisors	LC	Lack of a chapter of administrative sanctions devoted principally to ML and FT prevention, applicable to all regulated entities.
30. Resources, integrity and training	NC	Concerning the supervision of the regulated institutions, there are deficiencies in staffing, staff specialisation and knowledge in codes of conduct. In the three financial sectors, banking, securities and insurances, there is a lack of minimum resources in order to exercise inspection and supervision functions of regulated entities. Lack of technical resources, equipment, and software to facilitate work. Shortage of staff in inspection, supervision, monitoring, regulation and bank control units. For example the foreign exchange businesses that operate in the borders have not been supervised since 2004 and the CNMV has only one supervisor specialized in prevention.
31. National co-operation	LC	The various legal mechanisms for coordination established in the law have not been adequately applied.
32. Statistics	NC	An evaluation on the efficiency of the system has not been carried out. Only in the area of the UNIF there are complete statistics available. . With respect to the information on investigations, convictions, seizures etc, the information is partial or unavailable. In the matter of international cooperation, statistics were not adequate in order to evaluate its effectiveness
33. Legal persons – beneficial owners	NC	The project for computerisation of Register

		and notarial data is not yet complete. There is therefore no national register to provide necessary details on ownership and control of companies.
34. Legal arrangements – beneficial owners	PC	There is no central register encompassing all trusts set up by banking and insurance institutions. The effectiveness of this rule could not be determined, nor was it possible to discover what information the registers of the competent authorities contained. It is not clear for the evaluating team the adequacy of access to information when trusts are formed by clients of a Venezuelan financial institution but from a branch located in another country in which the legislation in this respect is different or where banking secrecy is excessive.
International Co-operation		
35. Conventions	C	
36. Mutual legal assistance (MLA)	LC	Problems in identifying goods exist, as noted in Recommendation 3
37. Dual criminality	LC	Venezuela cannot extradite nationals or foreigners when the sentence could surpass 30 years of prison
38. MLA on confiscation and freezing	PC	Problems in identifying goods Lack of Agreements for the sharing of assets. The effectiveness of the possible measures of cooperation contained in the LOCDO could not be evaluated.
39. Extradition	LC	Venezuela cannot extradite nationals or foreigners when the sentence could surpass 30 years of prison
40. Other forms of co-operation	C	
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implementing UN instruments	PC	No system for making operational the implementation of UN FT resolutions has been established.
SR.II Criminalise terrorist financing	PC	A few problems of definition which could cast doubts about the autonomy of the offense. Although there are cases of terrorism, no cases of FT are known. No criminalization of the financing of individual terrorists.
SR.III Freeze and confiscate terrorist assets	NC	No laws on this
SR.IV Suspicious transaction reporting	PC	No legal requirement for regulated entities to report operations related to FT. As is the case with recommendation 13, financial institutions submit reports based on Superintendency of Banks and FIU resolutions and circulars.
SR.V International co-operation	LC	The factors determined for R 36 and 38 are

		repeated Although within the Venezuelan legislation, there are mechanisms established to apply the SR.V, of the 192 international requests received and/or sent, as well as from the responses provided by Venezuela , it was not possible to determine the amount that corresponded to FT. This would have allowed a more accurate evaluation of the effectiveness of this RE.
SR VI AML requirements for money/value transfer services	PC	Deficiencies in the information about the clients (of) wire transfer services and fund transfers, especially below the threshold of the $10.000 There have been no STRs from Money remitters.
SR VII Wire transfer rules	NC	The identification threshold is $ 10.000US, far from U.S. $ 1,000, as recommended by the FATF There are no laws for internal transfers. No risk-based procedures have been developed for adoption by the institutions, for identifying and handling wire transfers not accompanied by full details of the originator. There is no specific reference to any information on the originator that must be incorporated in any cross border transfer.
SR.VIII Non-profit organisations	NC	The evaluation team was unable to obtain evidence of a central national register of these organisations, their spheres of operation, owners or founders. The team could obtain no evidence of any public control of the projects carried out by these organisations, or of the funds they manage.
SR.IX Cross Border Declaration & Disclosure	NC	No effective compliance declaration system, with clear functions and penalties, has been established.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1, 2 & 32)	It is necessary to cover all categories of predicate offenses defined by the FATF . The Venezuelan state has the necessary legislation for the prevention and correction of ML and FL offences, however, it requires that it be properly implemented by the responsable institutions in accordance with the spirit in which it was created
2.2 Criminalisation of Terrorist Financing (SR.II)	Improve criminalisation. Lack of records of cases of financing as opposed to existing terrorism cases.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	Train staff Improve tracing and detection of property to be confiscated.
2.4 Freezing of funds used for terrorist financing (SR.III, R.32)	Establish a regime for freezing funds used for FT.
2.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)	Improve structure Enhance analysis and information in reports to Ministerio Publico.
2.6 Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32) _____ 2.7 Cross Border Declaration or disclosure	Improve procedures and tools of law enforcement authorities. _____ Set up a system in accordance with CFATF recommendations
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	No risk-based application has been developed.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	Improve prevention system in securities sector Improve system for discovering beneficial owner for some legal persons Establish ML and FT prevention rules for PEPs, Correspondent Banking and remote banking
3.3 Third parties and introduced business (R.9)	Establish regulations in keeping with international standards.
3.4 Financial institution secrecy or confidentiality (R.4)	Clarify access to information on branches in countries with strict secrecy laws.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	Ensure compliance with record keeping in all sectors Establish a clear mandatory procedure for recording the identity of the originator of all wire transfers.
3.6 Monitoring of transactions and relationships (R.11 & 21)	Verify the effectiveness of recently issued regulations with respect to monitoring relations with countries that do not comply with the FATF recommendations. Implement in a more effective way the existing regulations for regulated institutions in order to comply with the laws, regulations and rules against money laundering.

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3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	Eliminate from the Law the obligation to send STRs to the "decentralized agency" in addition to the UNIF. Although this organ does not exist, it could cause future problems Reduce the time allowed to file an STR Require by law that STRs should be presented for all operations that are suspected of financing of terrorism (at the moment the law only requires STRs related to funds of illicit origin). To afford legal protection to regulated institutions that comply with this obligation in good faith. To raise to the rank of Law, the prohibition to reveal an STR or information related to investigations of the UNIF (currently the prohibition is only contained in a Resolution) and establish the possibility of administrative and penal sanctions for its breach Require by a legal or regulatory manner that the personal names and details of those who carry out a STR remain safe.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	Improve system in securities sector. For foreign branches, no mention is made of requirement to apply highest standards, nor to apply coherent CDD measures at group level.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	It is recommended that a specific sanctions regime for the AML/CFT system be established. Improve capability for inspections and controls in regulated entities.
3.11 Money value transfer services (SR.VI)	Complete the announced revision of the regulations. Improve controls for collecting information on originators.
4. Preventive Measures –Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	Issue regulations for the DNFBP sector and ensure compliance
4.2 Suspicious transaction reporting (R.16)	Issue regulations for the DNFBP sector and ensure compliance
4.3 Regulation, supervision and monitoring (R.24-25)	Issue regulations for the DNFBP sector and ensure compliance
4.4 Other designated non-financial businesses and professions (R.20)	Study feasibility of extending AML/CFT controls to high risk sectors other than DNFBPs
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	Complete the establishment of a system to enable control of legal persons to be determined

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	Establish some kind of system to enable parties controlling legal arrangements to be known.
5.3 Non-profit organisations (SR.VIII)	Establish a register of information on NPOs with regard to their improper use by money launderers of terrorism financers.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31 & 32)	The legal mechanisms have not been adequately applied and it is therefore necessary to determine the best way for the various institutions can develop them in the interst jof greater effectiveness.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	
6.3 Mutual Legal Assistance (R.36-38, SR.V, and R.32)	There should be a mechanism to determine the goods of which a person is owner, in a truthful and timely manner. Establish an effective mechanism for freezing financial accounts.
6.4 Extradition (R.39, 37, SR.V & R.32)	The rule that prevents extraditing nationals or foreigners capable of receiving a sentence greater than 30 years must be reviewed
6.5 Other Forms of Co-operation (R.40, SR.V & R.32)	A data management system should be established to provide statistics on the work being done in this aspect of international cooperation.
7. Other Issues	
7.1 Resources and Statistics (R30 & 32)	Provide greater resources for the work of the FIU and for supervision and inspection of regulated entities. Generate overall statistics in all the agencies of the AML/CFT system
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

Relevant sections and paragraphs	Country Comments

Annex 1: List of abbreviations

AML	Anti-Money Laundering
BCV	Central Bank of Venezuela
CADIVI	Foreign Exchange Commission
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CICPC	Criminal Investigations Body of the National Police
CNV	National Securities Commission
COPP	Code of Criminal Procedure
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
LOCDO	Organic Law Against Organized Crime
LOCTISEP	Organic Law Against Illicit Traffic in Psychotropic's
LTICSE	[same as above]
MINEC	Ministry of Economy
ML	Money Laundering
ONA	National Anti-Drug Office
PEP	Politically Exposed Person
RAS/ROS/STR	Suspicious transaction report
RFP	Registry of Personal Signatures
RIF	Registry of Fiscal (tax) Information
SAREN	Autonomous Service of Registries and Notaries
SENIAT	Customs and Tax Administration
SUDEBAN	Superintendency of Banks
SUDESEG	Superintendency of Insurance
TSJ	Supreme Court
UNIF	National Financial Intelligence Unit
UT	Taxation Units

Annex 2: Details of all bodies met on the on-site mission –

Government and Justice

Banco Central de Venezuela (Central Bank of Venezuela)

Cuerpo de Investigaciones Científicas Penales y Criminalísticas (Criminal Investigations Unit of the Police)

Comisión de Administración de Divisas CADIVI (Foreign Currency Administration)

Comisión Nacional de Valores (National Securities Commission)

Consejo Nacional electoral (National Electoral Council)

Fiscalía General de la República (Chief Prosecutor's Office)

Guardia Nacional Bolivariana (National Police)

Ministerio del Poder Popular para las Industrias Básicas y Minería (Ministry of Mining and Basic Industries)

Oficina Nacional Antidrogas ONA (National Anti-Drug Office)

Servicio Autónomo Nacional de Registros y Notarias (Registry and Notary National Service)

Servicio Nacional Integrado de Administración Financiera y Tributaria (tax adminiastration)

Superintendencia de Bancos and Other Financial Institutions SUDEBAN (Superintendency of Banks and other financial institutions)

Superintendencia de Seguros SUDESEG (Superintendency of Insurance)

Tribunal Supremo de Justicia (Supreme Court)

Unidad de Inteligencia Financiera UNIF (Financial Intelligence Unit)

Private Sector

Asociación Bancaria de Venezuela (Bankers Association)

Banco Bancaribe

Banco BANFOANDES

Banco Mercantil

Cámara Bolivariana de la Construcción (Real Estate Developers Association 1)

Cámara Venezolana de la construcción (Real Estate Developers Association 2)

Federación de Contadores Públicos de Venezuela (Accounting Association)

Federación del Consejo de Administradores de Venezuela (Federation of Administrators)

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Annex 3: Lists of all laws, regulations and other material received

LOCDO. Ley Orgánica contra la Delincuencia Organizada

LOCTISEP Ley Orgánica Contra el Tráfico Ilícito de Sustancias Estupefacientes y Psicotrópicas

COPP, Code of Criminal Procedure

Code of International Private Law

Code of Commerce of 1955

Civil Code, of 1982

Banks and other Financial Institutions Act, DFL 1.526.

Public Ministry Act

Law of Public Registry and Notaries, 2001

Trust Law of 1.956

Res 185-01, SUDEBAN, Sept. 12 , 2001. Rules for Prevention, Control and Oversight of Money Laundering Operations, Applicable to the institutions regulated by the Superintendency of Banks and Other Financial Institutions

Res 178-2005, of the National Securities Commission

Circular SBIF-UNIF-DIF-3759, SUDEBAN, April 9, 2003. Guidance to Financial Institutions on the detection of Terrorist Financing activities.

Res 006-0596, Rules for authorization and operation, of currency dealers at the national borders.

Providencias 5.192 y 193. Designates the National Commission for Casinos, Bingo Halls and Slot Machines as the regulatory body for the activities of casinos.

Providencia 1.150- 01 de oct. de 2004, SUDESEG (Superintendency of Insurance)

Res 136.03 de 29 de may de 2003

Circular 17962, SUDEBAN, de 2005

Circular 2535676 Registry and Notaries.