

**Islamic Republic of Afghanistan: Detailed Assessment Report on
Anti-Money Laundering and Combating the Financing of Terrorism**

This Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism for the Islamic Republic of Afghanistan was prepared by a team of the International Monetary Fund using the assessment methodology adopted by the Financial Action Task Force in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document are those of the IMF team and do not necessarily reflect the views of the Government of the Islamic Republic of Afghanistan or the Executive Board of the IMF.

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ISLAMIC REPUBLIC OF AFGHANISTAN

DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

JULY 21, 2011

INTERNATIONAL MONETARY FUND
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ACRONYMS

ACBR	Afghanistan Central Business Registry
Af	Afghani
AGO	Attorney General's Office
AISA	Afghanistan Investment Support Agency
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML/CFT RR	Regulation on the Responsibilities of Financial Institutions in the Fight against Money Laundering and Terrorist Financing
AML LD	Anti-Money Laundering and Proceeds of Crime Law (legislative decree)
ANP	Afghan National Police
BL	Banking Law
CC	Criminal Code
CFT LD	Law on Combating the Financing of Terrorism (legislative decree)
CDD	Customer due diligence
CNBIR	Cash and bearer negotiable instruments report
CNPA	Counter-Narcotics Police of Afghanistan
CPC	Criminal Procedure Code
CSP	Company Service Provider
CTU	Counter-Terrorism Unit
DAB	Da Afghanistan Bank
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FinTRACA	Financial Reports and Analysis Centre of Afghanistan
FSD	Financial Supervision Department (Da Afghanistan Bank)
FSRB	FATF-style Regional Body
FT	Financing of terrorism
IAIS	International Association of Insurance Supervisors
KIA	Kabul international airport
KYC	Know your customer/client
LCTR	Large cash transaction report
LEG	Legal Department of the IMF
MCTF	Major Crime Task Force
MEF	Ministry of Economy and Finance
MFA	Ministry of Foreign Affairs
ML	Money laundering
MLA	Mutual legal assistance
MOI	Ministry of Interior
MoF	Ministry of Finance
MOU	Memorandum of Understanding
MSP	Money Service Providers
NDS	National Directorate of Security

NPO	Nonprofit organization
PEP	Politically-exposed person
ROSC	Report on Observance of Standards and Codes
SIU	Sensitive Investigation Unit
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Afghanistan is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated from time to time. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from January 23 to February 8, 2011, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of most of the relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and two experts acting under the supervision of the IMF. The evaluation team consisted of Nadim Kyriakos-Saad, Senior Counsel (team leader); Nadine Schwarz, Senior Counsel, Emmanuel Mathias, Senior Financial Sector Expert, Chady El-Khoury, Counsel, and Melissa Tullis, Senior Projects Officer (all LEG); Emiko Todoroki, Senior Financial Sector Specialist (World Bank) and Raisa Sheynberg, Policy Advisor (U.S. Department of the Treasury). The assessors reviewed the institutional framework, the relevant laws, decrees, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Afghanistan at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Afghanistan's levels of compliance with the FATF 40+9 Recommendations (see Table1) and provides recommendations on how certain aspects of the system could be strengthened (see Table2). The report was also presented to the Asia/Pacific Group on Money Laundering (APG) and endorsed by this organization as a mutual evaluation report at its annual meeting of July 18-22, 2011.

The assessors would like to express their gratitude to the Afghanistan authorities for their hospitality and cooperation throughout the assessment mission.

EXECUTIVE SUMMARY

1. **This report summarizes the anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the Islamic Republic of Afghanistan at the time of the onsite visit (January 23 to February 8, 2011) and shortly thereafter.** It describes and analyzes these measures and offers recommendations on how to strengthen certain aspects of the AML/CFT system. It also assesses Afghanistan's level of compliance with the 40+9 Recommendations of the Financial Action Task Force (FATF) (see the attached table on the Ratings of Compliance with the FATF Recommendations).

Key Findings

2. **Afghanistan is one of the poorest countries in the world and, after decades of ongoing conflicts and strife, it is still at an early stage of developing its legal and institutional framework.** The main challenges that the authorities face are the precarious security situation (including regular occurrence of insurgency attacks), vested interests and corruption, capacity constraints, a large illicit narcotics sector, a weak business environment, and low human capital.

3. **Measures have nevertheless been taken to fight crime, including financial crime, and to lay the foundations for an AML/CFT regime.** In particular, two legislative decrees were issued by the President in 2004 to fight against money laundering and terrorist financing. Although their constitutionality and, ultimately, the validity of the AML/CFT framework, have not been definitively established, both decrees have been implemented, to a certain extent, by the authorities and the private sector.

4. **However, current efforts are not commensurate to the high risk of money laundering and terrorist financing in the country.** Illicit narcotic trade and corruption alone generate considerable amounts of illegal funds. Afghanistan is the world's largest opium producer and exporter and ranks amongst the most corrupt countries in the world. Smuggling and fraud are other major sources of illegal funds. In addition, terrorism and its financing remain a major concern both in terms of the security of Afghanistan and of the funding of terrorist individuals or organizations, and terrorist acts in the country and abroad. Despite the authorities' efforts, investigations into money laundering and terrorist financing have been few and none of them resulted in charges being brought before the courts.

5. **Structural elements make the effective implementation of AML/CFT preventive measures challenging in some sectors.** Both rudimentary financial relations (cash-based economy, low rate of financial intermediation, illiteracy, and weaknesses in documentation of identity), and a financial sector well connected to the outside world (at least through correspondent accounts and SWIFT) coexist in Afghanistan. Accordingly, while preventive measures are certainly difficult to implement, even in the medium term, in the rudimentary financial sector, they could be and could have been better implemented in the banking sector. For example, it would appear that the lack of implementation and supervision of preventive measures, such as identification of customers and fit and proper testing did play a role in the making of a major financial fraud in the main commercial bank.

Legal Systems and Related Institutional Measures

6. **The current government structure of Afghanistan is relatively new.** After the December 2001 fall of the Taliban regime, a new Constitution was adopted, putting a new institutional framework in place. The legislative process, overall, remains however very slow and a number of key measures have been taken by the President without Parliamentary approval. Over the last decades, Afghanistan has witnessed continuous instability and conflict. This situation has considerably challenged the country's economic and social development, and contributed to an increase in criminal activities. It also prevented the development of sound structural elements that would foster transparency and good governance.

7. **From 2001 onwards, the authorities adopted legislative and institutional measures to increase their capacity to fight against crime.** Laws, such as the Counter-Narcotics Law, were issued, and an anti-corruption strategy was adopted. New law enforcement agencies were established, notably the Major Crime Task Force (MCTF), the Sensitive Investigation Unit (SIU), the Intelligence and Investigation Unit (IIU) and the National Directorate of Security (NDS). An Anti-Corruption Unit was also created within the Attorney General's Office. In 2004, the President issued two legislative decrees, namely the "Anti-Money Laundering and Proceeds of Crime Law" (Law No.840, hereafter the AML LD) and the "Law on Combating the Financing of Terrorism" (Law No, 839; hereafter the CFT LD). Both decrees are still pending final endorsement by Parliament Article.

8. **Money laundering is criminalized in a way that meets most of the requirements under the standard, but it does not apply to the full range of FATF-designated categories of offenses.** The AML LD takes an all-crimes approach in the criminalization of money laundering. Several of the activities listed in the standard, however, have not been criminalized in Afghanistan, such as participation in an organized criminal group, kidnapping or illicit arms trafficking, and therefore remain outside the scope of the money laundering offense. Provisional measures and confiscation may be ordered in the case of offenses under the Counter-Narcotics Law, but are limited with respect to money laundering and other types of predicate crimes. While several investigations into money laundering have been led, none of them resulted in a case being brought before the courts.

9. **Illicit activities in Afghanistan generate considerable amounts of assets that may be laundered.** Afghanistan is a major drug trafficking and drug producing country: It is the world's largest opium producer and exporter and, by itself, provides 85% of the estimated global heroin and morphine supply; export value of opiates estimated to amount to some US\$4 billion. Corruption is another major source of illegal funds. It permeates all levels of the Afghan government, and, according to some estimates, may have generated up to US\$2.4 billion in 2009. In its 2010 corruption perception index, Transparency International ranked Afghanistan 176 out of 178 countries surveyed (178 being the most corrupt).

10. **Terrorist financing has been criminalized, but nevertheless remains a major cause of concern in Afghanistan.** Several terrorist groups are believed to be active in Afghanistan, notably Al Qaeda. The CFT LD criminalizes the provision and collection of funds for the commission of a terrorist act. It does not, however, criminalize the collection of funds and their provision to terrorist individual or terrorist organizations, and the scope of the terrorist financing offenses is further limited by other deficiencies.

11. **The current framework for freezing terrorist funds suffers from considerable shortcomings and has not been used in practice.** The mechanism in place for the implementation of the United Nations Security Council Resolution (UNSCR) 1267 is incomplete, and there is no framework for the implementation of UNSCR 1373. Considering the number of designated persons and entities that have links with Afghanistan, and, more generally, of the high risk of terrorist financing in the country, this constitutes a major shortcoming of the current AML/CFT regime. Moreover, in one instance, the authorities ordered the freeze of an account held by a person designated under UNSCR 1267, but the President subsequently lifted the freezing order, thus reportedly enabling the holder of the account to withdraw the funds and leave the country.

12. **A financial intelligence unit, the Financial Reports and Analysis Centre of Afghanistan (FinTRACA), was established in 2004, became operational in 2006 and has since led Afghanistan's AML/CFT efforts, but additional measures need to be taken to ensure that it can effectively perform the core functions of an FIU.** Pursuant to the AML LD, FinTRACA is the national center for the receipt, analysis and dissemination of suspicious transactions reports (STRs) from all reporting entities. In 2010, FinTRACA became a member of the Egmont Group of Financial Intelligence Units. Major shortcomings nevertheless remain in its current functioning. FinTRACA does not have the legal authority to disseminate financial information received from non-banks financial institutions and from designated non-financial businesses and professions (DNFBPs). It is currently not operationally independent, notably because it lacks human and technical resources and its financing depends for a significant part on foreign aid. It has not provided sufficient guidance regarding the manner of reporting. The collection of relevant information needs to be strengthened in order to allow for enhanced tactical, operational and strategic analysis of STRs and other relevant information. Finally, FinTRACA has not published periodic reports on its activities that would include detailed statistics as well as information on typologies and trends of money laundering and terrorist financing.

13. **The recent revamping of law enforcement in Afghanistan is a significant step forward but the relevant agencies do not appear to be effective in curbing crime, including money laundering and terrorist financing as expected, due notably to a lack of adequate resources, expertise and coordination.** Specialized agencies have been created without, however, their establishment and powers being clearly defined in law. While they have been granted the necessary investigative powers, they do not use them to their full extent. Poor coordination between law enforcement agencies notably entails a duplication of efforts and squandering of scarce resources. While investigations have been led into money laundering and terrorist financing cases, none of them has been prosecuted and forwarded to the courts. Despite continuous efforts by the Afghan government and foreign donors to build the capacity of law enforcement, Afghanistan continues to be unable to expose and disrupt financial crimes in an effective way. This is notably due to limited resources, little expertise and corruption, as well as the lack of focus on the money trail, and a lack of clarity as to the level of evidence required to (i) initiate an investigation into, and (ii) secure a conviction for money laundering and terrorist financing.

14. **Afghanistan has established a declaration system for cross-border transportation of currency and bearer instruments which, in practice, is only implemented (albeit in a limited way) at the Kabul international Airport (KIA).** Implementation at crossings elsewhere along Afghanistan's notoriously porous border is particularly challenging. The limited implementation of

the declaration regime at KIA is further hampered by the proliferation of government agencies present at the airport.

Preventive Measures—Financial Institutions

15. **With the exception of intermediation in the securities sector, all financial activities envisaged under the standard are permitted in Afghanistan.** The Afghan financial landscape has changed considerably over the last few years. The banking sector, in particular, although it remains relatively small, has expanded significantly, and correspondent banking relationships have been established with financial institutions in several countries. The Government has also supported the expansion of microfinance, notably through the Microfinance Investment Facility for Afghanistan (MISFA). To this day, most of the financial transactions are nevertheless conducted through money service providers (MSPs; or hawaladars); MSPs have enabled financial intermediation despite the security challenges that the country continues to face, and the lack of banks in rural areas.

16. **AML/CFT preventive measures are imposed on all financial institutions but need to be strengthened considerably in order to improve compliance with the standard.** They are set out in the AML LD, the CFT LD, and, as far as banks and MSPs are concerned, in the central bank's Regulation on the Responsibilities of Financial Institutions in the Fight against Money Laundering and Terrorist Financing (the AML/CFT RR). They impose basic customer due diligence (CDD) and record keeping measures but fall short of the standard in a number of instances: There are, for example, no requirements to determine whether a customer is acting on behalf of another person, to understand the ownership and control of legal persons, or to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions; and there are no requirements in primary or secondary legislation to verify that a person purporting to act on behalf of a natural person is so authorized, or to conduct ongoing due diligence on business relationships. Despite the prevalence of corruption in Afghanistan, current measures to address the potential risk posed by politically-exposed persons are not sufficiently comprehensive. Overall, the implementation of CDD requirements is weak and is hampered by insufficient means to verify natural persons and establish the beneficial ownership and control of legal persons.

17. **Correspondent relationships are not sufficiently regulated.** There are no requirements, other than those pertaining to regular CDD, to gather information on the respondent institution to understand the nature of its business and determine its reputation and the quality of the supervision to which it is subject.

18. **Pursuant to the wire transfer rules, most of the originator information required under the standard is included in the message.** However, these rules lack clarity, in particular with respect to domestic transfers. Furthermore, the threshold for verification of the originator information is substantially higher than what is contemplated in the standard.

19. **All financial institutions are required to report to FinTRACA suspicious transactions, but few have done so in practice.** Pursuant to the AML LD, STRs must be filed when there are suspicions that a transaction (or attempted transaction) is related to or derived from the commission of an offense or that funds are linked to terrorism, terrorist acts or terrorist organizations. The scope of this requirement is, however, too narrow considering that not all the activities listed under the

standard have been criminalized in Afghanistan. In practice, some STRs have been filed, but only by banks, and only with respect to suspicions of money laundering, and not terrorist financing.

20. **Financial institutions are required to develop internal policies, procedures and control to prevent money laundering, but no guidance has been provided on what exactly should be covered.** The depth and coverage of the (limited) number of samples of policies and procedure that were provided to the assessment team varied from one institution to the other and, in some instance, were not in line with the requirements of the AML LD.

21. **Market entry conditions and AML/CFT supervision fall short of the standard and the existing framework has not been effectively implemented, notably because of a general lack of resources and expertise, as well as vested interest and corruption.** The central bank, the Da Afghanistan Bank (DAB), is responsible for the supervision of banks, including depository microfinance institutions, MSPs, and foreign exchange dealers. The Ministry of Finance has the authority to regulate and supervise the insurance sector. Market entry conditions are insufficient: there are, in particular, no measures in place to ensure the fit and properness of the beneficial owners of financial institutions, and no criminal background check is conducted to prevent criminals and their associates from owning or controlling microfinance institutions.

22. **Although considerable efforts have been deployed to bring MSPs under government monitoring in 26 out of 34 provinces, a large number of MSPs continue to operate to date outside the legal framework particularly in the provinces of Kandahar, Helmand and Herat.** MSPs are required to obtain a license from DAB to operate and are subject to specific CDD obligations, but security constraints and limited resources have impeded the enforcement of these requirements in some parts of the country.

Preventive Measures—Designated Non-Financial Businesses and Professions (DNFBPs)

23. **DNFBPs are subject to AML/CFT obligations under the AML LD, none of which have, however, been implemented.** All the DNFBPs listed in the standard can operate in Afghanistan except casinos (which are forbidden), and notaries (which do not constitute a separate profession). Trust and company services providers do not appear to be present in a meaningful way in the country. DNFBPs are subject to CDD, record keeping and reporting requirements to a similar extent as financial institutions, but have not started implementing these obligations. There is no supervisory framework for DNFBPs.

Legal Persons and Arrangements & Non-Profit Organizations

24. **Transparency of the ownership and control of legal persons is insufficient.** Under Afghan law, legal persons may be established as corporations, limited liability companies and partnerships. All must register with the Afghan Central Business Registry, but the general information entered in the registry is not updated and information on beneficial ownership is not collected. Shares may only be issued in nominative form; there are therefore no bearer shares in Afghanistan. Legal arrangements such as trusts cannot be established under Afghan law and according to the authorities; assets of foreign trusts are not held or managed in the country.

25. **The authorities do not appear to adequately account for the risk of non-profit organizations (NPOs) being misused for terrorist financing purposes.** NPOs play a vital role in Afghanistan. Over 1600 NPOs are registered and active throughout the country. According to law enforcement agencies, although no cases have been brought before the courts, there have been instances of NPOs being used to fund terror. The Ministry of Economy, which is the primary oversight body of the NPO sector, lacks sufficient resources to conduct its functions in effectively and does not perceive the risk of misuse of NPOs for the purpose of FT.

National and International Co-operation

26. **National coordination amongst the relevant authorities is weak.** An informal AML/CFT committee was formed in 2009 with the intention of bringing together the law enforcement agencies, FinTRACA and DAB, but it focused mainly on the preparation of the detailed assessment questionnaire for this assessment, rather than on operational matters. The lack of coordination is particularly acute with regard to law enforcement, where several separate agencies have been established many of which have overlapping mandates.

27. **A framework has been established to allow for mutual legal assistance but it falls short of the standard and is rarely used.** The AML and CFT LDs set out a broad range of measures that Afghanistan may take on behalf of a foreign state. The scope of the assistance that may be offered is, however, too limited considering notably that not all FATF-designated categories of offenses have been criminalized, and that very few steps have been taken to implement UNSCRs 1267 and 1373. Moreover, the authorities have very limited experience in assisting other countries.

1. GENERAL

1.1. General Information on the Islamic Republic of Afghanistan

Background information

Geography

28. Afghanistan is a mountainous, landlocked country in Southwest Asia. Kabul is its capital. Approximately half of its territory is over 2,000 meters above sea level. Its total surface area is 652,865 km. It is bordered by Turkmenistan, Uzbekistan, and Tajikistan to the north, China to the east, Pakistan to the east and south, and Iran to the west. The total length of its land boundaries is 5,529 km: 744 km are shared with Turkmenistan, 137 km with Uzbekistan, 1,206 km with Tajikistan, 76 km with China, 2,430 km with Pakistan, and 936 km with Iran.

Demography

29. The country has 29,802,724 inhabitants, as of 2009. The Afghan population is composed of different ethnic groups speaking different languages. The largest ethnic groups are Pashtun (42%), Tajik (27%), Uzbek (9%), and Hazara (9%). Other, smaller groups account for about 13% of the population. They are Turkmen, Aimaq, Baluch, Nuristani, and Kizilbash. The predominant religion is Sunni Islam (80%); the remainder of the population (19%) is Shiite.

History

30. Afghanistan, often called the crossroads of Central Asia, has a turbulent recent history.¹ On July 17, 1973, former Prime Minister Daoud seized power in a military coup amid charges of corruption against the royal family and poor economic conditions. By the summer of 1978 however, a revolt began in the Nuristan region of eastern Afghanistan and quickly spread into a countrywide insurgency. In spite of a bilateral treaty of friendship and cooperation between the Soviet Union and Afghanistan signed in December 1978, by October 1979 relations between the two countries were tense. Faced with a deteriorating security situation, on December 24, 1979, a large number of Soviet troops entered Kabul. Although informal negotiations for a Soviet withdrawal from Afghanistan had started as early as 1982, it was only in 1988, when the Geneva accords were signed, that a timetable for full Soviet withdrawal from Afghanistan (by February 15, 1989) was set in motion.

31. The Mujahideen² were party neither to the negotiations leading to the 1988 agreement nor to the agreement itself and, consequently, refused to accept the terms of the accords. As a result, the civil war continued after the Soviet withdrawal, which was completed in February 1989. The Taliban movement³ gained strength in the mid-1990s in reaction to the anarchy and warlordism that arose

¹ This part is only intended to cover the recent history of Afghanistan, from 1973 onwards.

² Afghan opposition groups which rebelled against the Democratic Republic of Afghanistan (DRA) government and the Soviet troops.

³ The Taliban movement developed in Afghanistan as a politico-religious force led by Mullah Omar, originally from his hometown of Kandahar.

after the withdrawal of the Soviet forces. By September 1996 they had taken Kabul and won control of most of the country. An opposition called the Northern Alliance held out in the north of the country.⁴

32. Following the terrorist attacks of September 11, 2001 and the Taliban's refusal to expel Osama bin Laden and his key supporters, the United States (US) and its partners in the anti-terrorist coalition began a military campaign on October 7, 2001, targeting terrorist facilities and various Taliban military and political assets within Afghanistan, leading to the fall of the Taliban regime. Under the "Bonn Agreement," an Afghan Interim Authority was formed and took office in Kabul on December 22, 2001 with Hamid Karzai as its Chairman. At the same time, the United Nations Security Council authorized the establishment of an International Security Assistance Force (ISAF) to help the Authority maintain security in Kabul and its surrounding areas.

33. A new constitution was drafted, and ratified on January 3, 2004, Presidential elections were held in October 2004 and Hamid Karzai was inaugurated as President of the newly renamed Islamic Republic of Afghanistan on December 7, 2004 for a term of five years. Due to the security situation however the first parliamentary elections, originally scheduled for June 2004, were held on September 18, 2005. The second presidential and provincial council elections were held in August 2009, and National Assembly elections were held only on September 2010. On November 2, 2009, officials of the Independent Election Commission (IEC) declared Hamid Karzai President of Afghanistan for another 5-year term.⁵ Despite these progresses, the rule of law is still not upheld in the entirety of the country, as the central power is challenged by warlords in some regions, and combated by Taliban in others.

34. As the brief historical account above shows, Afghanistan has witnessed instability and conflicts during most of the last 40 years. Such a situation challenged economic and social development of the country, contributed to the flourishing of the criminal activities and prevented the development of the structural elements (e.g. transparency and good governance, a culture of AML/CFT compliance, appropriate measures to combat corruption, functioning institutions including an efficient court system, high ethical and professional standards for public officials and professionals) which underpin any effective AML/CFT framework.

System of government

35. Afghanistan's current institutional framework is recent. The Constitution of January 3, 2004 provides for a tripartite system of government, with a President, Ministers working under the chairmanship of the President, a National Assembly composed of the House of People (lower house) and the House of Elders (upper house) and a judiciary, which is comprised of the Primary Courts, Courts of Appeal and the Supreme Court. It also provides for the Loya Jirga (Grand Council), composed of the members of the National Assembly as well as of the presidents of the provincial and district assemblies.

⁴ *Afghanistan & the United Nations* (UN News Service, last checked April 24, 2011).

⁵ A difficult security situation and allegations of fraud have characterized both presidential and parliamentary elections since 2004.

President

36. The President is the head of state and he leads the executive branch of government. The President is the sole executive for Afghanistan and is aided by a first and second Vice-President. The President, among other duties, is responsible for commanding the armed forces of Afghanistan, convening the Loya Jirga, and appointing ministers and members of the Supreme Court. The president is charged with, and must abide by, the limitations of the Constitution.

37. The rights and obligations of the President are set out in Article 64 of the 2004 Constitution. The President has limited legislative powers when Parliament is in recess under Article 79 of the Constitution.

38. The Ministers are appointed by the President, with the endorsement of the House of People (Article 64 (11) of the Constitution). At the time of the onsite mission, there were 25 ministries charged with carrying out laws passed by the National Assembly, and drafting regulations.

National Assembly

39. The National Assembly is Afghanistan's national legislative branch. It is a bicameral body, comprising of two chambers:

1. The *Wolesi Jirga* or House of People: this is the lower house composed of 250 members, directly elected;
2. The *Meshrano Jirga* or House of Elders: this is the upper house composed of 102 members. Two thirds of the members are indirectly elected by members of district and provincial councils, the other third is appointed by the President.

40. The National Assembly is charged with passing, modifying, and abrogating laws, and with approving the government budget. It must also receive the legislative decrees issued by the President under Article 79 of the Constitution when Parliament is in recess and has the power to reject them (in which case they become void). While the House of People has the main law-making responsibility in the country, the House of Elders has an advisory more than a consultative role (although it has some veto powers). Laws must be accepted by both houses and signed by the President for it to enter into force. The House of People has also the power of accepting or rejecting presidential appointments for the ministries and Supreme Court.

Loya Jirga

41. The Grand Council (Loya Jirga) is composed of all members of the National Assembly and the chairpersons of the provincial and district councils. The Loya Jirga has very specific powers. It may amend the Constitution, make decisions on the territorial integrity and independence of the country, and prosecute the President.

Supreme Court

42. The Supreme Court (Stera Mahkama) is the highest judicial organ in Afghanistan and is headed by a Chief Justice who decides cases with the eight other justices of the court. Its nine members are appointed by the President with the consent of the House of People for ten year terms.

The Supreme Court, like the other courts in Afghanistan, is divided into four sections: general criminal, public security, civil and public rights, and commercial. Each section is headed by one justice who is in charge of all the cases in that subject area.

43. The powers of the Supreme Court are provided for in Article 24 of the Law of the Courts. This provision in particular gives the power to review laws passed by the National Assembly for compliance with the Constitution and Afghanistan's international agreements. The Supreme Court can also propose laws related to judicial affairs to the National Assembly.

Structural elements for an effective AML/CFT system

Criminal legal framework and justice system

44. Afghanistan's legal framework and justice system are still at an early phase of establishment and implementation. The institutional reform, and the revision of the legal framework, started very shortly after the collapse of the Taliban regime, notably with the January 2002 International Conference on Reconstruction Assistance to Afghanistan. A few donor countries and several international organizations initiated projects aimed at reforming and rebuilding the criminal justice framework. The United Nations Office on Drugs and Crime (UNODC), in particular, focused on reviewing national criminal laws and procedures, and on strengthening the judiciary.

45. These efforts entailed a search for and review of legal texts that existed prior to the Taliban regime and that could still be used. In many instances, they also entailed the drafting and issuance by the Afghan authorities of new legislative texts. Several agencies were established to create a new framework to fight against the main asset generating crimes and money laundering. They include the Major Crime Task Force (MCTF), Sensitive Investigation Unit (SIU) and Investigation and intelligence Unit (IIU) that were established within the Ministry of Interior, the National Department of Security (NDS), the Anti-Corruption Unit of the Attorney General's Office, and the Anti-Corruption Court and Counter-Narcotics Court (both established within the Supreme Court). Most of these agencies were set up with the assistance of foreign donor countries, some of which still maintain a presence for training purposes.

46. Criminal procedure in general lacks clarity. Procedural elements are spread out in various texts, and it is unclear if all of them are still in force.

47. Due to the actions of the insurgency which persists in most provinces of Afghanistan, the authorities are not in a position to investigate, prosecute and sanction crime (including money laundering and terrorist financing) throughout the entirety of the Afghan territory. In addition, the low levels of human capital, and the persistence of the traditional patronage systems have hampered the enforcement of the rule of law.

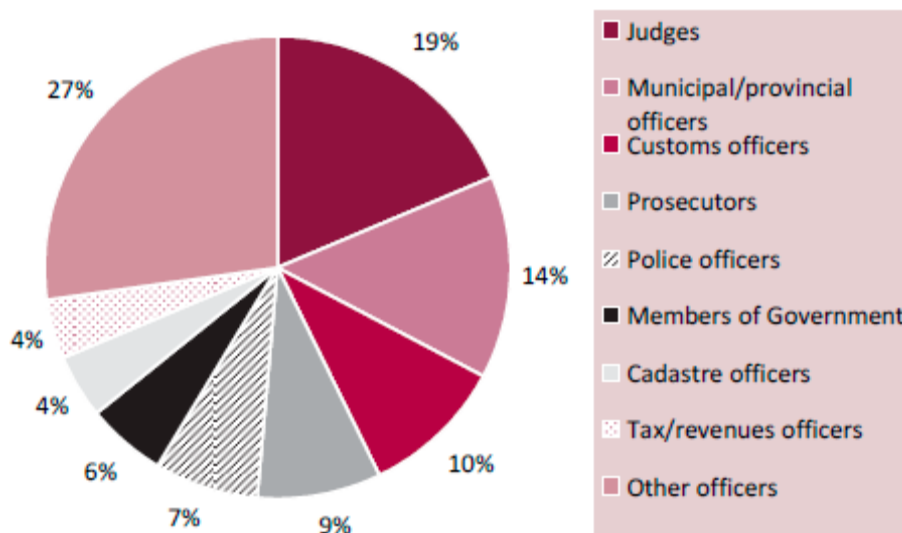
48. Finally, it is worth mentioning, that, in parallel to the formal justice system, Afghanistan has a long standing tradition of non-State justice systems, i.e. local (or tribal) systems of justice and mediation. Several studies have been conducted on the relationship between the two systems, and according to some, most disputes, both criminal and civil, are resolved outside Afghanistan's formal

justice system⁶. The non-State judicial systems are however mainly dedicated to the resolution of personal disputes and do not address crimes of national concern, such as money laundering and terrorist financing. They are therefore not the object of the present assessment.

Transparency, good governance, measures to combat corruption

49. Corruption is widespread in Afghanistan. Afghanistan ranks third to last in the 2010 Transparency International Corruption Perception Index (176 out of 178 jurisdictions), thus classifying it as the third most corrupt country in the world. According to a recent UNODC study, corruption is a routine activity in the country when dealing with public officials: 52% of adult Afghans had to pay at least one bribe to a public official during the last 12 months.⁷ As shown by the pie chart below, judges, prosecutors, customs, and police officers together account for 45% of all bribes of \$1,000 or higher.

Figure 1 – Percentage distribution of bribes by requesting public official⁸



Note: bribe of \$1,000 and more

50. Afghans have little confidence that the authorities are tackling the problem. “[O]nly 9% of the urban population has ever reported an act of corruption to authorities.” A majority of Afghans feel discouraged to report unlawful behaviors to people who are seen as being part of the problem (63% of

⁶ United States Institute of Peace, Relations Between State and Non-State Justice Systems in Afghanistan, <http://www.usip.org/programs/projects/relations-between-state-and-non-state-justice-systems-afghanistan>

⁷ UNODC, “Corruption in Afghanistan”, January 2010.

⁸ Source: UNODC, “Corruption in Afghanistan – Bribery as reported by the victims,” p. 27, figure 12.

responses).⁹ Along the same lines, a vast majority of the population (84%) perceived that the court system is corrupt and unfair.¹⁰

51. Bribery is a predicate offense to money laundering. Afghanistan signed and ratified the United Nations Convention against Corruption on August 25, 2008. Afghanistan adopted a detailed “strategy and policy for anti-corruption and administrative reform.” In July 2008, the President issued a Decree establishing a High Office for Oversight and Anti-Corruption (HOO) as the highest office for the coordination and monitoring of the implementation of Afghanistan’s anti-corruption strategy and for the implementation of administrative procedural reform in the country. Pursuant to Article 154 of the Afghan Constitution, asset disclosure is mandatory for the President, Vice-President, Ministers, the Attorney General and members of the Supreme Court. The Law on Monitoring the Anti-Administrative Corruption Strategy extends the disclosure requirements to other officials, including “staff working in second grade and higher and employees who work in finance, accounting and procurement sections, prior to occupation of their positions” (Article 12).

Legal framework for AML/CFT

52. Afghanistan started taking steps to fight money laundering in 2004 (i.e. prior to the establishment of Parliament) with the issuance of a legislative decree entitled the “Anti-Money Laundering and Proceeds of Crime Law” (Law No.840, hereafter the AML LD). The purpose of the decree is “to prevent and prohibit the use of financial institutions and any economic activities for money laundering and for the financing of terrorism” (Article1).

53. According to the authorities, the decree was issued under Article 79 of the 2004 Constitution, which enables the government to issue legislative decrees “during the recess of the House of Representatives”, and “in case of an immediate need (...) except in matters related to budget and financial affairs.” Pursuant to this same provision, legislative decrees acquire force of law after they have been endorsed by the President. They must then be submitted to Parliament “within 30 days of convening its first session” and, if rejected by the National Assembly, they become void.

54. Article 79 of the Constitution only deals with “recess” of Parliament and does not address the situation that the authorities were facing in 2004, namely a nascent political system in which Parliament had not yet been established. Contrary to what the authorities maintain, it cannot constitute the basis for the AML LD. This interim situation in which the country found itself at the time (i.e. the period between the adoption of the Constitution and the inauguration of the National Assembly) is covered under Article 160, which provides that “pending the establishment of the National Assembly, its powers, enshrined in this Constitution, and shall be submitted to the government (...).” This provision therefore would appear to enable the President to issue legislative decrees until Parliament has been established. Pursuant to Article 161, the legislative decrees enforced from the beginning of the interim period must be referred to the first session of the National

⁹ *Ibid*, p.4.

¹⁰ The Afghanistan Investment Climate in 2008, World Bank
<http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/305984-1237085035526/5919769-1258729848597/1AFInvestmentClimatesurveyReportFinal.pdf>

Assembly; these decrees are enforceable unless annulled by the National Assembly. Accordingly, while the decrees are enforceable upon signature by the President, they are nevertheless subject to final endorsement by Parliament. Although Article 160 has not been invoked by the authorities, it would appear to be the only possible basis for the issuance, by the President, of the AML LD in the period that preceded the convening of Parliament. Two days prior to the APG plenary discussion of the report, the Afghan authorities provided the assessment team with a letter from the House of People confirming that the AML LD had been transmitted to the National Assembly during its first session (which was inaugurated on December 2005), and that the procedural conditions set out in the Constitution had therefore been complied with. The letter also indicated however that, more than five years after the transmittal of the LD to Parliament, the latter still had not endorsed it. Consequently, the AML LD still does not have the full force and value of law.

55. In October 2006, the President also issued the “Law on combating the financing of terrorism”, which, despite its title, is also a LD. Like the AML LD, the CFT LD has been submitted to Parliament during its first session and, while enforceable under the provisions mentioned above, is still pending final endorsement by Parliament.

Ethical and professional standards

56. According to the recently adopted laws governing the work of these agencies, the law enforcement personnel of the Afghan National Police and of the Attorney General’s Office (AGO) are required to have high professional standards and qualifications. They are also subject to strict confidentiality rules. Merit-based processes for selecting police officers, judges and prosecutors and promotions have been introduced.

57. However, in many cases, these standards and ethical requirements are not implemented. In practice, several reports indicated that there is widespread “petty corruption” within the Ministry of Interior (MoI) and the Ministry of Justice (MoJ), and that police officers demand bribes from the public.¹¹ According to the World Bank Report, the most serious corruption within the MoI, is the large-scale corruption linked to the drug trade. The report states that the MoI appoints chiefs of Police “to both protect and promote criminal interests. The result is a “complex pyramid of protection and patronage, effectively providing state protection to criminal trafficking activities.” Similar concerns have been raised with respect to AGO staff and judges.

58. Development and implementation of codes of conducts and good practices for professions such as accountants, auditors and lawyers are at an early stage. To date, only the bar association has adopted a code of conduct, in July 2009.

¹¹ The World Bank Public Financial Management report distinguishes between “petty corruption” and “grand corruption” in Afghanistan. World Bank, “Volume V: Improving Public Financial Management in the security sector: in Afghanistan: Managing Public Finances for Development, Poverty Reduction and Economic Management Sector Unit, South Asia Region, Washington, D.C, The World Bank, 22 December 2005, p.31.

Economy

General information

59. Afghanistan is one of the poorest countries in the world, with a per capita income estimated at about US\$500, and the country ranks well below its neighbors on most human development indicators. The economy remains heavily dependent on inflows of foreign aid to finance the government budget and cover the massive current account deficit. According to the Ministry of Finance, in early 2011, 40% of the operating budget and 100% of the development budget was financed by the international community. The most important economic activity in Afghanistan is the illegal cultivation of opiates and the production of opiates, combined with the cultivation of cannabis and the production of cannabis resin.

60. The Afghan economy is dominated by agriculture, including the cultivation of opiates and cannabis, although only 12% of the country's total land area is classified as arable, while one-half of that is cultivated, due to the lack of irrigation. Afghanistan depends to a large extent on melting snows to provide irrigation water, but has experienced several years of droughts over the last decade due to low snowfall. Afghanistan's mining industry is still largely informal, characterized by small scale, undercapitalized operations. To date only few deposits have been exploited (including gas, coal, copper and precious minerals). According to the World Bank, if managed properly mining has the potential to be a driver of poverty reduction and sustained growth,¹² as the country hosts among the largest unexplored copper and iron deposits in the world. Manufacturing has recovered since 2001, but remains hampered by poor security and a lack of materials. Most factories are located in Kabul and a few other major cities, including Herat and Mazar-i-Sharif. The service sector has developed rapidly since 2001, fueled by significant aid inflows, as well as the proceeds of crimes including drug trafficking and corruption (see below).

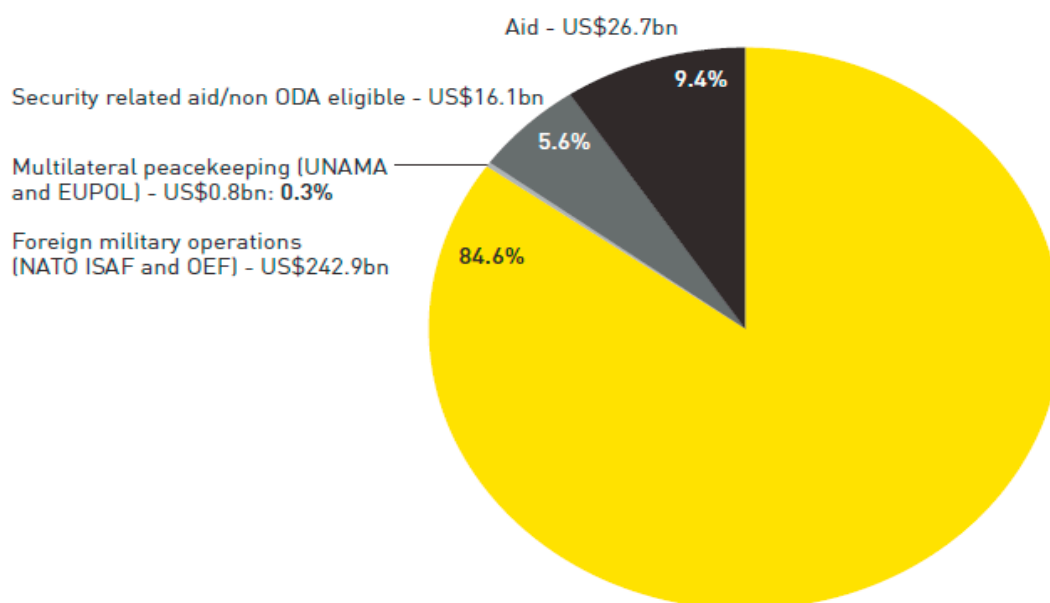
61. Between 2007 and 2010, economic growth averaged about 12 percent per year. However, this growth has been volatile, ranging from 3 percent in fiscal year 2008 /09 to 21 percent in 2009 /10, thanks to a record harvest and a booming service sector. The authorities managed to undertake a successful disinflation after domestic prices surged in 2008 due to historically high world commodity prices. Government revenues are among the lowest in the world at under 11 percent of GDP in 2010 /11. Consequently, with total spending in excess of 20 percent of GDP, the government is reliant on donors' inflows.

62. A total of US\$286.4 billion (US\$9,426 per Afghan citizen) has been spent since late 2001 on security, military resources and international aid in Afghanistan.¹³ These inflows, along with illicit financial flows from the narcotic sector, have stimulated sales of domestic goods and services to nonresidents and contributing to a buildup of international reserves and a stronger Afghani. Interestingly, even with the severe banking crisis which has been developing since the summer of 2010, the domestic currency did not depreciate yet, particularly thanks to external inflows.

¹² Mining for sustainable growth in Afghanistan, World Bank, September 2010.
<http://go.worldbank.org/ICI51R4XG0>

¹³ "Afghanistan: Tracking major resource flows 2002-2010" by Lydia Poole (Global Humanitarian Assistance, January 2011).

Figure 2: International aid, security and military expenditure, 2002-2009.¹⁴



Trade flows

63. Afghanistan's total trade in 2005 was estimated by the Central Statistics Office (CSO) at US\$5.4 billion, comprising about US\$3.9 billion in imports and US\$1.7 billion in exports (of which around US\$1.2 billion represent re-exports). Exports comprise mainly carpets, dried fruits, nuts, sheepskins, and precious stones. Pakistan is the major destination of Afghanistan's exports and re-exports (electronics, cosmetics, toiletries, crockery, and auto parts). Recorded imports represent 50 percent of total imports, as smuggling is still prevalent with some neighboring countries, including Iran. Official imports come mainly from Japan, India, and Pakistan. While Pakistan was a major source of imports in the past, China and Japan are now Afghanistan's main import partners, followed by India.¹⁵

64. Formal and legitimate trade is not the only one present in the country. Trade flows for illicit opiates are significant but are difficult to quantify, although information is available regarding the main opiates markets.¹⁶

¹⁴ *Ibid*, p.2. Sources cited: Development Initiatives based on OECD DAC data; Government of the Islamic Republic of Afghanistan (GIROA) Donor Assistance Database (DAD); Stockholm International Peace Research Institute (SIPRI) database of Multilateral Peacekeeping Operations; and Development Initiatives Research.

¹⁵ IMF, Islamic Republic of Afghanistan: Selected Issues and Statistical Appendix, March 2006.

¹⁶ "World Drug Report 2010," p.42 (United Nations Office on Drugs and Crime, 2010). The report assesses the main opiates markets as Europe (US\$20 billion), the Russian Federation (US\$13 billion), China (US\$9 billion) and the United States and Canada (US\$8 billion).

Economic activity generated by the drug industry

65. Afghanistan is the largest producer of illicit opiates in the world. By the latter part of the 1990s, Afghanistan had become the main source of the world's opium and heroin. By 2001, a Taliban ban on illicit poppy cultivation reversed a trend of increasing production since the late 1980s. However, after the fall of the Taliban regime, production picked up where it had left off,¹⁷ and has grown fairly steadily until the last few years.

66. In 2007, 92% of the opiates on the world market originated in Afghanistan.¹⁸ This amounts to an export value of about US\$4 billion, with a quarter being earned by opium farmers and the rest going to district officials, insurgents, warlords, drug traffickers.¹⁹ The country accounted for 7% of total world demand, or 80 mt a year, for an estimated 150,000 users in 2008 (rising to 200,000-250,000 in 2009). A large volume of opium is consumed in the Islamic Republic of Iran, approximately 450 mt, according to UNODC estimates. But all of Afghanistan's neighbors report important levels of opium use. Excluding China, consumption in the countries bordering Afghanistan (the Islamic Republic of Iran, Pakistan, Tajikistan, Uzbekistan and Turkmenistan) is estimated at 650 mt per year, or 60% of global consumption. Although small-scale cultivation occurs in these countries, such as in Pakistan and Central Asia, the main supply source for the region's opium consumers is Afghanistan.²⁰

67. The magnitude and importance of Afghanistan's opium economy are virtually unprecedented and unique in global experience ---it has been roughly estimated as equivalent to 36% of licit (i.e. non-drug) GDP in 2004 /05, or if drugs are also included in the denominator, 27% of total drug-inclusive GDP. The size and illicit nature of the opium economy mean that it infiltrates and seriously affects Afghanistan's economy and society.²¹

68. According to the Government of Afghanistan, the Ministry of Counter Narcotics and the United Nations Office on Drugs and Crime's annual *Afghanistan Opium Survey 2010* 123,000 ha of opium were cultivated in the country in 2010, yielding 3,600 mt of opium with a farm gate value of US\$605mn, equivalent to 5% of the Government's GDP estimate for 2010.²²

69. The vast majority of cultivation, which only five years ago took place throughout the country, is now confined to 14 of the country's 34 provinces. The Southern (84%) and Western (15%) provinces host 99% of opium cultivation. Of the 14 the major cultivating provinces, the top five are

¹⁷ "Afghanistan Opium Survey 2003" (UNODC, GoA Counter Narcotics Directorate), p. 6, A. Background.

¹⁸ UNODC, [Afghanistan Opium Survey 2007](#).

¹⁹ UNODC, "Opium Amounts to Half of Afghanistan's GDP in 2007."

²⁰ World Drug Report 2010 –UNODC.

²¹ Afghanistan's Drug Industry, UNODC/World Bank publication, edited by Doris Buddenberg and William A. Byrd, November 2006.

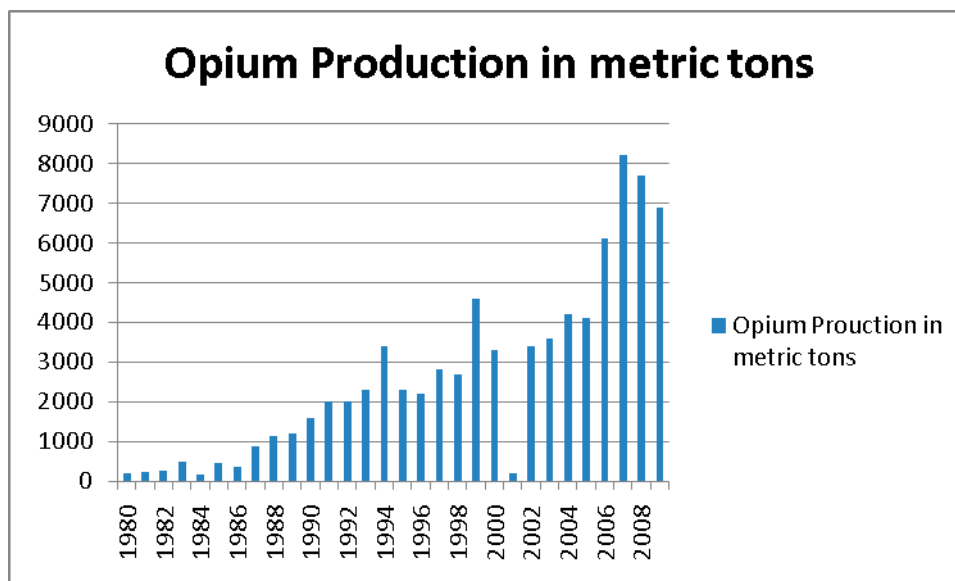
²² The Information for this section is drawn primarily from UNODC, World Drug Report 2009 and the Government of Afghanistan, MCN, and UNODC, Afghanistan Opium Survey 2009 Summary Findings, UNODC and World Bank, 2006.

Hilmand (65,045 ha), Kandahar (25,835 ha), Uruzgan (7,337 ha), Dai Kundi (1,547 ha) and Zabul (483 ha). In 2009, 1.6mn people were involved in opium cultivation, equivalent to an estimated 248,700 households. Hilmand, where roughly 53% of the country's opium is cultivated is one of the most insecure provinces in the country.

70. The Afghan drug industry has spillover effects in many countries around the world. A 2009 UNODC Report²³ shows the adverse consequences that the 900 tons of opium and 375 tons of heroin, trafficked from Afghanistan every year, have on the health, security, and consequently economies of countries along the Balkan and Eurasian drug routes, all the way to Europe, Russia, India and China. Afghanistan's drug production is responsible for a market worth US\$65 billion.

71. As shown by Table 1 (Opium production in metric tons) below, opium production has steadily risen since the 1980s and peaked in 2006.

Table 1. Opium production in metric tons



Relationships between formal and informal/illegal economy

72. As noted above, Afghanistan is an extremely poor country, landlocked, and highly dependent of foreign aid, agriculture and trade with neighboring countries. Much of the population continues to suffer from shortages of housing, clean water, electricity, medical care, and unemployment. Most economic activity takes place in the informal and illegal sectors. Activities which take place in the formal sector are largely associated with government activities, aid, and the laundering of proceeds of crimes.

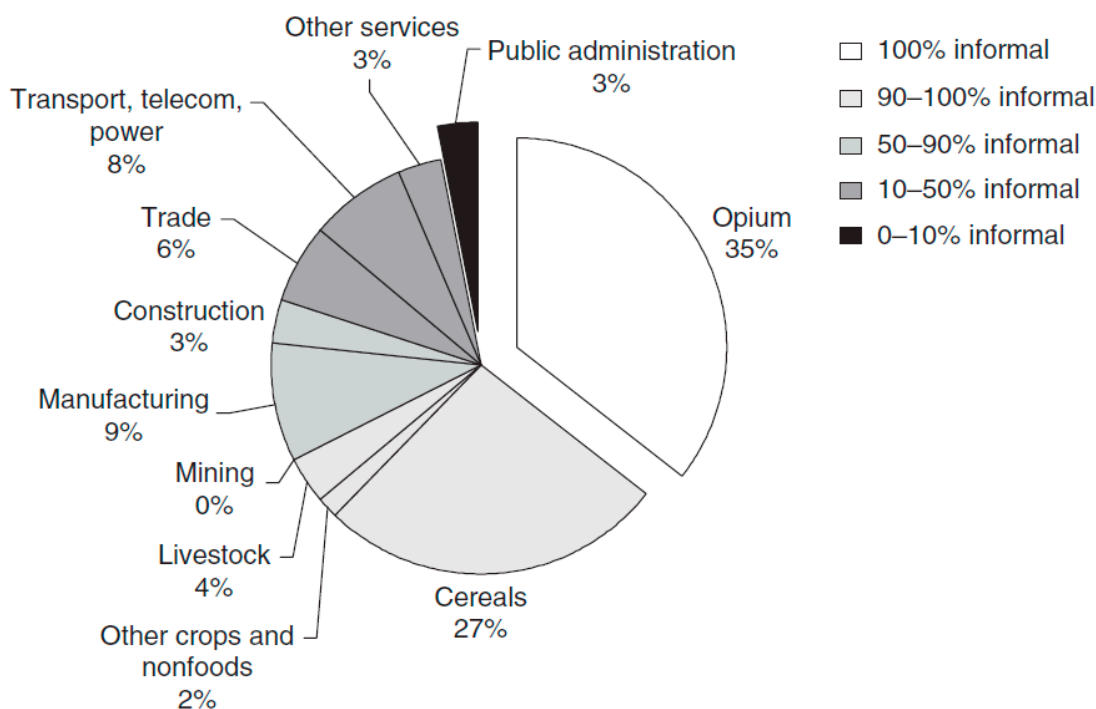
73. There are many interdependencies between the informal, the illegal and the formal economies. Market links exist through the provision of services, trade of goods, and acquisitions of

²³ Report on "Addiction, Crime and Insurgency: The transnational threat of Afghan opium," October 2009.

skills and know-how. Informal actors provide services to formal actors on a sub-contracting basis. In addition, individuals can participate both in the formal, informal, and illegal economies.

74. Transactions in both the formal, informal and illegal sectors are mainly cash based, and take place in different currencies, which makes studying financial flows difficult. The World Bank estimates that between 80 and 90% of the economic activity in Afghanistan occurs in the informal sector.²⁴

Figure 3: The informal economy in different sectors.²⁵



1.2. General situation of ML and FT

Information on predicate crime

Current situation and trends regarding predicate offenses

75. Various forms of proceeds-generating crimes are perpetrated in Afghanistan. These include, but are not limited to, drug trafficking, smuggling and corruption.

²⁴ “Afghanistan—State Building, Sustaining Growth and Reducing Poverty”, p.6 (World Bank, February 2005).

²⁵ Source: “Afghanistan—State Building, Sustaining Growth, and Reducing Poverty”, p. 7. Note: % figures refer to share of sector in total GDP, shadings to very rough estimates of the percentage of the informal economy in the sector. Source of data used: CSO (2004); UNODC (2003a); staff estimates.

76. The main proceeds-generating crimes are drug-related offenses with proceeds estimated to US\$4 billion in 2007. As noted above, Afghanistan is the world's largest producer and exporter of opiates. It is also an important consumer. Moreover, by itself, Afghanistan produces 85% of the estimated global heroin and morphine supply, a near monopoly. Afghanistan is also a globally significant producer of cannabis and cannabis resin.

77. Drug cultivation and production is illegal in Afghanistan, which is signatory to all three international drug control conventions. Various government agencies in Afghanistan (e.g., the Ministry of Interior, the Afghan National Police and the Counter Narcotics Police, and the Sensitive Investigations Unit) conduct counter narcotics activities, as does ISAF. Counter narcotics efforts include seizures and destruction of clandestine laboratories by NATO/ISAF and/or Afghan National Police (ANP), as well as a government led eradication program. Since October 2008, consistent with the UN Security Council Resolutions, NATO Defense Ministers agreed that ISAF could work with the Afghan police and army against narcotics facilities and facilitators who support the insurgency.

Opiate Seizures in Afghanistan, 2003 – 2008, Kilograms

	2003	2004	2005	2006	2007	2008
Opium	8,412	21,446	90,990	40,958	52,457	42,807
Morphine	85	84	1,967	937	5,019	479
Heroin	815	2,388	7,112	4,052	5,038	2,782

78. In addition to drugs, smuggling of other goods is also a serious concern in Afghanistan. While precise figures are difficult to obtain, it is estimated that smuggling of various goods is an important source of income for criminals and the insurgency. Reports from the Khyber Agency in Pakistan indicate that smuggling of counterfeit cigarettes represent a potential loss of approximately \$88 million in tax revenues for Pakistan every year.²⁶ Cash smuggling from neighboring countries, and particularly from Pakistan to the United Arab Emirates through Afghanistan, constitutes a major source of proceeds laundered in Afghanistan. Based on interviews conducted by the mission it could count in billion of U.S. dollars billion (See section 3).

79. Besides drug trafficking and smuggling, corruption is widespread in Afghanistan. In 2009, it is estimated that Afghan citizens had to pay approximately US\$2,490 million in bribes, which is equivalent to 23% of country GDP.²⁷ This does not take into account proceeds generated by bribes paid by foreigners (e.g. to be awarded contracts). Finally fraud, and particularly financial fraud, needs to be mentioned. As indicated under section 1.3 below, the authorities consider that a single fraud in a commercial bank has generated almost US\$1 billion in proceeds.

²⁶ *The Taliban and Tobacco – Smuggled Cigarettes Give Boost To Pakistani Militants*, by Aamir Latif and Kate Willson (The Center for Public Integrity – Tobacco Underground, June 29, 2009).

²⁷ Source: UNODC, "Corruption in Afghanistan – Bribery as reported by the victims", January 2010.

Statistical data on the numbers of investigations, prosecutions and convictions by type of predicate offenses

80. Reliable statistical information concerning the number of prosecutions and convictions for serious offences in Afghanistan is scant. Some information has been provided in a public document published by the Criminal Justice Task Force (CJTF)²⁸ in its first annual report covering the period from March 2008 to March 2009. In the reported year, the Primary Court convicted 259 people on drug trafficking offences, and acquitted 134 people. The main concentrations of convictions were in Herat province (22%), Helmand province (17%), Kabul (15%), Nangrahar (13%). The Appeal Court convicted 355 people, and acquitted 66. In none of the reported cases was Article 42 of the Counter Narcotics Law of Afghanistan used to confiscate the proceeds of drug trafficking from those convicted. The authorities also indicated more broadly that, from 2005 to 2010, they investigation some 2,406 cases, which resulted in 262 persons being prosecuted under the Counter Narcotics Law. The number of persons which were ultimately sentenced under the Law from 2005 to 2010 was not clear, but the authorities mentioned that as a result of the convictions pronounced, some 100 vehicles owned or used by drug traffickers were confiscated.

81. Tables 2 and 3 below contain the crime statistics from 2007 to 2010 and the court cases with convictions in Kabul Province in 2009, respectively. No crimes statistics were available for the other provinces in Afghanistan.

Table 2: Crime statistics 2007- 2010 (Kabul Province only).²⁹

Crime	2006-2007	2007-2008	2008-2009	2009-2010
<i>Bribery</i>	33	40	23	45
<i>Embezzlement</i>	85	74	34	36
<i>Homicide</i>	1,573 ³⁰	1,672	1,075	1,115
<i>Assault</i>	929	-	404	995
<i>Kidnapping</i>	136	276	279	275
<i>Robbery</i>	170	281	119	213
<i>Theft</i>	2,366	2,996	1,496	1,365
<i>Smuggling of non-narcotic goods</i>	/	376	317	336
<i>Smuggling of</i>	/	207	148	206

²⁸ The CJTF was established in 2005 by the Afghan government under the auspices of the Supreme Court, the Office of the Attorney General, and the Ministry of the Interior. Its primary focus is mainly the larger and more significant counter narcotics cases.

²⁹ Source for 2007-2008, 2008-2009, and 2009-2010: "Afghanistan Statistical Yearbook 2009-10," p. 79, *Table 4-42: Crimes Statistics in the Country 2007-10* (Islamic Republic of Afghanistan Central Statistics Organization), source of data: Ministry of Interior Affairs.

³⁰ This number includes intentional (1,560), unintentional (10), and "by fault" (3) homicides.

<i>narcotics</i>				
<i>Forgery</i>	223 ³¹	54	72	98

Table 3: Court cases with convictions in Kabul Province in 2009.³²

Crime	Number of convictions
<i>Bribery</i>	1
<i>Embezzlement</i>	2
<i>Homicide</i>	11 ³³
<i>Kidnapping and hostage-taking</i>	9
<i>Robbery and theft</i>	4 ³⁴
<i>Drug smuggling</i> ³⁵	73
<i>Extortion</i>	3

Description of the money laundering situation

82. The authorities believe that the major proceeds-generating crimes for money laundering (and also the financing of terrorism) in Afghanistan are: production and trade in opiates and cannabis (including chemical precursors and infrastructure), corruption, protection payments for legal and illegal movement of goods, smuggling, and kidnapping. The authorities explained that money laundering is primarily cash-based. They did not mention corruption or fraud as major proceeds-generating crimes.

83. There is a coexistence of both rudimentary financial relations (large informal sector, cash-based, low rate of financial intermediation and of formal documentation of identity), and a financial sector well connected to the outside world (at least through correspondent accounts and SWIFT). In particular, due to high levels of donor assistance and military spending, formal financial flows to and from Afghanistan are very high in comparison with countries of similar GDP per capita, and a

³¹ The 2006-2007 statistics lists this as “counterfeiting.” The other years list it as “forgery”. This may explain the rather large difference between the number for 2006-2007 and the numbers for the other years.

³² Note: In each case one or more persons may be convicted.

³³ This includes one conviction for armed robbery in combination with murder.

³⁴ This number includes two convictions for banditry, a conviction for armed robbery in combination with murder, and a conviction for theft.

³⁵ Most often heroin, opium, and hashish. One instance of smuggling of morphine. Two instances of smuggling of sodium chloride. One instance of smuggling nitric acid. One instance of smuggling alcohol.

banking fraud of the extent of the one of Kabul Bank could be unlikely in countries with similar economic development. This situation is extremely challenging for the authorities as they have to address both risks emanating both for a rudimentary financial system and a more sophisticated one.

84. While the *hawala* system in Afghanistan is convenient and serves a legitimate remittance purpose, the serious weakness in the regulation and supervision of the licensed entities, make them vulnerable to those seeking to hide the illegal source or intended destination of funds. In addition, as indicated under section 1.3, a significant number of the hawaladars are not licensed and consequently are operating illegally and without any supervision. It is worth noting that in Afghanistan some hawaladars operate cross border correspondent relationships, which in the absence of a strong supervisory framework present opportunities for large scale money laundering through hawaladars. In relation to Pakistan, one hawaladar met by the assessors indicated that he transfers every year hundreds of millions of dollars which he justified as cash smuggling from Pakistan to Dubai. He explained this transit through Afghanistan by the strict exchange control restrictions in Pakistan which were reportedly easier to circumvent through the border between Pakistan and Afghanistan. He did not perceive this as a criminal activity, and indicated that the funds he is transferring are not related to drug trafficking. Four Afghan banks have correspondent accounts in Pakistan. There are also very developed financial relations with Iran; most of them are performed outside the legal framework.

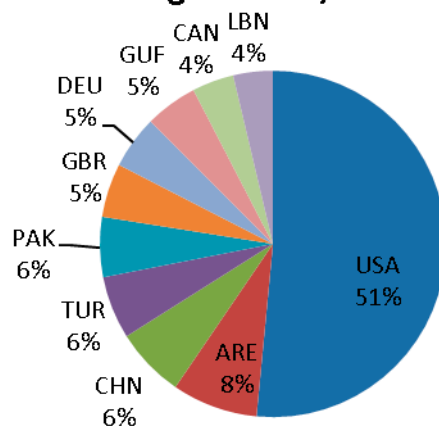
85. Recently, the U.S. Department of the Treasury designated the New Ansari Money Exchange, as a major money laundering vehicle for Afghan narcotics trafficking organizations, along with 15 affiliated individuals and entities under the US Foreign Narcotics Kingpin Designation Act. The US authorities believe that the New Ansari Money Exchange is at the center of an unofficial network of individuals, money exchange houses and other businesses operating throughout Afghanistan and in the United Arab Emirates. Between 2007 and 2010, the New Ansari Money Exchange is believed by the US authorities to have concealed illicit narcotics proceeds among the billions of dollars it transferred in and out of Afghanistan.³⁶

86. There have been no successful prosecutions for money laundering. There are a small number of cases, twenty one, that have been analyzed by FinTRACA and that were disseminated to the AGO. The authorities have not pursued the proceeds of crime using freezing orders, confiscation orders, access orders or similar instruments in the past. This is slowly changing with the recent granting of access and freezing orders.

87. Due to the high level of informality and the weaknesses of the statistical apparatus, it is difficult to determine unusual financial trends which could suggest potential money laundering or the financing of terrorism. A few data is available to analyze trends and would benefit from further refinement and cross-comparison. When analyzing the amounts received through wire transfers in 2010, it is worth noting that countries like the USA, Canada, and Turkey send more than they receive, while the UAE, Pakistan, China the UK and India receive more than they send. While trade, remittances and aid flows might explain some of these patterns, additional analysis could be necessary to explain economic rationale for some of the origin and destination countries.

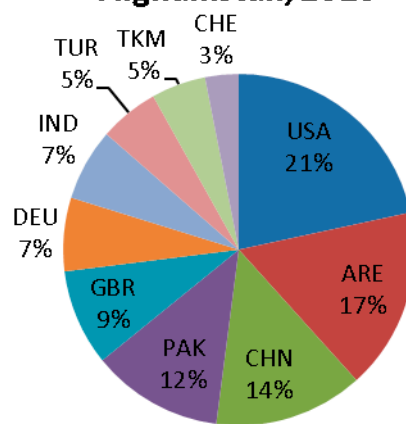
³⁶ February 11, 2011, US Drug Enforcement Administration, <http://www.justice.gov/dea/pubs/pressrel/pr021811a.html>.

Top ten countries for wire transfers into Afghanistan, 2010



Source: Fin TRACA. The total amount of wire transfers received from these 10 countries was more than US\$1.21 in 2010.

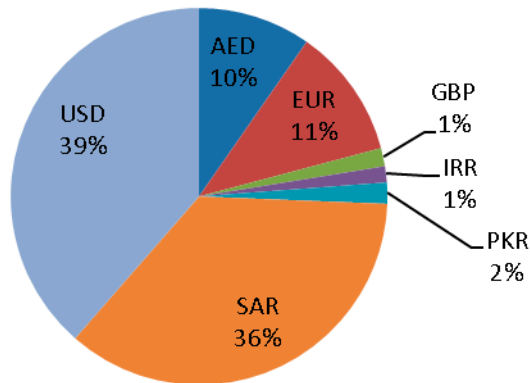
Top ten countries for wire transfers out of Afghanistan, 2010



Source: FinTRACA The total amount of wire transfers sent to these 10 countries was more than US\$1.15 in 2010.

88. Similarly, information is available on the main currencies reported in the cash and bearer negotiable instruments reports (CNBIRs). While the authorities indicate that 95% of the CNBIRs are submitted by MSPs transporting cash to Dubai, further analysis would be needed to explain the breakdown in currencies.

CNBIR, reports by main currency, 2007-2010



Source: FinTRACA

Information on terrorism and its financing

89. Terrorism and its financing remain a major cause of concern both in terms of security in Afghanistan and of funding for terrorists, terrorist organizations and terrorist activities in the country and around the world. Afghanistan faces serious terrorism problems threatening its stability, prosperity and good governance.³⁷ Terrorist attacks target the local population,³⁸ as well as the international community personnel present in the country.³⁹

90. Numerous terrorist groups are believed to operate in Afghanistan. Among them is Al Qaeda, a global terrorist group founded by Osama bin Laden sometime between August 1988 and late 1989.⁴⁰ It operates as a network with similarly motivated organizations in other countries and regions. On October 15, 1999 the Security Council adopted resolution 1267 (1999) imposing financial and other sanctions on the Taliban in Afghanistan for their support of Osama bin Laden. The sanctions have since been modified by subsequent resolutions. In December 2000, an arms embargo was added and those individuals and entities under sanction were expanded to include members of Al-Qaida and as of January 2002, a travel ban was added and the measures no longer exclusively target the territory of Afghanistan. The sanctions only apply to those individuals, groups, undertakings and entities associated with Al-Qaida and the Taliban as designated on a Consolidated List maintained by the Al-Qaida and Taliban Sanctions Committee.

³⁷ "Afghanistan: UN agency welcomes new law on combating terrorism", July 2008.

³⁸ News agencies have reported, for instance, that terrorist attacks in Afghanistan grew from 1,200 in 2008 to 2,100 in 2009.

³⁹ See, for instance, the terrorist attacks against a guesthouse used by UN personnel in Kabul in October 2009 or against the UN operations center in Herat in October 2010.

⁴⁰ *United States v. Osama bin Laden et al.*, S (7) 98 Cr. 1023, Testimony of Jamal Ahmed Mohamed al-Fadl (S.D.N.Y. 6 February 2001).

91. A STR filed by one the Afghan banks indicated a positive match with the Consolidated list. As a result, FinTRACA ordered the freeze of the relevant bank account, but the freezing order was subsequently lifted by the President, for reasons that were not shared with the assessors, in violation of the country's UN obligations. This reportedly enabled the designated person to regain control to his funds and leave the country.

92. Other terrorist groups operating in Afghanistan include Hizb-i-Islami (an insurgent group divided into two factions both led by former anti-soviet mujahedin commanders) and the Haqqani network (also headed by a former mujahedin, involved in the protection of cross border trade, including trade in opiates and hashish).

93. According to the authorities, terrorist financing continues to be a persistent problem in Afghanistan and there is much evidence of significant overlap between criminal proceeds related to the narcotics trade and corruption, and the financing of terrorism. The authorities believe the Taliban can raise around US\$100 –200 million per year by “taxing” the opiate sector. It is likely that the Taliban and other anti government elements raise even more money through a wide range of other offenses. Financing of terrorism is most often done in cash, though the authorities explained that there have been alleged instances of bank accounts being used to move terrorist funding. Box 1 below shows a typology case relating to terrorist financing, reported in a 2008 FATF document.⁴¹

Box 1 - Case study: Terrorist organization raises money through drug trafficking

Since 1990, Person A led an international heroin-trafficking organization (the “Organization”) responsible for manufacturing and distributing millions of dollars worth of heroin in Afghanistan and Pakistan. The Organization then arranged for the heroin to be transported from Afghanistan and Pakistan into the United States, including New York City, hidden inside suitcases, clothing and containers. Once the heroin arrived in the United States, other members of the Organization received the heroin and distributed the drugs. These co-conspirators then arranged for millions of dollars in heroin proceeds to be laundered back to Person A and other members of the Organization in Afghanistan and Pakistan. To launder the funds, Person A used several import/export commercial enterprises to wire his funds. Funds were placed in the financial system as proceeds and/or expenses related to those diverse concerns and remitted under that cover.

The Organization was closely aligned with the Taliban in Afghanistan. During the course of their cooperation, the Organization provided financial support to the Taliban. More specifically, between 1994 and 2000, the Organization collected heroin proceeds in the United States for the Taliban in Afghanistan. In exchange for financial support, the Taliban provided the Organization protection for its opium crops, heroin laboratories, drug transportation routes, and members and associates.

94. In the same report, the FATF stated the following: “Whether through the absence of effective jurisdictional control, tolerance of terrorist organizations and their activities, or active support to

⁴¹ Terrorist Financing, February 2008, FATF. www.fatf-gafi.org/dataoecd/28/43/40285899.pdf.

terrorist organizations, safe havens, failed states and state sponsors create enabling environments or otherwise provide support to terrorist organizations. Safe havens, failed states and state sponsors continue to represent crucial sources of support for terrorist organizations today, including from territories in Somalia, Iraq, and the Pakistan-Afghanistan border.”⁴²

1.3. Overview of the financial sector

Evolution and specificities of the Afghan financial sector

95. The financial sector of Afghanistan has expanded significantly between 2005 and 2010, albeit in an environment characterized by very low level of human capacity, high levels of insecurity and a very new and untested legal and regulatory framework.

96. Despite some progress, bank intermediation and access to credit are still very low. Under 5% of the population are banked (according to a World Bank survey, only 30% of surveyed businesses had bank accounts). The rural nature of the population, lack of security and central government control also explain an almost complete lack of bank intermediation outside of the country’s four largest urban areas. Micro finance attempts to fill this gap but the share of total credit to GDP is 6.7% in Afghanistan, as opposed to the 43% average for South Asia. The bulk of activities in the banking sector remain in foreign currencies. In 2007, about 77% of total deposits and loans were denominated in US dollars. All interbank deposits were in foreign currencies (of which 80% were in US dollars). Some banks market Islamic banking products, however there is currently no legal framework specific to Islamic finance in the country and these products are offered under the Banking Law (BL).

97. Part of the rapid expansion in the banking sector assets was related to the introduction of “lottery accounts”, which have accounted for a significant share of the deposits of the two main banks between 2006 and 2010.⁴³ For every US\$100 deposited in a lottery account, the depositor is given a ticket in a luck draw held every month for a cash prize. At the beginning of 2010, the main bank was giving away a US\$1million yearly prize and smaller amounts in monthly prizes.

98. While deposits were boosted by the lottery accounts scheme, loans increased quickly and a major fraud was allegedly developing in the main bank, Kabul Bank. The disclosure of information on the alleged loan fraud amounting to hundreds of millions of dollars led to a run on Kabul Bank in September 2010. These loans have been said to have enabled bank insiders to make investment abroad, including in properties in Dubai. In February 2011, the Afghan government communicated that “the main cause of Kabul Bank’s crisis is the unethical and fraudulent behavior of the bank’s executives and the inadequate supervision by the central bank.”⁴⁴ In April 2011, the Governor of the Central Bank confirmed to the House of Representatives (Wolesi Jirga) the existence of forged loans at Kabul Bank and revealed names of perpetrators. These included the founder and chairman of the bank, the chief executive officer, a brother of the Afghan President, a brother and a nephew of the first vice-President. In May 2011, the chairman of the High office on oversight and anti-corruption indicated that 207 persons, including some shareholders, Parliamentarians and ministers had to repay

⁴² Ibid, p.19

⁴³ Such accounts have since been banned.

⁴⁴ Islamic Republic of Afghanistan, Government Media and Information Center, February 19, 2011. <http://www.gmic.gov.af/english/index.php>

about US\$912 million to the bank, or almost 8% of the Afghan GDP, or 50% of the government revenues.

99. As the rule of law is not upheld on the entirety of the territory, there is still a large illegal financial sector, which plays a role in both internal and external trade finance. In particular, a large number of hawaladars operating outside Kabul and some other provinces are not licensed while they offer a diverse range of services such as money exchange, transfer of funds domestically and internationally, trade finance, microfinance and deposit taking.

100. As indicated in the table below, all the financial activities listed by the FATF are or can be performed under the Afghan legal framework, except for the participation in securities issues and the provision of financial services related to such issues.

Table 4: Financial Activity by Type of Financial Institution

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	Banks, ⁴⁵ Depository Micro Finance Institutions (DMFIs) Non-DMFIs accepting only mandatory deposits	DAB Fintraca
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	Banks, Depository Micro Finance Institutions (DMFIs) Non-DMFIs	DAB Fintraca
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	Banks, DMFIs	DAB
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	Banks, Money service providers (including e-money institutions), DMFIs	DAB
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks, Money service providers (check cashing)	DAB
6. Financial guarantees and commitments	Banks	DAB

⁴⁵ Pursuant to Article 1.1.2. of the AML/CFT RR, DAB is also considered to be a financial institution to the extent that it engages in commercial activities. There are 75 branches of the DAB.

7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Banks	DAB
8. Participation in securities issues and the provision of financial services related to such issues	-	-
9. Individual and collective portfolio management	Banks	DAB
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks, DMFIs, MSPs (Short term safekeeping)	DAB
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Banks	DAB
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	Insurance companies Insurance brokers	Ministry of Finance
13. Money and currency changing	Banks, Foreign Exchange Dealers	DAB

Banking

101. The banking sector is comprised of 17 commercial banks, 12 of which are Afghan including two State owned banks (Bank e millie Afghan and Pashtany Bank), and two commercial banks specialized in microfinance. Banking is highly concentrated, as the two largest private commercial banks (Kabul Bank and Azizi Bank) held 40% of the total assets, 37% of the deposits and 66% of the loans at the time of the on-site visit.

Table 5: Statistical table – Banking sector

Commercial Banks (17) as of February 2011

	Total assets	Share	Total Loans	Share	Total Deposits	Share
State Owned (2)	708	15%	167	9%	450	13%
Private Commercial (10)	3,252	70%	1,626	87%	2,450	69%
<i>Including share of: Kabul and Azizi banks</i>	<i>1,867</i>	<i>40%</i>	<i>1,240</i>	<i>66%</i>	<i>1,310</i>	<i>37%</i>
Foreign Commercial Banks (5 Branches)	679	15%	82	4%	671	19%
Total	4,639	100%	1,875	100%	3,570	100%

Source: DAB, in US\$ million . Data originally provided by the authorities in Afghanistan and has been converted in US\$. As of February 28, 2011: 1 Af = US\$0.0232423002.

Microfinance

102. The Government has supported the expansion of microfinance through the Microfinance Investment Support Facility for Afghanistan (MISFA) which began in 2003. MISFA is a private non-share holding company owned by the Ministry of Finance. MISFA provides funding and capacity support to microfinance institutions (MFIs), which in turn channel development assistance and Government funds to increase the credit base at the lower tiers of the financial sector.

103. According to the World Bank there were 15 MFI's active in 24 out of 34 provinces in September 2008. The average loan disbursements were US\$2.7 million per month (cumulative US\$518.69 million since 2003). There were 447,633 active clients and the average loan size was US\$311, but loans are provided up to US\$5,000. Three MFIs are operationally self sustainable and the remainder are 84.4% self sustainable.

Money Service Providers

104. The number of licensed MSPs (or hawaladars) has steadily increased over the years. The number of MSPs varies from province to province. Only a limited number of MSPs have been licensed in regions such as Helmand and Kandahar where this type of financial institution is very active but the security situation in these areas has not allowed DAB to roll-out the licensing requirement. As of end January 2011, FSD's licensing department has issued 320 licenses to MSPs. Most of the licensed MSPs are located in the Kabul province, with a majority operating in the Shahzada market in Kabul. One MSP, which has 460 agents location at this point, submitted an application to be an Electronic Money Institution (EMI). These agents include both licensed financial institutions as well as small retail stores.

Foreign Exchange Dealers

105. As of January 2011, 679 licenses have been issued by DAB to foreign exchange dealers. While present in the whole country, no foreign exchange dealers have been licensed in Kandahar and Helmand.

Insurance

106. In 2007 the Afghanistan Insurance Commission (AIC) was established in the Ministry of Finance. The first private insurance company, the Insurance Corporation of Afghanistan, was licensed by the AIC in 2008 and does not offer life insurance and other investment related insurance products. Two insurance brokers operate in the country. The insurance supervisor did not provide information on the type of products that are sold by brokers, but was doubtful that it includes life insurance and other investment related products.

Leasing

107. Leasing services are underdeveloped in Afghanistan. Only one company offers leasing of agricultural products and indicates to operate in compliance with the Sharia principles. The Secured

Transaction Law, which was in parliament at the time of the onsite visit, should provide a legal basis for the expansion of leasing services. In the absence of this law the sector is unregulated.

1.4. Overview of the DNFBPs

108. While the Designated Non-Financial Businesses and Professions (DNFBPs) sector is generally not organized in Afghanistan, some businesses and professions may have a relatively important role in the prevention of money laundering and the financing of terrorism in an economy which is mostly cash based and where the financial sector only captures a small share of the economic transactions. These professions are, in particular, lawyers, accountants, real estate agents and dealers in precious metals and stones.

109. **Casinos.** Gambling is outlawed in Afghanistan pursuant to Article 5, paragraph 1 of the Private Investment Law and Chapter 20 Article 353 of the Penal Code. While anecdotic evidence indicates the existence of forms of popular gambling in the country such as kite fighting or quail fighting, there is no evidence of the existence of illegal casinos. At the time of the onsite visit, some banks were still operating “lottery accounts” (see above under section 1.3) which were not considered as gambling by the authorities. Finally, there is no indication of internet casinos operating from Afghanistan, however the prohibition of gambling in the penal code is related to gambling taking place in “public places, places or houses prepared for this purpose”, and would not apply to this activity.

110. **Real estate agents.** While the profession of real estate agents exists in Afghanistan, it is not organized. The authorities did not provide any estimation of the number of real estate agents in the country. It is worth noting that in part due to the presence of a large number of foreigners as well as of proceeds of crimes, the demand for luxury properties in Kabul is high and has led to a real estate boom. Anecdotic evidence indicates monthly rentals over US\$20, 000 for some buildings, and that residential property in Kabul’s prime neighborhood is valued at an average of US\$1,500 per square meter. The Ministry of Justice is considering introducing a department that will be responsible for registering and overseeing real estate agents.

111. **Dealers in precious metals and dealers in precious stones.**⁴⁶ Afghanistan has a long history of mining and trading in precious metals and stones. In fact, some of the earliest records of mining anywhere in the world are from Afghanistan, dating back over 6,000 years. Emeralds, ruby and sapphires mining is typically an artisanal activity, carried out by people living in villages surrounding the mines. According to the Ministry of Mines, most of the gemstones mined in Afghanistan leave the country illicitly, 90-95% of them going to Peshawar in Pakistan where they are sorted for quality. Due to this pattern of trade, Afghanistan gains little value from its gemstones, and makes the value of the annual production difficult to estimate. While the World Bank has valued it at US\$2.75 million in

⁴⁶ Semi-precious stones such as lapis lazuli, tourmaline, aquamarine or topaz are also worked in Afghanistan. For more information see the website of the Afghanistan Geological Survey (AGS), a component body of the Afghanistan Ministry of Mines (<http://www.bgs.ac.uk/AfghanMinerals/preciousStone.htm>).

2004,⁴⁷ the UNDP has suggested a potential annual value at US\$160 millions.⁴⁸ Emeralds is the main resource and its production, in the Panjshir Valley, was estimated between US\$8-10 millions before the war and was a major source of financing for the northern alliance of Ahmad Shah Massoud. Concerning precious metals, there is also a serious potential for gold in Afghanistan. Mining and trading in precious metals and stones is primarily regulated by the Minerals Law of 2005 which subjects trading in minerals to authorization by the Ministry of mines. Jewelers are subject to the same requirements of registration and municipal license than other businesses. In Kabul, there is an association of dealers in precious metals and stones. Early 2011, the Ministry for Mines announced that the country has untapped minerals worth over US\$3 trillion.

112. **Lawyers.** The legal profession is organized pursuant to the Advocate's law enacted by the Parliament in November 2007. The law provides for an independent bar association to be established to regulate all activities of the advocates. The first general assembly of the Afghan Independent Bar Association (AIBA) was held in July 2008 and the by-laws were debated and adopted. The AIBA officially opened in September 2008 and began issuing licenses for attorneys in October 2008. As of May 2010, 769 advocates from across the country have become members of the AIBA. A code of conduct has been approved in July 2009. All the relevant documents as well as the list of the registered advocates are available on the AIBA's website (<http://www.aiba.af>).

113. **Notaries.** Based on information provided by the bar association, the independent legal profession of notary does not exist in Afghanistan.

114. **Accountants.** The accountant profession has developed in Afghanistan in recent years, in large respect due to the importance of the aid sector in the economy. However, as indicated in the 2009 ROSC on Accounting and Auditing,⁴⁹ there is no local accounting or auditing standards, professional regulator, corporate regulator or oversight organization. In 2008, there were 16 audit firms registered with the Afghanistan Investment Support Agency (AISA) though it is likely that more than half are inactive, and there were fewer than 20 qualified accountants in the city of Kabul. Statutory audits are not legislated, even in the recent corporate legislation, other than in insurance and banking law, and thus there is limited demand for audit services. The local branches of large international accounting firm networks dominate the limited audit market in Afghanistan, including almost all the banks operating in the country. The Afghan association of professional accountants has been created in 2007⁵⁰ and counted approximately 50 members in 2009.

⁴⁷ World Bank (2004), Transitional Islamic State of Afghanistan: Mining as a source of growth (http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2004/03/26/000160016_20040326111059/Rendered/PDF/282310AF.pdf).

⁴⁸ UNDP (2005), Market Sector Assessment. http://www.undp.org.af/Publications/KeyDocuments/Final_Report_MSA_SME_Altai_Cons_July_14th_2005.pdf.

⁴⁹ Report on Observance of Standards and Codes (ROSC) Accounting and Auditing, The World Bank, February 16, 2009. http://www.worldbank.org/ifa/rosc_aa_afg_eng.pdf.

⁵⁰ See <http://aapa.af/index.html>.

115. **Trust and company service providers.** While the Afghan legislation does not provide for the creation of trusts or other similar legal arrangements, it is highly probable that the simplest forms of company service providers exist in the country (i.e. providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement). However, the authorities did not provide any information on this profession.

1.5. Overview of commercial laws and mechanisms governing legal persons and arrangements

116. Legal persons in Afghanistan include corporations, limited liability companies, or partnerships. These are established under the 2007 Commercial Laws. There are no trusts or other legal arrangements.

117. The Afghan Central Business Registry (ACBR), which operates under the Ministry of Commerce and Industry (MoCI), must register all companies in Afghanistan. ACBR offices are located in the capital and 3 provinces across Afghanistan and they provide services, guidance and ensure that companies and their directors comply with the statutory requirements.

118. The following documents are required by the ACBR at the time of registration: (i) an official letter from the relevant licensing office that will later be responsible for issuing a license to the new business; (ii) copy of Tazkera⁵¹ or Passport of the president and vice president of the business; (iii) two sets of color passport photographs of the president and vice president of the business; (iv) Article of agreement that is drafted by a corporation or partnership. It must list the names of owners, shares, and other agreement clauses. This document is submitted only once to ACBR. If there is a change in this document the business must report the changes to ACBR and submit the most recent document; and (v) a copy of the business license once issued by the relevant license department. Only the president and vice president are identified at the stage of registration. The beneficial owners are not identified.

119. A Legislative Decree (LD) on Private Investment was issued by the President in 2005. This LD established AISA. Although all companies need to be registered with ACBR, AISA's mission is to facilitate to investors all necessary permits, licenses and clearances. Limited information on the name, sector, license number, expiration date and address of the companies is publicly available via AISA online directory.⁵²

120. It is worth noting that, according to an AISA bulletin:⁵³ "[...] most of the investment in Afghanistan flows through informal non banking channels and, therefore, does not capture the overall picture of investment. It may also be noted that consequent to simplification of licensing procedures, AISA does not seek any proof of the amount of capital declared by the investor at the time of filing registration. Likewise, some investor may be under registering their initial capital just to avoid the delay in procuring license as company with more than US\$3 million investment has to get the prior

⁵¹ For more information, on the tazkera (I.D) please refer to the information under Section 2.

⁵² <http://www.directory.aisa.org.af/>

⁵³ <http://www.aisa.org.af/english/bulletin.html>

approval of the High Commission on Investment before getting a license.” Accordingly, the information about legal persons is likely to be, in most cases, inaccurate and do not necessarily reflect the real size of the company, the beneficial owners and those who control it.

121. The work of the non-profit sector in Afghanistan is governed by the Non-Governmental Organizations Presidential Decree of 2005, the Counter Financing of Terrorism Legislative Decree (Articles 25-28), and the Law on Social Organizations (LSO) of 2003. The NGO Presidential Decree of 2005 repealed the Regulation on the Activities of Domestic and Foreign Non-Governmental Organizations, issued in 2000 by the Taliban regime. Other laws and regulations may apply to the supervision of NPOs, including charities, but the assessment team was not able to obtain conclusive information on this point.

1.6. Overview of strategy to prevent money laundering and terrorism financing

AML/CFT Strategies and Priorities

122. According to DAB and FinTRACA, the AML/CFT strategy is essentially centered on having an effective infrastructure within the financial sectors which is properly supervised by the regulatory authority (the DAB) and imposing sanctions and penalties as appropriate for non compliance with and breaches to AML/CFT preventive measures.

123. However, there is no national strategy or document indicating the aspects of the AML/CFT policies which have to be prioritized. In addition, the significant involvement of foreign donors in AML/CFT related technical assistance, while overall valuable, has not been based on an overall assessment of the priorities. In particular, in the law enforcement and intelligence area, assistance most often responded to the needs of the donor countries and their agencies in terms of international cooperation with Afghanistan. In the absence of national strategy, the competition between foreign agencies has sometimes translated into competition between domestic agencies, rather than providing a consistent assistance to address the major weaknesses in the Afghan AML/CFT regime. Up to now, the authorities did not engage in measuring the effectiveness of the AML/CFT policies.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

124. The main institutions responsible for combating of money laundering and terrorist financing are the DAB, the Financial Intelligence Unit (FINTRACA), the Ministry of Interior, the Ministry of Justice, the Attorney General’s Office and the Courts. In addition, the High Office for Oversight plays a role in coordinating and implemented the country’s anti-corruption strategy.

125. Within DAB, the Financial Supervision Department’s AML/CFT section takes primary responsibility for implementation of the AML and CFT LDs, by banks and MSPs.

126. FinTRACA became operational in 2006. It is responsible for promoting and assessing the quality of compliance within the financial sector. This is done primarily through centralizing and analyzing data on suspicious transactions reports and large cash transactions reports, developing forms and procedures, and training institutions responsible for implementing the AML/CFT regime on various aspects of the reporting framework.

127. Within the Ministry of Interior, the Afghanistan National Police including the Criminal Investigation Division, the Border Police, and the Counter Terrorism Police, investigate predicate crimes, money laundering and terrorist finance. In addition, the Major Crimes Task Force investigates abductions and corruption, and the Sensitive Investigations Unit investigates narcotics associated

crimes. The National Directorate of Security is involved in gathering intelligence on all matters related to national security.

128. The Ministry of Finance is involved in all matters related to revenue collection, including taxes and customs. They are involved in customs regulation and administration at all international borders.

Approach Concerning Risk

129. The authorities are not currently taking a risk based approach to AML/CFT. In spite of the vast illicit sector and corruption issues that plague Afghanistan and the risks associated with them, the authorities were relatively unresponsive on the subject of how this may impact the implementation of the AML/CFT regime. Significantly, there was little understanding of the importance of the effective implementation of the AML/CFT regime to overall governance and the rule of law, and conversely, the criticality of the rule of law to economic development and financial integrity.

130. Implementation of the existing AML/CFT regime seemed largely compliance based. While this is not negative in itself, the authorities should rapidly consider implementing a risk-based approach based on those risks and vulnerabilities specific to Afghanistan. This would include, but not be limited to, an acknowledgement of the risks for ML and TF posed by exposure to a large illicit sector and the vulnerabilities created by a highly corrupt environment and weak criminal justice system.

Progress since the Last IMF/WB Assessment or Mutual Evaluation

131. This is Afghanistan's first ever AML/CFT assessment.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1. Description and Analysis⁵⁴

Legal Framework

132. Afghanistan's AML/CFT framework is based on the "Anti-Money Laundering and Proceeds of Crime Law" (Law No 8 40) which was issued by the President as a legislative decree in 2004 (hereafter referred to as the AML LD). As mentioned in Section 1 of this report, the AML LD is enforceable, but has been with Parliament for the last five years and is still pending final endorsement.

⁵⁴ For all recommendations, the description and analysis section should include the analysis of effectiveness and should contain any relevant statistical data.

133. The AML LD criminalizes money laundering, establishes the provisional measures that may be taken, allows for confiscation, and sets a basic framework for international cooperation in the fight against both money laundering and terrorist financing. Other relevant texts include the 1976 Penal Code (PC), the “Law on combating the financing of terrorism” (which, despite its title, is a LD, and, like the AML LD, has not been submitted to Parliament and therefore suffers from the same ambiguities as the AML LD), the Counter-narcotics law and the Police law.

134. Pursuant to Article 134 of the Constitution, the “discovery of crimes” is the duty of the police, and the “investigation and filing the case against the accused in court” is the responsibility of the AGO. The functions of the police and AGO are set out, respectively, in the Police law and the Law on the structure and authority of the Attorney General’s Office. As per Article 116 of the Constitution, the judiciary comprises the Primary Courts, Courts of Appeal and the Supreme Court, and their functions as outlined in the Interim Criminal Code (CC) for Courts.

135. Criminal procedure in general lacks clarity. Procedural elements are spread out in various texts, not all of which were provided to the assessment team. According to some of the authorities, criminal procedure is governed by the Interim Criminal Law for Courts of 2004 and the Detection and Discovery Law of 1981 (which was not submitted to the assessment team). According to the judges, however, it is governed by the Criminal Procedure law (which pre-dates both the current and the Taliban regimes, and, according to representatives from the Supreme Court, has since been amended but those amendments were not provided to the team); the Interim Criminal Code for Courts and the Law on the Structure and Authority of the Attorney General’s Office.

136. There are three types of crimes under Afghan criminal law: (i) the felony, which carries a sentence of death or “continued imprisonment or long imprisonment (Article 24 of the Penal Code, PC); (ii) misdemeanor, which carries a sentence of imprisonment of more than three months and up to five years, or a cash fine of more than Af 3,000 (Article 25 of the PC); and (iii) obscenity, which carries a sentence of imprisonment of 24 hours to three months, or a cash fine of up to Af 3,000 (Article 26 of the PC).

137. The principal types of punishment under the PC are: Execution (by hanging – Article 98); Continued imprisonment (from sixteen to twenty years – Article 99 PC); Long imprisonment (no less than five years and not more than fifteen years – Article 100 PC); Medium imprisonment (from one to five years – Article 101 PC); Short imprisonment (from twenty-four hours to one year – Article 102 PC); Fines (not less than Af 50 with maximum stipulated in the law). The PC also provides for consequential punishments (such as the deprivation of certain rights and privileges as a consequence of imprisonment - Article 112 – 116) and “complementary punishments” (such as confiscation - Article 117-120).

138. Money laundering is punishable by imprisonment for two to five years and/or a fine that may range between Af 50,000 and Af 250,000 (approx. US\$1,000 and 5,040 respectively - Article 49 of the AML LD). It therefore constitutes as a misdemeanor under Afghan law.

139. To date, money laundering has rarely been investigated and prosecuted, and has not been sanctioned by the courts. There is therefore very little experience in the implementation of the money laundering offense and no case law that would establish the courts’ understanding of the AML LD.

Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):

140. Afghanistan criminalized money laundering in Article 3 of the AML LD as follows: “A person commits the offense of money laundering if the person:

- a) conceals, disguises, converts, transfers, removes from or brings into Afghanistan funds and property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions [which constitute an offense in Afghanistan];
- b) acquires, possesses or uses funds and property knowing or having reason to believe that it is derived directly or indirectly from those acts or omissions; or
- c) enters into or participates in an arrangement or transaction knowing or having reason to believe that it facilitates (by whatever means) the acquisition, retention, use or control of funds and property derived directly or indirectly from those acts or omissions by or on behalf of another person.”

141. Article 3 also provides that “concealing or disguising funds and property includes concealing its nature, source, location, disposition, movement or ownership or any rights with respect to it.”

142. The money laundering offense is drafted in terms that are very similar to those of the Vienna and Palermo Conventions (to which Afghanistan is a party). It covers the conversion and transfer of proceeds of crime as set forth in Articles 3(1) (b) of the Vienna Convention and 6(1) of the Palermo Convention, as well as the concealment or disguise of the elements listed in these same articles.

143. Unlike the Conventions however the law does not address the purpose of the conversion and transfer of the proceeds of crime. Under the Conventions, the conversion or transfer should be an offense where the defendant knows that the property involved is the proceeds of crime and does so for the following two purposes: (i) concealing or disguising its illicit origin; or (ii) helping an person involved in the commission of the predicate offense to evade the legal consequences of his or her action (Vienna Convention Article 3(1) (b) (i), and Palermo Convention Article 6(1) (a) (i). The fact that the AML LD is silent in this respect would suggest that, as long as the perpetrator knows or has grounds to believe that the funds or property are the proceeds of crime, both the conversion and transfer of these proceeds are criminalized in all cases, i.e. regardless of their perpetrator’s ultimate intention. The AML LD therefore goes beyond the standard on this point by not requiring proof of the purposive element.

The Laundered Property (c. 1.2):

144. The money laundering offense extends to “funds and property” that directly or indirectly stem from an offense (Article 2 lit. m and Article 3 of the AML LD). “Funds and property” cover all the elements required by the standard namely “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments, including electronic or digital, evidencing title to, or interest in, such assets” (Article 2 lit. g AML LD). Discussions with the authorities suggested however that, in the rare instances where they investigate money laundering, they do not use the definition of funds and property to its full extent in the sense

that they pursue only funds (either in cash or deposited on bank accounts) and none of the other types of assets.

Proving Property is the Proceeds of Crime (c. 1.2.1):

145. No mention is made in the AML LD regarding the need (or lack thereof) to secure a prior conviction for the predicate offense to prove that the property is tainted. The fact that there is no explicit restriction on this point would suggest that money laundering charges can be pressed successfully even in the absence of a prior conviction for the predicate. This view was shared by the representatives from the Ministry of Justice, but discussions held with other authorities on the analysis of evidence more generally suggest that prosecutors and judges would not be satisfied that the property is proceeds of crime unless there is a conviction for the predicate crime. Consequently, there is a risk that, even though prior conviction is not a specific requirement under the decree, it may become one in practice. As noted above, there is no case law on this point.

The Scope of the Predicate Offenses (c. 1.3):

146. Afghanistan opted for an all-crimes approach to its money laundering offense. Although the money laundering offense does not specifically refer to “predicate offenses” as such (only to offenses), Article 2 lit. 1 of the AML LD nevertheless defines “predicate offense” as any criminal offense, even if committed abroad, enabling the perpetrator to obtain proceeds. This means that all asset generating offenses under Afghan law, whether felonies, misdemeanors or obscenities, are predicate offenses to the money laundering offense. However, only nine of the 20 FATF-designated categories of offenses have been criminalized in Afghanistan; despite the “all-crimes approach taken under the AML LD, all the other categories of offenses fall outside the scope of the money laundering offense.”

147. The table below indicates the activities that constitute predicate offenses to money laundering and those that do not:⁵⁵

Category of offense	Criminalized in Afghanistan?	Relevant provision of Afghan law
Participation in an organized criminal group and racketeering	No	
Terrorism, including terrorist financing	Yes	Terrorism: Several crimes against the internal security of

⁵⁵ While the authorities claim that certain activities (namely participation in an organized criminal group and racketeering; trafficking in human beings and migrant smuggling; environmental crime, kidnapping, illegal restraint and hostage-taking; illicit trafficking in stolen goods; illicit arms trafficking; and sexual exploitation of women and children) constitute offenses in Afghanistan, they did not provide copies of the relevant laws, thus making it impossible for the assessors to verify how and to what extent these activities have been criminalized. The assessors therefore considered that, for the purposes of this assessment, these activities do not constitute predicate offenses to money laundering.

		the State in Book II, Chapter II of the PC. Terrorist financing: Art. 3 of the CTF Law
Trafficking in human beings and migrant smuggling	No	
Sexual exploitation, including sexual exploitation of children	No	
Illicit trafficking in narcotic drugs and psychotropic substances	Yes	Art. 15 Counter Narcotics Law of December 17, 2005
Illicit arms trafficking	No	
Illicit trafficking in stolen and other goods	No	
Corruption and bribery	Yes	Art. 254 to 267 of the PC
Fraud	Yes	Art. 469 – 472 PC
Counterfeiting currency	Yes	Art. 302 PC
Counterfeiting and piracy of products	No	
Environmental crime	No	
Murder, grievous bodily injury	Yes.	Murder: Art. 395, 400 PC Grievous bodily injury: Art. 407, 408 PC
Kidnapping, illegal restraint and hostage-taking	No	
Robbery or theft	Yes	Art. 447 & 456 PC
Smuggling	Yes	Art. 346 PC; Art. 172 and 173 of the Customs Law
Extortion	No	
Forgery	Yes	Art. 309 PC
Piracy	No	
Insider trading and market manipulation	No	

Threshold Approach for Predicate Offenses (c. 1.4): Not applicable.

Extraterritorially Committed Predicate Offenses (c. 1.5):

148. The AML LD specifically provides that predicate offenses for money laundering extend to conducts that occurred in another country which constitute an offense in that country, and which would have constituted an offense in Afghanistan had they occurred domestically (Article 3 para. 1 (b)).

Laundering One's Own Illicit Funds (c. 1.6):

149. The AML LD makes no distinction between self-laundering and third party laundering. According to the authorities, no fundamental principle of Afghan law would prohibit them from pressing money laundering charges against the perpetrator of the predicate offense. Self-laundering is therefore punishable to the same extent as third party laundering. Although they have not used this provision in practice, the authorities seemed comfortable with the concept of prosecuting the perpetrator of the predicate offense for money laundering as well.

Ancillary Offenses (c. 1.7):

150. The attempt to commit the money laundering offense, as well as “aiding, abetting, facilitating or counseling the commission of [money laundering]” are punishable “as if the [money laundering offense] had been committed” (Article 46 para. 2 of the AML LD). However, the association with the criminals or conspiracy to commit the money laundering offense is not criminalized.

Additional Element—If an act overseas which does not constitute an offense overseas, but would be a predicate offense if it occurred domestically, leads to an offense of ML (c. 1.8):

151. Article 3 addresses conducts that occurred in another country only to the extent that they constitute offenses in that country. Consequently, the AML LD would not apply to the proceeds derived from a conduct that occurred in another country which did not criminalize that conduct, even if it constituted a predicate offense in Afghanistan.

Liability of Natural Persons (c. 2.1):

152. The money laundering offense applies to those who intentionally engage in one of the money laundering activities listed above knowing that the property is the proceed of crime. The AML LD goes beyond the standard by also punishing those who engage in these activities while “having reason to believe” that the property is derived from a crime (Article 3 of the AML LD).

The Mental Element of the ML Offense (c. 2.2):

153. Article 3 para. 3 of the AML LD specifically provide that knowledge or belief may be inferred from objective factual circumstances. While the law meets the standard on this point, discussions with the authorities raised doubts as to whether judges would indeed consider objective factual circumstances alone (i.e. in the absence of a clear confession or witness statements) to be sufficient to prove the money laundering offense.

Liability of Legal Persons (c. 2.3):

154. Corporate criminal liability is explicitly provided for in the AML LD for entities other than those owned by the Afghan Government, and may apply with no prejudice to the individuals who committed the offense or were accessories to the offense (Article 47 of the AML LD). Corporate criminal responsibility also features in the PC (Article 96) and is therefore available for the predicate offenses that it criminalizes. No information was provided on the practical conditions of criminal liability or on the authorities' practice in that matter (including in criminal proceedings other than those initiated under the AML LD).

155. Similarly, no information was provided on the exemption of liability for state owned entities. It is therefore unclear if, for example, the exemption extends to all State-owned entities, including those that are jointly owned by the State and private shareholders.

Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings and c. 2.4):

156. No information was provided as to whether other sanctions are available and, if available, whether criminal liability of legal persons would preclude or not parallel proceedings.

Sanctions for ML (c. 2.5):

157. Money laundering is subject to "medium imprisonment." When committed by natural persons, it is sanctioned by imprisonment from two to five years, or a fine of not less than Af 50,000 (equivalent to approx. US\$1,000) or more than Af 250,000 (equivalent to approx. US\$5,040), or both (Article 46 of the AML LD).

158. Corporate entities (other than those owned by the Afghan government) are liable to a fine of not less than Af 250,000 and not more than Af 1,250,000 (i.e. approx. US\$25,215). They may additionally be:

- a) banned for a period not to exceed five years from directly or indirectly carrying on certain business activities;
- b) dissolved if such corporation had been established for the purpose of committing the offence in question or it allowed its premises to be used for such purposes; and
- c) required to publicize the judgment in the press or in any other audiovisual media (Article 47 of the AML LD).

159. These sanctions are significantly higher than the sanctions for fraud or smuggling (short imprisonment of up to three months and a fine in both cases) and lower than the sanction for bribery (imprisonment between two to ten years). Considering the size of the drug trade (and ensuing money laundering), these sanctions appear rather low, in particular as far as monetary sanctions are

concerned. Moreover, the term of imprisonment is lower than in several countries in the region.⁵⁶ In the absence of convictions, sanctions have not been imposed on the basis of the AML LD.

Statistics (R.32)

160. Overall, reliable statistics are scarce in Afghanistan.

161. Money laundering may be investigated by several law enforcement agencies (see write-up under Recommendations 27 and 28):

- The Major Crime Task Force (MCTF), which was established in 2010 to investigate corruption, organized crime and kidnappings (and related money laundering), indicated that it had investigated some 100 cases from its inception to January 2011. Money laundering was investigated in 17 of these cases;
- The Counter-Narcotics Police of Afghanistan (CNPA) investigated money laundering in 23 cases (all of which were also related to terrorism financing);
- No information was provided on the number of cases investigated by the ANP.

162. The AGO indicated that it usually investigates 5 or 6 cases of money laundering a year (in the Kabul district only) but has only investigated 2 cases during the course of 2010. (By comparison, the AGO's Anti-corruption unit in Kabul has prosecuted some 1000 cases. Statistics on other crimes are provided in Section 1 of this report).

163. None of the money laundering matters has been brought before the courts.

Analysis of effectiveness

164. The fact that the AML LD is still pending final Parliamentary approval five years after having been transmitted to the National Assembly raises serious concerns about Afghanistan's commitment to AML/CFT. This means that the entire AML framework could be deprived of a legal basis if Parliament were to reject the decree.

165. The Afghan money laundering offense covers most of the elements set forth in the Vienna and Palermo Conventions, and, despite the deficiencies that it still suffers from (in particular with respect to the list of predicate offenses), should have been sufficient to enable the authorities to prosecute and sanction money laundering to a larger extent. In practice, however, the implementation of Article 3 of the AML LD is particularly weak: few investigations have been undertaken into money laundering activities, and there has not been a single prosecution or conviction in application of the AML LD.

⁵⁶ For example, India: five years to life; Pakistan: one to ten years; China: up to five years. In Iran, the final sanction depends on the type of predicate offense that has generated the proceeds.

166. From 2004 (entry in force of the AML LD) until March 2006 (establishment of FinTRACA), no investigation was conducted on the basis of the AML LD. Since March 2006, the situation has improved somewhat, notably as a result of the assistance and support provided to key stakeholders (including law enforcement agencies) by the international community. The implementation of the decree nevertheless remains ineffective and the authorities recognize that many obstacles remain. They indicated that, although the number of STRs has increased steadily, particularly since September 2008, FinTRACA is constrained from disseminating the analyzed intelligence for two main reasons: firstly, until the beginning of 2009, FinTRACA was unable to identify suitable units within the law enforcement agencies with the necessary skills to carry out effective investigations into money laundering crimes. Secondly, in light of the “corruption that pervades Afghanistan”, as noted by the authorities, FinTRACA harbored serious concerns with respect to the protection of the sensitive information to be disseminated.

167. Overall, the criminal process seems both cumbersome and slow, particularly at the level of the AGO. Some law enforcement agencies expressed concerns about the staged-approach taken by prosecutors, suggesting even that some of the stages of the process may be redundant.

168. More generally, there is considerable lack of clarity both on the amount of evidence required to initiate a prosecution and obtain a conviction, and on the means by which evidence may be gathered. There also appears to be great divergence in the authorities’ views on the subject. Wire tapping is a case in point: on the one hand, it is explicitly recognized in the AML LD as one of the measures that may be ordered by the courts for the purpose of obtaining evidence on the money laundering offense or its predicates (without restriction as to the type of predicate involved) (Article 44). On the other hand, it is considered by the Supreme Court representatives met during the assessment mission as constituting “strong evidence” in a trial for terrorism, terrorist financing or drug-related offense, and as “weak evidence” in cases of alleged corruption; finally, mention was made of a case of alleged corruption of a high level official arrested on the basis of recorded telephone conversations where the charges were dropped and the suspect set free on the grounds that Afghan law “prohibits” wiretap evidence in corruption cases (while nothing in the law seems to confirm such prohibition). This lack of clarity notably leads the prosecutors to require additional evidence from the law enforcement agencies during the investigation stage, and judges to send cases back to the AGO to complete the evidence or to address “mistakes.” It also causes considerable delays in the overall criminal process.

169. Another difficulty that the authorities acknowledged they are facing (and which they all concede) is the lack of knowledge and experience of the investigating agencies, public prosecutors’ office and the judiciary in handling money laundering cases.

170. This lack of familiarity with the money laundering offense notably means that, in most cases, the authorities focus solely on the predicate and very rarely make use of the tools provided by the AML LD. This raises serious concerns because there is every indication that money laundering in Afghanistan occurs on a particularly large scale. As indicated in Section 1 of this report, crime is both frequent and lucrative in Afghanistan: assets generated by drug trafficking is estimated at US\$4billion a year; corruption is estimated to generate US\$2.5 billion a year. While no estimates exist for other asset generating offenses, the frequency with which crimes such as kidnapping and extortion occur would tend to indicate that, they too, generate large amounts of proceeds to be laundered.

171. The authorities recognized that pervasive corruption, at all stages of the criminal process, has a significant impact on the fight against crime: anecdotal evidence notably indicated that a number of investigations as well as prosecutions have been “paid off” and dropped. Corruption also causes mistrust between the competent authorities.

172. Sanctions for money laundering, in particular monetary sanctions, appear to be low, both in light of the drug trade and in comparison with other countries, and are unlikely to be dissuasive.

173. Finally, as mentioned in Section 1, the actions of anti-government elements in some part of Afghanistan entail that the authorities are not in a position to enforce the rule of law on the entirety of the country’s territory. This affects the implementation of the whole criminal framework, including the AML LD.

174. Overall, the high level of crime in Afghanistan and paucity of law enforcement measures taken, combined with weak AML/CFT preventive measures in and supervision of the financial sector, and the absence of an AML/CFT framework for designated non-financial businesses and professions contribute to the creation of a high risk of money laundering. The current number of investigations into, prosecutions of and convictions for money laundering is not in any way commensurate with that risk.

175. A clear analysis of money laundering trends and typologies in Afghanistan is not possible considering the scarcity of money laundering investigations, but according to the law enforcement agencies the most frequent ways to launder funds, in addition to the use of bank accounts, are the resort to cash couriers and trade-based money laundering.

2.1.2. Recommendations and Comments

176. In order to comply fully with Recommendation 1, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that, as security improves, the AML legal framework is progressively implemented in the whole country;
- Criminalize participation in an organized criminal group and racketeering; trafficking in human beings and migrant smuggling; environmental crime, kidnapping, illegal restraint and hostage-taking so that they may constitute predicate offenses to money laundering;
- Ensure that prior conviction for the predicate is not considered as a condition to proving that property is the proceeds of crime;
- Criminalize association with and conspiracy to commit or attempt to commit the money laundering offense;
- Make use of the money laundering offense.

177. In order to comply fully with Recommendation 2, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Establish dissuasive monetary sanctions;
- Ensure that criminal sanctions do not preclude the possibility of parallel civil or administrative proceedings if such proceedings are available;
- Extend criminal liability for money laundering to corporate entities that are partially owned by the Afghan government;
- Although the law meets the standard in this respect, ensure that, in practice too, intention can effectively be inferred from objective factual circumstances.

2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating ⁵⁷
R.1	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Scope of the money laundering offense is too narrow because a large number of the FATF designated categories of offenses that should constitute predicates to money laundering are not criminalized. • Lack of clarity as to whether prior conviction for the predicate offense is required to prove that property is the proceeds of crime. • Ancillary offenses are only partially covered (association and conspiracy are not criminalized). • Lack of effectiveness due to: failures in the criminal justice system; the fact that in most cases only the predicate is investigated, prosecuted and sanctioned; and to the fact that the rule of law is not upheld on the entirety of the Afghan territory.
R.2	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Lack of clarity as to whether parallel sanctions are available and if so possible. • Financial penalties for money laundering are not dissuasive. • No corporate criminal liability of legal entities partly owned by the Government. • Lack of effectiveness of sanctions due to failures in the criminal justice system and to the fact that in most cases only the predicate is investigated, prosecuted and sanctioned, and to the fact that the rule of law is not enforced in the entirety of the Afghan territory.

⁵⁷ These factors are only required to be set out when the rating is less than Compliant.

2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework

178. Afghanistan signed and became party to the International Convention for the Suppression of the Financing of Terrorism (ICSFT) on September 24, 2003 but has not implemented in full.

179. Terrorist financing is criminalized in Article 3 of the “Law on Combating the Financing of Terrorism” (Law No 839, of October 20, 2004, hereafter the CFT LD). As is the case with the AML LD, the CFT “law” is in fact a legislative decree drafted at a time when there was no Parliament in place. It was signed by the President on October 20, 2004 Article 2004 and was submitted to Parliament as required by the Constitution, but has not yet approved by Parliament (see also write-up under Section 1).

180. Terrorism itself is not defined. Various forms of crimes against the internal security of the State are criminalized under Book II Chapter 2 of the PC including some but not all of the acts that must be offenses under the treaties listed in annex to the ICSFT. Regardless of the acts that are criminalized under the PC, with the exception of the issue noted below regarding conventions to which Afghanistan is not a party, financing activity for each of the acts set forth in the ICSFT is criminalized as required by ICSFT.

181. The provisions of the AML LD also apply to the fight against terrorist financing to the extent that the purpose of the decree, defined in Article 1, is “to prevent and prohibit the use of the financial institutions or any economic activities for money laundering and for the financing of terrorism.”

182. No charges have been brought in application of the CFT LD. The terrorist financing offense therefore remains untested by the courts.

183. As mentioned above, the actions of anti-government elements hinder the implementation of the rule of law in some areas of Afghanistan. This affects also Afghanistan’s fight against terrorist financing.

Criminalization of Financing of Terrorism (c. II.1):

184. The 2004 Constitution sets out the State’s mandate to “prevent all kinds of terrorist activities” (Article 7). The CFT LD criminalized terrorist financing in a way which follows the terms of the ICSFT. Article 3 provides that:

1. Any person commits the offense of the financing of terrorism who by any means, directly or indirectly, unlawfully and willfully, provides or collects funds and property, or tries to provide or collect funds and property, or provides or tries to provide financial or other services with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

a) an act which constitutes an offense within the scope of and as defined in one of the treaties listed in the annex to the ICSFT, and to which Afghanistan is a party; or

b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate the population, or to compel a government or an international organization to do or abstain from doing any act.

185. The CFT LD further mentions that no consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the terrorist financing offenses and ancillary offenses thereto (Article 3 para. 3. lit. d).

186. “Funds and property” are defined as “assets of any kind, whether material or immaterial, corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments, including electronic or digital, evidencing title to, or interest in, such assets” (Article 2 para. 1 CFT LD). This definition is in line with the ICSFT notion of funds. Unlike the Convention, the CFT LD does not specifically address the manner in which these funds were acquired, the decree does not address the source of the funds, and it was not established that the terrorist financing offense extends to funds of both legitimate and illegitimate sources.

187. As mentioned under the write up for Recommendation 1 above, the practice in Afghanistan, regardless of the type of crime investigated and prosecuted, is to go after funds (in cash form or in bank accounts), and not other type of assets. The tools provided in the CFT LD are therefore not used to the full.

188. The collection of funds for and their provision to terrorist organizations and terrorist individuals is not separately criminalized. Thus their provision to terrorists or terrorist organizations is covered only if shown to be for terrorist acts. Furthermore, the acts for which funding is provided or collected are limited to the offenses defined in the anti-terrorism treaties to which Afghanistan is a party, which falls short of the standard: Special Recommendation II goes beyond the ICSFT on this point by requiring the criminalization of the funding of the terrorist offenses set forth in all treaties listed in annex to the ICSFT, regardless of whether a specific country is party to them.

189. Article 3 para. 2 CFT LD explicitly provides that it is not necessary that the funds and property be used to carry out an offense for the terrorist financing offense to be complete. The funds and property must, however, nevertheless be linked to a specific terrorist act.

190. The attempt to commit the terrorist financing offense is criminalized in the same way as the TF itself. Participation in the terrorist financing offense, as well as the organization, direction or motivation of others to commit the TF offense and the contribution to the commission of that offense by a group of persons acting with a common purpose are also criminalized under the CFT LD (Article 2 para. 3, lit. a to c). However, no mention is made of the organization, direction, motivation of individual terrorist or of the contribution to the commission of the terrorist financing offense by an individual.

191. The authorities did not provide the list of the treaties listed in the annex to the ICSFT, to which Afghanistan is a party.

Predicate Offense for Money Laundering (c. II.2):

192. All offenses under Afghan law are predicates to money laundering under Article 3 of the AML LD. Terrorism financing constitutes an offense under the CFT LD and may therefore be a predicate.

Jurisdiction for Terrorist Financing Offense (c. II.3):

193. The CFT LD provides for the jurisdiction of Afghan courts in a number of instances, including when the offense was committed in Afghanistan, and when the acts occurred or the perpetrators reside outside Afghanistan, without requiring that the act and the perpetrator be in the same country (Article 17). Afghan courts therefore also have jurisdiction over the domestic financing activity of overseas events.

The Mental Element of the TF Offense (applying c. 2.2 in R.2):

194. The offense applies to those who willfully provide funds, thus requiring knowledge. However, unlike the AML LD, the CFT LD does not specifically allow for that knowledge to be inferred from objective, factual circumstances, and the authorities did not clarify how knowledge would be established in this case.

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2):

195. Criminal liability for terrorist financing extends to corporate entities other than those owned by the Afghan government, without prejudice to the conviction of individual perpetrators for the same acts (Article 5 CFT LD).

196. No information was provided on the possibility (or lack thereof) of parallel sanctions, nor on the definition of State-owned (see write up under 2. 2 above).

Sanctions for FT (applying c. 2.5 in R.2):

197. The penalty applicable to natural persons found guilty of having funded terrorism is imprisonment for not less than five years or more than fifteen years and a fine of not less than Af 250,000 (approx. US\$5,540) to Af 1,500,000 (approx. US\$33,270). Complicity and other forms of assistance provided for the commission of the terrorist financing offense are subject to the same penalties (Article 4 CFT LD).

198. Non-Government owned corporate entities are subject a fine of not less than Af 1,500,000 (approx. US\$33,270) and not more than Af 4,500,000 (approx. US\$99,820). In addition, they may also be:

- a) banned permanently or for a maximum period of five years from directly or indirectly carrying out business activities; or
- b) ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense; or

c) dissolved if they were created for the purpose of committing the offense; or

d) required to publicize the judgment in the press or any other audiovisual media (Article 5 of the CFT LD).

199. It is unclear whether legal entities that are partially owned by the Afghan State and that engage in terrorist financing activities may be sanctioned.

200. The commission of the offense in the context of a criminal organization constitutes an aggravating element in the sanctioning of both natural and legal persons, and the penalty may in these circumstances be increased to imprisonment of not less than fifteen years to life imprisonment (for natural persons) and a fine not less than Af 1,000,000 (approx. US\$22,180) and not more than Af 2,000,000 (approx. US\$44,360; Article 6 of the CFT LD).

Statistics (R.32)

201. The law enforcement authorities mentioned that they had investigated terrorist financing in 23 instances, all of which also included an investigation into money laundering. None of these cases have been transmitted to the courts. The terrorist financing offense therefore remains untested.

Analysis of effectiveness

202. The fact that the CFT LD is still pending final Parliamentary approval five years after having been transmitted to the National Assembly raises serious concerns about Afghanistan's commitment to AML/CFT. This means that the entire CFT framework could be deprived of a legal basis if Parliament were to reject the decree.

203. The Afghan terrorist financing offense is in line with several elements of the ICSFT in the sense that it covers the provision and collection of funds and property for the purpose of committing a terrorist act. It nevertheless falls short of the standard notably because it fails to criminalize the collection of funds for and their provision to *terrorist organizations* and *individual terrorists* (for instance as a mean of general support unrelated to a terrorist act). To date, while 23 investigations have been undertaken, no charges have been laid, no prosecutions have been commenced and no sanctions have been imposed in application of the terrorist financing offense.

204. The risk of terrorist financing in Afghanistan, however, is particularly high and should have warranted strong action from the Afghan State. Following the 1999 adoption of resolution 1267 and its successor resolutions, the UN Security Council designated a considerable number of terrorist individuals and organizations that have, in one way or another, ties with Afghanistan. The authorities recognize that terrorist financing continues to be a persistent problem. They mentioned that, although the amounts involved are relatively small by comparison with that of the narcotics trade, there is much evidence to support the contention that there is a significant overlap between the two. They also indicated that the financing of terrorism is mainly cash-oriented although there have been alleged cases where terrorist funds were moved through the banking sector.

205. The fact that, nine years after the fall of the Taliban regime and six years after the entry in force of the CFT LD, no individuals or organizations have been sanctioned for terrorist financing constitutes a major failure of the Afghan law enforcement and judiciary. It also raises serious

concerns with respect to Afghanistan's role in the global fight against terrorism. The lack of expertise in the fight against economic crime at all stages of the criminal process and pervasive corruption may both be factors that impede the effective implementation of the terrorist financing offense.

2.2.2. Recommendations and Comments

206. In order to comply fully with Special Recommendation II, the authorities are recommended to:

- Amend the CFT LD where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that, as security improves, the CFT framework is progressively implemented in the whole territory;
- Criminalize the collection of funds for and their provision to terrorist organizations and terrorist individuals;
- Criminalize the organization, direction, motivation of individual terrorist and the contribution to the commission of a terrorist financing offense by an individual;
- Criminalize the funding of any of the terrorist offenses defined in the treaties listed in annex to the ICSFT;
- Ensure that the terrorist financing offense extends to any funds, whether from a legitimate or illegitimate source;
- Ensure that, for successful prosecution, it is not required that the funds and property be linked to a specific terrorist act;
- Extend criminal liability for TF to corporate entities that are partially owned by the Afghan government;
- Ensure that intention can effectively be inferred from objective factual circumstances;
- Ensure that criminal sanctions do not preclude the possibility of parallel civil or administrative proceedings if such proceedings are available;
- Vigorously pursue TF investigations and prosecutions.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • The collection of funds for and their provision to terrorist organizations and terrorist individuals is not criminalized.

		<ul style="list-style-type: none"> • Funding of terrorist acts is limited to acts defined in the treaties to which Afghanistan is party. • The organization, direction, motivation of individual terrorist and the contribution to the commission of the terrorist financing offense by an individual are not criminalized. • The source of funds is not addressed and it has not been established that the offense extends to funds of both legitimate and illegitimate sources. • No corporate criminal liability of legal entities only partly owned by the State is contemplated. • Funds must be linked to a specific terrorist act in order to prosecute. • Lack of clarity as to whether parallel sanctions are available and possible. • Lack of clarity as to whether intention would effectively be inferred from objective factual circumstances. • Lack of effectiveness due to the fact that terrorist financing is not investigated, prosecuted and sanctioned despite the high risk environment, and to the fact that the rule of law is not upheld on the entirety of the Afghan territory.
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2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1. Description and Analysis

Legal Framework

207. The AML LD sets out a framework specifically designed to enable the freezing, seizing and confiscation of tainted property in the course of prosecutions for money laundering (Articles 31 to 37). The law defines “freezing” as “provisionally (i) deferring the execution of a transaction, or (ii) prohibiting or restraining the transfer, alteration, conversion, disposition or movement of funds and property, on the basis of an order or directive from a competent authority” (Article 2 (e)). As mentioned above, however, due to the lack of parliamentary review of the AML LD within the timeframe prescribed in the Constitution, it is not clear that this framework is valid and constitutional. Provisional and confiscation measures applicable to predicate offenses are limited.

208. In the decree, “seizure” means “provisionally assuming custody or control of funds and property by a competent authority on the basis of an order issued by a court,” while “confiscation” is “the permanent deprivation of funds and property by final order of a competent court whereby the ownership of such funds and property and title, if any, evidencing such ownership, is transferred to the state” (Article 2 (o) and (a)).

209. While some freezing orders have been issued by the FIU on the basis of this framework, no assets have been confiscated in application of the AML LD.

210. Confiscation is defined as “the permanent deprivation of funds and property by final order of a competent court whereby the ownership of such funds and property and the title, if any, evidencing such ownership, is transferred to the state” (article 2 (a)).

Confiscation of Property related to ML, TF, or other predicate offenses including property of corresponding value (c. 3.1):

211. The AML LD provides for the confiscation of funds and property:

- used or intended to be used to commit the offense;
- that constitute the proceeds of “the offence”, including funds and property intermingled with such proceeds or derived from or exchanged against such proceeds;
- that constitute an income and other benefits obtained from such funds;
- the funds and property “that have been transferred to any party unless the owner of such funds and property can establish that he paid [sic] the court finds that the owner of such funds and property acquired it by paying a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds, and that he was unaware of its illicit origin (Article 32).

212. In the first bullet point above, the law refers only to the proceeds of “the offense,” namely the money laundering offense. It does not allow the confiscation of the proceeds of the predicate offenses. This is compensated to a limited extent by two other texts of law: the PC which, in its general provisions allows for the confiscation of the proceeds of predicate offenses criminalized in the PC (namely terrorist acts, bribery, fraud, counterfeiting currency, theft, smuggling and forgery) (Article 6, para. 1); and the Counter-Narcotics Law which calls for the confiscation of the proceeds of drug-trafficking related offenses (Article 42).

213. The CFT LD enables the confiscation of funds and property,⁵⁸ proceeds of the terrorist financing offense as well as funds and property that are derived from the proceeds, if they are used or intended to be used to commit the offense (i.e. the terrorist financing offense).

214. With the exception of the Counter Narcotics Law, neither the AML LD, CFT LD nor other pieces of legislation enable the authorities to confiscate the instrumentalities used in, or intended for use in the commission of the money laundering offense or its predicates.⁵⁹ Both decrees provide for the possibility to confiscate funds and property of equivalent value when the assets to be confiscated

⁵⁸ Funds and property are defined as “assets of every kind, whether material or immaterial, corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments, including electronic or digital, evidencing title to, or interest in, such assets”(Article 2 para. 1 CFT LD).

⁵⁹ The Counter Narcotic Law specifically requires the confiscation of vehicles used to carry, transport or conceal drugs above a specific amount (Article 28) but there are no other provisions dealing with other types of instrumentalities. In itself, Article 28 is not sufficient to allow for the confiscation of all instrumentalities.

cannot be produced (Article 32 para. 3 AML LD and Article 8 para. 1 (e) of the CFT LD),⁶⁰ but there seems to be no equivalent provision in other pieces of criminal law that would enable the same with respect to predicate offenses.

215. The AML LD also provides that confiscation may be ordered even in the event that the asset generating offense cannot be prosecuted, be it because the perpetrator(s) is (are) unknown or because “there is a legal impediment to the prosecution” of that offense (Article 33).

Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):

216. The “income and other benefits” obtained from the funds and property used or intended to be used to commit the money laundering offense or from the proceeds of crime are part of the property subject to confiscation under the AML LD (Article 32). It was not established however that this would apply to income and other benefits that derive directly as well as indirectly from the proceeds of the money laundering offense (Article 32 para. 2 only applies in the case where funds and property have been intermingled with funds of legitimate source).

217. Funds and property may be confiscated regardless of whether they are held by the defendant or a third party (Article 32 para. 1 (d) but the rights of the *bona fide* third party are nevertheless protected as described below).

218. The CFTLD equally provides for the confiscation of proceeds of the terrorist financing offense (Article 8 para. 1 (a), regardless of who owns them, except if the owner is a bona fide third party (article 8 para. 1 (c). Proceeds are defined as any funds and property derived from or obtained, directly or indirectly, through the commission of the terrorist financing offense (Article 1 para. 3).

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):

219. The AML LD and the CFT LD allow for provisional measures to be taken to secure the property subject to confiscation, but, with the exception of the proceeds of drug trafficking, there is no framework to order the freezing or seizing of the proceeds of the predicate offenses to money laundering.

220. According to the AML LD, FinTRACA may issue an order to freeze funds or property or a transaction if, by reason of the seriousness or urgency of the case, it considers the freezing necessary (Article 30 para. 1). The authorities confirmed that FinTRACA may use its freezing powers both on its own accord (i.e. during the analysis of a suspicious transaction report (STR) or of a large cash transaction report), and upon request of the law enforcement agencies (i.e. where no STR has been filed). The funds and property that FinTRACA may freeze are the same as the property subject to confiscation (Article 30 para. 5).

⁶⁰ Article 32 para. 3 of the AML LD provides the following: “When funds and property to be confiscated cannot be produced, confiscation may be ordered for funds and property of equivalent value, including funds and property belonging directly or indirectly to a person convicted of a money laundering offence, or funds and property acquired from the person convicted by his spouse, cohabiter or dependent children, unless fair value has been paid for such finds and property.” Article 8 para. 1 (e) of the CFT LD is drafted in similar terms.

221. FinTRACA may only order freezing for a period not exceeding seven days. It may refer the case to the public prosecutor if the freezing order should be maintained for a longer period. An extension of the freezing order for an additional fourteen days is possible upon application to the court (Article 30 para. 1 and 2 of the AML LD). The competent court may then issue an order authorizing the prosecutor to seize funds and property associated with the offense that is the subject of an investigation of money laundering, as well as the proceeds of this offense and any evidence facilitating the identification of such funds and property or proceeds (Article 31).

222. Since its establishment in 2007, FinTRACA has issued 22 freezing orders for a total amount of US\$1,488,442 in all 22 cases, FinTRACA sent the files to the AGO with a request to maintain the freezing order. In one instance, the case was submitted to the court: the defendant was subsequently convicted for corruption (but not money laundering) and the amounts held in his four accounts were confiscated. In all remaining cases, an order was issued to freeze the accounts until further notice but no money laundering charges have been brought before the courts. The authorities did not know whether these funds were still frozen at the time of the assessment.

223. Article 44 of the AML LD also gives the judicial authorities the powers to order the seizure of financial and commercial records, if there are “strong grounds for suspecting” that these documents “are or may be used by persons suspected of participating in” money laundering or its predicates. The decree does not however enable the courts to freeze or seize assets; measures such as freezing a bank account are not provided for.

224. As far as predicate offenses are concerned, provisional measures may only be ordered with respect to evidence, instrumentalities and proceeds of drug trafficking (Article 45 para. 5 of the Counter-Narcotics law) and terrorist financing (described below). While the PC allows for the confiscation of funds and assets linked to those predicate offenses criminalized under the PC, it does not allow for provisional measures to be taken to secure the property subject to confiscation.

225. Provisional measures may be taken in the context of the CFT LD through the “competent court” (rather than through FinTRACA). These measures include “the freezing of funds and property and financial transactions involving assets, regardless of their nature, that can be seized or confiscated” (Article 15 of the CFT LD). The competent court may also seize assets associated with the offense that is the subject of the investigation in particular funds and property used or intended to be used to commit the TF offense, as well as the proceeds of these offenses and all evidence facilitating their identification (Article 16).

Ex Parte Application for Provisional Measures (c. 3.3):

226. According to the authorities, in practice, the freezing and seizing orders (issued by FinTRACA and the courts) are made ex-parte to avoid the risk of assets being removed prior to the implementation of the orders. But once the orders have been issued, the AML LD specifically requires the FIU and, if a longer freeze is required, the public prosecutor, to communicate their freezing orders “immediately to the funds and property owner or reporting entity” (Article 30 para. 1 and 2 of the AML LD).

Identification and Tracing of Property subject to Confiscation (c. 3.4):

227. The various law enforcement agencies derive their powers mainly from the Police Law (notably Articles 15 and 17) and the Interim Code for Courts.

228. The police may “search persons, things and houses” under specific circumstances, mainly in case of imminent danger or commission of a crime (Article 9 of the Police law).

229. The judicial police (i.e. in the case of money laundering, the MCTF, NPA SIU and IIU) perform their duties under the direction and supervision of the Saranwal (prosecution). Their role is to detect crimes, collect evidence and seek suspects in the pursuit of justice (Article 29 of the Interim Code for Courts). Judicial police officers may, in case of *flagrante delicto* and whenever there are grounded reasons to believe that urgent action is needed to preserve the evidence, conduct preliminary investigations which notably include searches of premises and seizure of objects and documents.

230. The AML LD enables the judicial authorities to take specific measures (“special investigative techniques”) for the purpose of obtaining evidence of the money laundering offense or its predicates, such as monitoring bank accounts and wire tapping (Article 44). These measures can be ordered when there are “strong grounds” to suspect that the “accounts (...) or documents are or may be used by the persons suspected of participating” in the money laundering offense or its predicates. All these powers may prove useful in the identification and tracking of property subject to confiscation but have not been used to date. It is therefore unclear what would, in practice, constitute “strong grounds” to suspect the commission of the money laundering offense or one of its predicates, and whether this threshold is adequate or on the contrary too limitative to enable an effective use of the special investigative techniques.

231. The Counter-Narcotics Law specifically provides for a range of identification and tracing measures of the evidence, instrumentalities and proceeds of drug trafficking; they include searches of persons, property and vehicles, covert surveillance, intrusive or electronic surveillance and undercover operations (Articles 43 to 51).

232. There are no other specific provisions that apply to terrorist financing.

Protection of *Bona Fide* Third Parties (c. 3.5):

233. Article 36 para. 1 of the AML LD provides that confiscated funds and property remain “encumbered, up to their value, by any rights *in rem* lawfully established in favor of third parties.” Anyone who claims to have a right over the assets or funds that are the subject of a confiscation order may appeal to the jurisdiction that issued the confiscation order within one year of that order (Article 37 of the AML LD).

234. The CFT LD also provides for the protection of the rights of *bona fide* third parties by enabling them to file a petition in court within one year of confiscation to defend their rights (Article 12).

235. Neither the AML LD nor the CFT LD enable however *bona fide* third parties to ensure that their rights are not prejudiced during the pre-confiscation stage, namely when identification, tracing,

or provisional measures are taken. The Counter-Narcotics Law, however, does allow for adequate protection of the rights of *bona fide* third parties whose property may be seized, frozen or confiscated as a result of drug trafficking.

Power to Void Actions (c. 3.6):

236. Under the AML LD, “any legal instrument” executed for a fee or free of charge, *inter vivos* or *mortis causa*, is void if its purpose was to prevent the implementation of the confiscation measures provided for in the AML LD (Article 35). In the case of a contract involvement a payment, the “buyer shall be reimbursed only for the amount actually paid.”

237. There is no equivalent provision with respect to predicate offense.

238. The CFT LD also provides that “legal document prepared for the custody of funds or property [...] are void” (Article 10).

Statistics (R.32)

239. As mentioned above, FinTRACA ordered the freeze of 22 accounts related to money laundering investigations. No other provisional measures were taken and no funds have been confiscated on the basis of the AML LD. Similarly, the authorities have not made use of provisional and confiscation measures of funds and assets suspected of being linked to terrorist financing. No information was provided on the number of confiscation orders that have been issued on the basis of the predicate offenses other than the one case of corruption mentioned above.

Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):

240. Article 34 of the AML LD allows for the confiscation of property of which a criminal organization has power of disposal. It also reverses the burden of proof by providing that the property is to be confiscated unless its lawful origin is established. A criminal organization is defined as “any structured group of two or more persons acting in concert with the aim of committing one or more criminal offences, in order to obtain, directly or indirectly, funds and property or any kind of financial or other material benefit” (Article 2 para. 1(b) of the AML LD).

Analysis of effectiveness

241. In the case of money laundering and terrorist financing offenses, the framework adequately provides for provisional measures and confiscation of all property subject to confiscation under the standard, except instrumentalities. In the absence of conviction for money laundering and terrorist financing, however, the confiscation framework provided by the AML LD and the CFT LD has never been used. Freezing measures have been taken without difficulty by FinTRACA in a number of suspected money laundering cases, but the authorities have no experience in seizure, be it in the course of an investigation into money laundering or terrorist financing. *Bona fide* third parties may challenge a confiscation order, but have no possibility to ensure that their rights are not prejudiced by provisional measures.

242. The conditions under which the authorities may undertake “special investigative techniques” in the course of an investigation into money laundering seem reasonable, but it is important that the courts do not interpret them in a too restrictive way.

243. In the case of terrorist financing offenses, similar provisions apply: provisional and confiscation measures may be ordered with respect to property - other than instrumentalities - linked to a terrorist financing offense.

244. With the exception of drug trafficking cases, there is no possibility to seize or freeze the proceeds from, or instrumentalities used, or to be used in the commission of the predicate offense to money laundering, nor to prevent or void actions taken to prejudice the confiscation of such assets.

2.3.2. Recommendations and Comments

245. In order to comply fully with Recommendation 3, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis to ensure that the AML framework, and in particular the provisional and confiscation measures applicable to money laundering, terrorist financing and all predicate offenses, has a sound legal basis;
- Ensure that, as security progresses, the AML framework is implemented in the entirety of the territory of Afghanistan;
- Enable the confiscation of the proceeds of all predicate offenses;
- Ensure that confiscation would apply to income and other benefits that derive directly as well as indirectly from the proceeds of crime;
- Enable the confiscation of instrumentalities used or to be used in the commission of all predicate offenses and terrorist financing;
- Ensure that provisional measures (including seizing and freezing) may be taken in respect to all predicate offenses to money laundering;
- Ensure that *bona fide* third parties can defend their rights at all stages (i.e. not only after a confiscation order has been issued);
- Ensure that steps may be taken to prevent or void actions (whether contractual or otherwise) that would prejudice the authorities ability to recover all property subject to confiscation.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • No provisional measures and confiscation possible for the proceeds of predicates. • Confiscation measures do not extend to instrumentalities used or to be used on the commission of all the predicates to money laundering and terrorist financing. • Rights of <i>bona fide</i> third parties only ensured in case of confiscation. • Lack of clarity as to whether confiscation applies to income and other benefits that derives indirectly from the proceeds of money laundering. • Provisional measures not possible for predicate offenses other than drug trafficking. • Provisional measures and confiscation not possible for instrumentalities used or intended to be used in the commission of the predicate offenses (other than drug trafficking) and terrorist financing. • Lack of effectiveness: no funds or assets have been confiscated in application of the AML LD or CFT LD; and the rule of law is not upheld on the entirety of the Afghan territory.

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

2.4.1. Description and Analysis

Legal Framework

246. The CFT LD addresses, albeit in a limited way, the freezing of funds and property of individuals and organizations designated by the UN Security Council acting under Chapter VII of the UN Charter. No other procedures are in place for freezing of funds used for terrorist financing in other circumstances, which significantly hampers the actions that the authorities may take in the fight against terrorism and its financing. Moreover, as mentioned above, there are serious concerns about the constitutionality of the CFT LD, and, consequently, of any measure based on the decree.

247. It is also worth mentioning from the outset that very little information was provided to the assessment team on the implementation of the freezing mechanisms called for under Special Recommendation III, suggesting that practical experience in the matter is scarce.

Freezing Assets under S/Res/1267 (c. III.1):

248. Article 13 of the CFT LD provides that the President may, by executive order, direct the freezing of funds and property of individuals and organizations designated by the United Nations Security Council (UNSC) acting under Chapter VII of the UN Charter. This is the only reference in

law to the freezing measures called for under UNSCR 1267 and there are no decrees, regulations or other texts that would set out the applicable procedure or provide guidance on the implementation of the freezing order.

249. According to the authorities, one freezing order was issued under Article 13 in 2007 on the basis of UNSCR 1267: No copy of the President's order was however provided to the assessment team. The response to the detailed assessment questionnaire suggest that, before the President may issue a freezing order, a "request" is addressed to the Afghan Ministry of Foreign Affairs, which then confidentially forwards it to the relevant domestic authorities, i.e. the Ministry of Interior, NDS and Da Afghanistan Bank. These authorities report back to the President who then issues a freezing order. This procedure involves a number of different steps before a freezing order may be issued, and may potentially cause significant delay in the freezing mechanism.

250. According to the authorities, the freezing order that was issued was the result of an STR filed by a bank which found a positive match in its list of customers with the UNSCR consolidated list. The authorities mentioned that FinTRACA ordered the account to be frozen, and forwarded the case to the NDS and AGO. A request was made for a Presidential order to maintain the freeze, but it was denied and the freezing order was lifted, despite the clear positive match. The holder of the account subsequently left the country, taking with him the entirety of the amounts on his account (some US\$32,000). Freezing measures required under UNSCR 1267 are not however subject to the UN members' discretion: the assets of the listed persons and entities must be frozen. By lifting the freezing order, Afghanistan violated its obligations under UNSCR 1267.

Freezing Assets under S/Res/1373 (c. III.2):

251. Article 13 of the CFT LD only deals with the freezing of funds and property of persons and entities that have been designated by the UNSC. There is no clear mechanism in place for the implementation of UNSCR 1373. According to the authorities, the requests made under UNSCR 1373 are dealt with in the same manner as described above. No information was provided on the number of requests received and presidential decrees issued as a result. The authorities did mention however that no account had been frozen in implementation of a foreign request.

Freezing Actions Taken by Other Countries (c. III.3):

252. According to the authorities, a request to give effect to another country's freezing actions would follow the general provisions on mutual legal assistance set out in the CFT LD, but no mention was made of the authorities in charge of examining the requests, the number of requests received and their result.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

253. The CFT LD only makes reference to "funds and property" of individuals and organizations designated under UNSCR 1267 without any indication of the extent of their ownership or control.

Communication to the Financial Sector (c. III.5):

254. The UNSCR 1267 Sanction Committee consolidated list of designated persons and its updates have been forwarded by FinTRACA to the banking sector on three occasions only. These

communications were made without imposing any requirement on financial institutions to compare their list of customers against the UN list, and without requiring them to freeze the funds and inform FinTRACA in case of a positive match.

Guidance to Financial Institutions (c. III.6):

255. No guidance has been given to financial institutions on the implementation of the freezing measures.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):

256. Two different procedures are available for the delisting of designated persons.

257. Article 14 of the CFT LD sets out a procedure to contest a freezing measure taken under Article 13 that gives the Afghan Supreme Court (rather than the UNSC) the possibility of lifting a freezing order issued under UNSCR 1267. It provides that any individual or organization whose funds and property have been frozen pursuant to article 23 and who consider that they were included on the list as a result of an error may seek to have their names removed from the list by submitting a request to this effect to the Supreme Court within thirty days of publication of the President's order, indicating all factors that could demonstrate the error. It also provides that the Supreme Court's decision in this respect is final. This provision of the CFT is not sufficiently precise in its reference to "the list" and may contravene Afghanistan's obligation under UNSCR 1267: as long as Article 13 refers to the list that the President may have drawn, the powers granted to the Supreme Court do not necessarily raise an issue under the standard; if the list refers, however, to the UNSCR 1267 list of designations (or the President's list that duplicates the UNSCR 1267 list), Article 13 is not in line with the standard in the sense that it enables the Supreme Court to take a decision (namely to remove a person or entity's name from the list of designations) that should remain the prerogative of the UN Security Council.

258. In their responses to the DAQ, the authorities mentioned that, in practice, a different approach is taken: requests for delisting are addressed to the Security Council of Afghanistan, which then sends them to the Ministry of Foreign Affairs for transmittal to the Afghan Permanent mission in New York, which then prepares a Note verbal to the Chairman of the UNSC 1267 committee.

259. This approach is consistent with international rules in that matter. The mechanism established under Article 13, however, as mentioned above, is in contradiction with Afghanistan's obligations under UNSCR 1267 in the sense that it enables the Afghan Supreme Court to lift the freezing measure while the resolution affords individual jurisdictions no leeway and no flexibility in that matter beyond cases of mistaken identities.

260. It is unclear whether any request for delisting has been made through either of these procedures.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

261. There are no procedures to allow for the unfreezing of funds or other assets of persons or entities inadvertently affected by a freezing mechanism.

Access to frozen funds for expenses and other purposes (c. III.9):

262. There are no measures in place to allow access to frozen funds or other property to cover expenses as set out in UNSCR 1452.

Review of Freezing Decisions (c. III.10):

263. A review process is set out in Article 13 of the CFT LD as described above.

Freezing, Seizing, and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):

264. Article 15 of CFT LD enables the competent court acting either “by virtue of its office or at the request of the public prosecutor’s office”, to order any provisional measure, including the freezing of funds and property and financial transactions involving assets regardless of their nature, that can be seized or confiscated. Article 16 addresses also seizure of assets associated with the TF offense under investigation, in particular: funds and property used or intended to be used to commit the [terrorist financing offense], as well as the proceeds of these offences and all evidence facilitating their identification.”

265. Article 8 of the CFT LD enables the competent court to confiscate the following funds and property:

- a) “Property and funds as well as the proceeds of the TF offense if they are used or intended to be used to commit the offence;
- b) Funds and property [that] came from the proceeds, derivatives or exchange of the offense;
- c) funds and property listed in paragraph a) and b) except if the owner of the funds or property can prove that it has been transferred to him in exchange of services provided by a transferee or fair value has been paid for such funds and property or acquired through any other legitimate way and the transferee was not aware of the origin of the funds and property;
- d) Funds and property directly or indirectly connected to an offense and are mixed with legitimate funds and property of equal value to that of the TF offense committed.”

266. The law also provides that when the funds and property to be confiscated cannot be produced, confiscation may be ordered for their value, including but not limited to any funds and property belonging directly or indirectly to a person convicted of a TF offense, or funds and property acquired from the person convicted by his spouse, cohabiter or dependent children, unless fair value has been paid for such funds and property.

267. In addition, funds and property controlled by criminal organizations may be confiscated “without considering it is link to the offense committed [sic],” i.e. without the need to prove a link with a specific offense (Article 9 of the CFT LD).

Protection of Rights of Third Parties (c. III.12):

268. Any individual or organization that believes that they have rights in the confiscated assets can file a petition with the competent court within one year from the date of the confiscation (Article 12 of the CFT LD).

Enforcing the Obligations under SR III (c. III.13):

269. Although there is no explicit provision to this effect (neither in the CFT LD nor in the AML LD), according to the authorities, FinTRACA is the competent authority to enforce the obligations under the freezing of terrorist funds provisions under Article 28 of the AML LD which gives the FIU general powers to prevent money laundering. However, the AML LD does not constitute an adequate legal basis in the context of freezing obligations under Special Recommendation III because it only deals with money laundering. Furthermore, FinTRACA has no enforcement powers as such.

Statistics (R.32)

270. The authorities forwarded the UNSCR 1267 Sanction Committee consolidated list of designated persons on three occasions only, and solely to the banking sector. As mentioned above, one bank account was frozen in application of UNSCR 1267 but the authorities subsequently lifted the order, despite the account holder being listed in the UNSCR 1267 consolidated list.

Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):

271. No consideration has been given to the measure indicated in the Best Practices Paper for SR III.

Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):

272. No procedures have been adopted to allow for access to funds frozen pursuant to UNSCR 1373.

Analysis of effectiveness

273. The current freezing framework does not comply with the standard on a number of points notably because it is incomplete with respect to UNSCR 1267 and provides no legal basis for the implementation of UNSCR 1373. It is furthermore very rarely used, despite the high risk of terrorist financing in Afghanistan. The fact that the authorities allow themselves some level of discretion in the implementation of the UNSCR 1267 obligations, and the fact that they have, in one case of positive match, used that discretion to release funds that were subject to mandatory freeze, raise particular concerns.

2.4.2. Recommendations and Comments

274. In order to comply fully with Special Recommendation III, the authorities are recommended to:

- Ensure that there is a sound legal basis to implement the UNSCRs;
- Ensure that, as security improves, the AML framework is progressively implemented in the whole country;
- Clarify the freezing mechanism under UNSCR 1267 or clarify its meaning so it can be used effectively to freeze without delay;
- Establish a clear legal basis to implement the freezing obligations under UNSCR 1373 and clear procedures to meet the obligations;
- Establish clear procedures to consider and implement as necessary to give suit to other countries' designations and requests for freezing of terrorist assets;
- Ensure that funds and property subject to freezing orders extend to all funds and other assets listed under Criterion III.4;
- Establish clear procedures to allow for domestic freezing of terrorist assets;
- Establish clear procedures for delisting;
- Ensure that freezing, seizing and confiscation measures in other circumstances are not unduly restrictive;
- Establish appropriate procedures to allow for the unfreezing of funds or other assets of persons or entities inadvertently affected by a freezing order;
- Ensure there are measures to allow access to frozen funds or other property to cover expenses as set out in UNSCR 1452;
- Establish clear obligations for the private sector to implement freezing orders;
- Provide clear guidance to the private sector in respect of their freezing obligations;
- Ensure effective monitoring of compliance with all freezing obligations under SR III.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • Insufficient mechanism to implement UNSCR 1267 freezing obligations. • UNSCR 1267 consolidated list and updates thereto forwarded to the banking sector only, and without a request to freeze the funds in case of a positive match. • No legal basis and no mechanism to implement freezing measures in the

		<p>context of UNSCR 1373.</p> <ul style="list-style-type: none"> • Lack of clarity in the definition of funds and property subject to freezing orders. • No guidance to financial institutions on the implementation of their freezing obligations. • No publicly known procedures for delisting and unfreezing. • No procedure to ensure access to frozen funds and assets in the context of UNSCR 1452. • No procedure to allow for the unfreezing of funds or other assets of persons or entities inadvertently affected by a freezing order. • Restricted scope of freezing, seizing and confiscation measures in other circumstances. • No mechanism to enforce freezing obligations. • Afghanistan released funds that were subject to mandatory freeze under UNSCR 1267. • Lack of effectiveness: with the exception of the one limited case mentioned above, no funds or assets have been frozen; and the rule of law is not upheld on the entirety of the Afghan territory.
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Authorities

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

2.5.1. Description and Analysis

Legal Framework

275. The Financial Reports and Analysis Centre of Afghanistan (FinTRACA), Afghanistan's financial intelligence unit (FIU), was established by virtue of the AML LD in 2004. The decree describes the main functions of the FIU, notably in Chapters IV and V.

Establishment of FIU as National Centre (c. 26.1):

276. Article 19 of the AML LD establishes the FIU under the authority of the DAB. It provides the FIU with an independent decision-making authority to exercise its functions under the LD, namely for receiving (Article 23), requesting (Article 26), analyzing (Article 23) suspicious transaction reports (STRs), large cash transaction reports (LCTRs) and other relevant information concerning money laundering and terrorist financing activities. The power to disseminate the disclosures to the prosecutor is limited to cases where there are grounds to suspect money laundering (Article 38).

277. Receipt of STR and other relevant information: Article 16 of the AML LD requires reporting entities to file an STR when they (a) suspect that any transaction or attempted transaction may be related to or derived from the commission of an offense; and (b) suspect that funds are linked or

related to, or are to be used for terrorism, terrorist acts or by terrorist organizations. STRs are submitted to FinTRACA “in a form and by any rapid means of communication as may be determined in regulations of Da Afghanistan Bank.” (For more details on reporting, please refer to section 3.8).

278. In addition and according to Article 12, paragraph 1 of the AML LD, reporting entities should report to the FIU, as STRs, i) all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose; and ii) business relationships and transactions with persons from countries which do not or insufficiently apply AML/CFT requirements equivalent to those contained in the AML LD. This requirement has never been implemented; reports are filed for suspicious transactions and not those specified in Article 12.

279. Also, according to Article 15 of the AML LD “a reporting entity shall report to the Financial Intelligence Unit in such form and manner and within such period as may be prescribed in regulations by Da Afghanistan Bank any transaction in cash in an amount as may be so prescribed, by Da Afghanistan Bank, unless the recipient and the sender are financial institutions.” Article 1, paragraph 1.2.b. of the AML/CFT RR defines large cash transaction as a transaction in which one party receives, pays, or otherwise transfers, cash, bullion, other precious metals, or precious stones, or any other monetary instrument with a value equal to or exceeding Af 500,000 (around US\$11,620). A large cash transaction also includes the completion of two or more such transactions by or on behalf of the same person during any two consecutive business days when the total value of the transactions is equal to or exceeds Af 500,000 (around US\$11,620). MSPs regulation sets out the same requirements for this sector.

280. In practice, FinTRACA receives STRs from banks and LCTRs from both banks and MSPs.

281. Finally, according to Article 6, paragraph 7 of the AML LD, the compliance officer of reporting entities should be authorized to inform FinTRACA once per month of all reported cross-border transfers of cash and other negotiable instruments and forward the copies of reports made by people leaving or entering Afghanistan. Currently, the requirement on currency reporting (described in detail under SRIX) is only implemented with respect to outgoing travelers at Kabul International Airport (KIA), except at the VIP section of the airport. The assessment team was informed that 95% of the cash and bearer negotiable instruments reports (CNBIRs) are submitted by MSPs transporting cash to Dubai.

282. Analysis: According to article 23 of the AML LD, FinTRACA should receive the reports and analyze them on the basis of all relevant information available. A preliminary tactical analysis is conducted in order to examine the specific pieces of information contained in the STR. The operational analysis is limited to matching the information contained in the STRs to the information contained in FinTRACA’s internal database. The analysis focuses on the reported transactions and does not usually reach the next level to produce activity patterns, new targets, relationship among the subjects and accomplices and investigative leads and criminal profiles. FinTRACA does not conduct strategic analysis at this stage to further develop the knowledge base that would be useful in its future activities. (Please refer to criterion 26.3 for more details).

283. Dissemination: Pursuant to Article 38 of the AML LD, FinTRACA must immediately disseminate financial information to the prosecutor for investigation or action when there are reasonable grounds to suspect that an offence of money laundering has been committed.

Article 1.3.6.1 of the AML/CFT RR included a requirement to disseminate STRs where there is a suspicion of financing of terrorism; however this regulation only applies to financial institutions. (Please refer to criterion 26.5 for more details).

284. In addition to the traditional powers of an FIU (receiving, analyzing and disseminating), the AML LD gives FinTRACA the power to:

- Assist the customs in implementing the requirements of controlling the transportation of cash and bearer negotiable instruments. The employees of the FIU are considered authorized officer who have the power to require the declaration, search, and seize (Article 6 of the AML LD) (please see SRIX for additional details);
- (i) Propose to competent bodies the enactment, change, amendment, or nullification of the relevant laws and regulations; (ii) participate in drawing up the list of indicators for recognizing suspicious transactions; and (iii) provide professional training to the staff of reporting entities, state bodies, and organizations with official authorizations (Article 28 of the AML LD);
- Issue and order the freezing of funds and property or a transaction, in urgent and serious cases, for a period not exceeding seven days, which shall be communicated immediately to the funds and property owner or reporting entity (Article 30 of the AML LD- for more details, please refer to the details under Recommendation 3);
- Examine records and inquire into the business and affairs of any reporting entity, other than the regulated entities under the regulation of DAB, for the purpose of ensuring compliance with the requirements of the LD (Article 39);
- Enforce compliance of all reporting entities that are not supervised by DAB according to Article 40 of the AML LD. (i.e., revocation or suspension of business license, imposition of fine etc.).

Guidelines on Reporting STR (c. 26.2):

285. Feedback on the manner of reporting has been provided to banks. The AML/CFT RR specifies that STRs must be prepared in accordance with the specification published on the FinTRACA website (<http://www.fintraca.gov.af>) at the time of submittal. However, when time is critical, preliminary reports may be prepared and filed in any convenient format via any other available means that may facilitate rapid and secure transmittal of information including, but not limited to, telephone, courier, and secure electronic mail. Filing of a preliminary report does not release the reporting entity from the obligation to file an STR. True and accurate copies of all documents required to support the suspicion must be included as attachments to the report. Reports must be placed for delivery on magnetic, optical, or USB-compatible storage media. Supporting documents may be in paper form if no alternative is available. Delivered reports will be validated against the report preparation specifications. Those reports that cannot be validated by the FIU will not be considered as having been received.

286. Similar information was also provided to banks on the filing of LCTRs (for more details, please refer to details under Recommendation 19).

287. In addition, two forms specifying the data content for STRs and LCTRs were provided to banks. According to FinTRACA staff, a number of workshops were held for the commercial banks by FinTRACA staff who delivered information on indicators and typologies of suspicion based reporting.

288. Guidance to other financial institutions regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting have been provided through the AML/CFT RR. Similar guidance was not provided to the institutions that are not regulated by DAB or to DNFBPs.

Access to Information on Timely Basis by FIU (c. 26.3):

289. According to Article 26 of the AML LD, the FIU must, upon request directly or indirectly, be granted access to databases of the public authorities in Afghanistan. Such authorities must then respond to these requests for information in an expeditious manner. In all cases, information thus obtained is to be used by the FIU only for purposes of exercising its functions as specified in this LD. FinTRACA and law enforcement authorities may exchange information on matters within the scope of the AML LD.

290. FinTRACA's own database contains financial information gathered from STRs, LCTRs and CNBIRs, received so far from banks, MSPs and Customs.

291. Other administrative and law enforcement information is very difficult to gather for FinTRACA. In some cases, the information is collected using official correspondence. It enables the analysts to conduct preliminary analysis by matching the collected information to the one contained in the STR. The following table illustrates the information FinTRACA has access to, starting with the most accessible:

SOURCE	TYPE OF INFORMATION
FinTRACA own database	<ul style="list-style-type: none"> • FinTRACA local database: Information about previous STRs, LCTRs, CNBIR from customs and LEAs requests and related information. <p>As of February 2011, the database contained:</p> <ul style="list-style-type: none"> - 684 STRs from banks. - 1,765,808 LCTRs (in 27 different currencies) - 1900 CNBIRs. <ul style="list-style-type: none"> • List matching software: a searchable database updated regularly and containing UN, OFAC and US lists. • PEPs list compiled with information received from banks (for more details,

	please refer to Rec. 6).
Afghan National Police – Criminal Investigation Department (CID) & Interpol	<ul style="list-style-type: none"> • Police Database: National ID and photographs of persons who are/have been under investigation, residence and addresses, antecedents. • Interpol database: International alerts <p>FinTRACA made very few of these requests.</p>
AISA (see more details under Recommendation 33)	<p>Commercial database: License number, expiration date and address.</p> <p>This information on beneficial owners is not complete.</p>

292. Overall, FinTRACA does not appear to have the level of access to administrative and law enforcement databases necessary to properly undertake the analysis of STRs. AISA does not hold accurate information about the beneficial owners of companies. FinTRACA do not have access to administrative information such as land title information, immigration records, vehicle licensing information and tax records. It does not have access to law enforcement information: arrest records or charges laid, convictions and acquittals; investigation records, intelligence information and prison records.

Additional Information from Reporting Parties (c. 26.4):

293. According to Article 26, paragraph 1 of the AML LD, FinTRACA may ask any reporting entity to submit any information, documentation and records, for the purposes of exercising its functions, and the requested reporting entity must comply with the request.

294. FinTRACA has requested additional information from banks on several occasions, but has not done so with regard to non-bank financial institutions and DNFBPs.

Dissemination of Information (c. 26.5):

295. Proactive Dissemination: FinTRACA has the authority to disseminate financial information to the prosecutor for investigation or action whenever there are reasonable grounds to suspect that an offence of money laundering has been committed (Article 38 of the AML LD). Article 1.3.6.1 of the AML RR included a requirement to disseminate STRs where there is a suspicion of financing of terrorism; however this regulation only applies to financial institutions. Therefore, it is not empowered to disseminate financial information related to terrorist financing reported by DNFBPs. Whenever there are reasonable grounds to suspect that a money laundering offense has been committed, FinTRACA should immediately disseminate a report of the facts, together with its opinion, to the prosecutor, who must then decide upon further action.

296. To date, the FIU has not determined any objective criteria to disseminate reports. The director general of the FIU decides on a case by case basis whether to file the STR or to disseminate the case to the prosecutor. Twenty one money laundering and in cases were deemed suspicious and have been

forwarded to the AGO, which then determined that there was not sufficient evidence to launch an investigation.

297. According to the authorities, the level of evidence required by the AGO to start a judicial investigation is high. Since there were no follow up by the AGO in the twenty one cases, FinTRACA re-disseminated the cases to other law enforcement agencies for further collection of evidence after receiving a receipt notice from the AGO. Thus far, none of the reported cases have led to an investigation or a prosecution. (See more details under the analysis of effectiveness).

298. Currently, the FinTRACA is disseminating reports to different LEAs depending on the kind of suspicion. When there are grounds to suspect:

- proceeds of counter narcotics, the reports are sent to the Sensitive Investigation Unit (SIU; no cases disseminated to date);
- proceeds of corruption, kidnapping and organized crimes, reports are sent to the Major Crimes Task Force (MCTF) at the Ministry of Interior (MOI) (17 cases disseminated); and
- TF cases, report are sent to the MCTF within the National Directorate of Security (NDS; 4 cases disseminated).

299. To be effective in prosecuting the cases, the prosecutor needs to lower the level of evidence required for starting an investigation and the FinTRACA needs to improve the quality of the reported STRs by enhancing the collection of information capacity and developing the analysis function.

300. Reactive Dissemination: FinTRACA disseminates information in response to a request received from domestic law enforcement agencies. According to Article 26, paragraph 3 of the AML LD, FinTRACA, DAB, and the LEAs may exchange information on matters within the scope of the AML LD. At the same time, Article 24 of the same LD requires FinTRACA to have measures in place for the protection of privacy and computerized databases.

Operational Independence (c. 26.6):

301. According to Article 19 of the AML LD, FinTRACA has independent decision-making authority for purposes of exercising its functions. Its budget is determined by the Supreme Council of DAB, which is composed of seven members that includes DAB Governor and his deputy. All members of the Supreme Council are appointed by the President of Afghanistan with the consent of the Parliament of Afghanistan.

302. FinTRACA's director general is appointed by the Supreme Council for a term of five years renewable for one term. The Director should satisfy the requirements set out in Article 20 of Da Afghanistan Bank Law: He should be 1) a citizen of Afghanistan; 2) enjoy "recognized integrity"; 3) have a degree of higher education or extensive work experience preferably in economics, banking or law; 4) not be disqualified from serving; 5) not be an officer or a full time or part time employee, with or without remuneration, of a bank or other financial institution submitted by law to the DAB's oversight; and 6) not be a member of the council of ministers, member of parliament or other high ranking official of the state.

303. The Director General may be suspended or removed by the Supreme Council for one of the following reasons: (i) becomes ineligible to serve pursuant to the reasons mentioned above in the text; (ii) has been convicted of an offense to the punishment of which is imprisonment, unless such conviction was motivated by his religious or political views or activities; (iii) has been declared bankrupt or unable to pay his debts by a court decision; (iv) has served during the immediately preceding five years as a member of the executive board, or as an authorized officer or administrator of a company that has been subject to conservatorship or receivership; (v) has, on grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession; (vi) has been unable to perform the functions of his office because of an infirmity of body or mind that has lasted for more than six months; and (vii) has engaged in significant violations of the law or in negligence from any duty imposed by the law, or has engaged in serious misconduct in the office, substantially prejudicing the interests of DAB.

304. FinTRACA's director general, with the approval of the Governor, establishes the number and type of staff positions and has the power to hire and dismiss them.

305. In practice, the Supreme Council meetings are held every quarter and FinTRACA prepares its quarterly report for review by its members. FinTRACA has a separate operational budget for carrying out its activities as approved by the Supreme Council of DAB. The director general of FinTRACA is allowed to approve an expense of up to US\$2,500 per item, which is consistent with the Procurement Law of Afghanistan.

306. Although the MOUs with foreign FIUs are signed by the Director of FinTRACA, the MOU between the FIU and the customs for regulating the transmission of CNBIR to FinTRACA and controlling cash couriers was signed by the Governor of the Central Bank. The signature of such document by the Governor could create confusion about the role and functions of FinTRACA's director general and the FIU's operational independence.

307. Finally, since FinTRACA is under the authority of DAB, it is subject to the internal audit department of DAB. To date, no such inspection has been conducted.

Protection of Information Held by FIU (c. 26.7):

308. The information held by FinTRACA is securely protected. FinTRACA staff required to maintain the confidentiality of the information held by the FIU by virtue of Article 21 of the AML LD: "the officers, employees, agents or such other persons appointed to posts in the Financial Intelligence Unit shall be required to keep confidential any information obtained within the scope of their duties, even after the cessation of those duties within the Financial Intelligence Unit. Such information may not be used for any purposes other than those provided for by this law and may not otherwise be disclosed except by order of a court of competent jurisdiction."

309. The reporting entities secure and send information using a Pretty Good Privacy (PGP) public key for encryption provided to them by FinTRACA. FinTRACA servers are connected to a closed network and there is no connection with outside computers. Reports are received by a computer, which is connected to both terminals (internal network and the internet); the reports are then put on the servers and become available only to those individuals with access to the internal network. The server room is always locked and only authorized personnel are allowed to enter.

310. There is no log history to record all the queries made by FIU employees. Currently, there are no electronic IDs used to access to the building, however this system will be used when FinTRACA moves to its new premises in the coming months.

Publication of Annual Reports (c. 26.8):

311. FinTRACA has not yet released any statistics, trends analysis, and/or typologies developed from its activities. It manages its own website,⁶¹ which contains information on AML/CFT legislation and guidance.

Membership of Egmont Group (c. 26.9):

312. FinTRACA was accepted as an Egmont Group member in July 2010.

Egmont Principles of Exchange of Information Among FIUs (c. 26.10):

313. Pursuant to Article 27 of the AML LD, the FinTRACA may, spontaneously or upon request, provide, receive or exchange information with foreign FIUs and foreign counterparts performing similar functions with respect to reports of suspicious transactions, provided that this is done on a reciprocal basis, and that such counterparts are subject to confidentiality requirements similar to those applicable to FinTRACA. It may, for that purpose, conclude cooperation or other agreements with foreign counterparts. Upon receipt of a request for information or transmission from a foreign FIU regarding an STR, FinTRACA must respond to that request in an expeditious manner within the scope of the powers conferred by this law. Prior to forwarding personal data to foreign authorities, FinTRACA must obtain assurances that such information will be protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the foreign FIU and that the foreign authority will use the data solely for the purposes of fighting money laundering and financing of terrorism.

314. According to the authorities, FinTRACA takes the Egmont principles into account when it exchanges information with its overseas counterparts.

315. FinTRACA has signed information exchange agreements by way of MoU with eight foreign FIUs,⁶² which are all based on the Egmont Group's Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases. In addition FinTRACA has an informal information sharing agreement by way of an exchange of letters with FinCEN (US FIU) which adheres to the same principles. In addition, negotiations are under way for signing MOUs with Japan and the UAE.

316. FinTRACA has not received or requested information from foreign counterparts until it joined the Egmont group in June 2010. Since then, it has received 62 requests and made 12 requests as follows:

⁶¹ <http://www.fintraca.gov.af/>

⁶² United Kingdom, Russia, Ukraine, Mongolia, Bangladesh, Turkey, Sri Lanka, Belarus.

From	Number	To	Number
UK	40	United Kingdom	2
USA	19	Russia	2
Moldova	1	United Arab Emirates	2
Kyrgyz Republic	2	Switzerland	2
		Belarus	2
		France	2

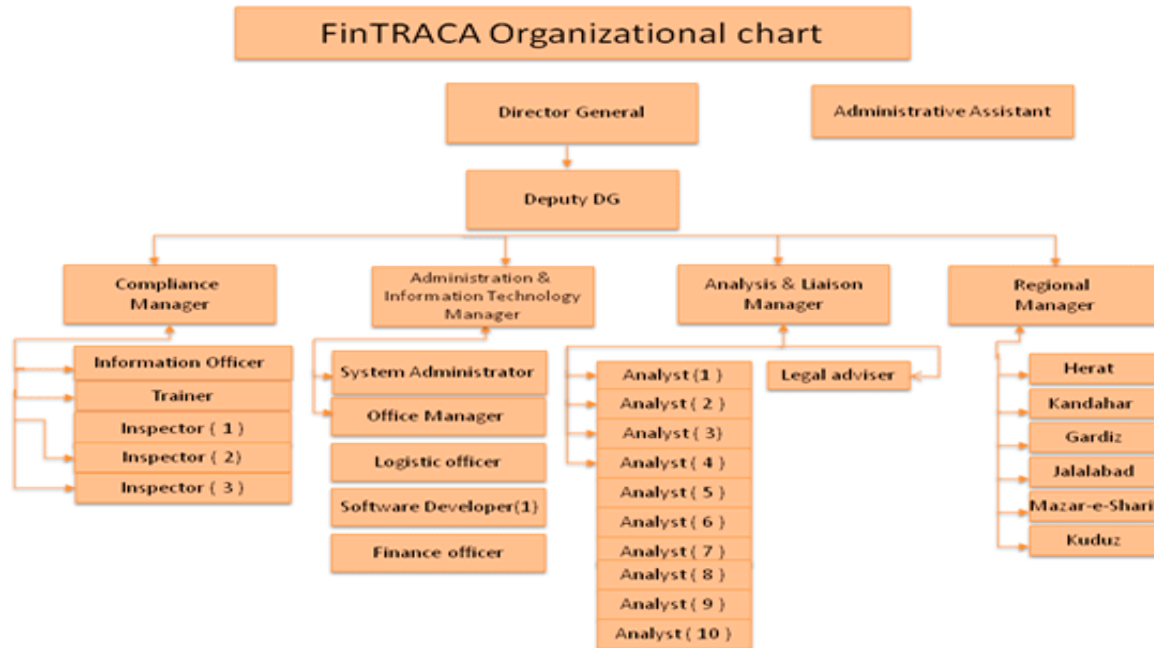
317. FinTRACA representatives mentioned that it usually takes them one week at the most to answer foreign requests. The assessment team was not able to verify this since no information or statistics on the number of replies were provided.

Adequacy of Resources – FIU (R. 30)

318. FinTRACA's organization chart shows four main sections, namely:

- Administration and IT Section: FinTRACA has six zonal officers who are responsible for technical expertise, outreach and awareness on the AML/CFT aspects of licensing and reporting of the MSPs in the provinces in addition to the implementation of the CNBIRs;
- Compliance Section: responsible for ensuring compliance and implementation of AML & CFT policies and procedures by the reporting institutions. The sole employee of this section inspects the banks to check whether all the STRs and LCTRs were filed properly;
- Analysis Section: involved in the analysis of reports received from various reporting entities. The section has four analysts and one law enforcement officer responsible to deal with dissemination of cases and other relevant information;
- Regional Manager Section: responsible for the development and maintenance of the internal networking and the overall software development of FinTRACA's databases. This section also handles the day-to-day administration and stationary issues.

319. The following chart shows the structure and staffing of FinTRACA. Not all the positions shown in the chart have however been filled:



320. At the time of the onsite visit, FinTRACA had a Director General who was appointed in 2009, the Manager for the Analysis and Liaison Unit and four analysts, two regional managers (one for Jalalabad and one for Kunduz), one IT expert and one compliance officer. The assessment team was informed that FinTRACA is planning to recruit other staff upon moving to the new premises.

321. The low percentage of STRs disseminated (6.6%) and high percentage of pending cases (26.7%) may indicate that the Analysis Section, composed of four analysts who sometimes also conduct tasks other than those linked to the analysis of STRs, is not adequately staffed. (See information under statistics).

322. The assessment team was informed that the FinTRACA staff are, in addition to performing the FIU's traditional functions of receiving, analyzing and disseminating STR and other information, involved in (i) licensing MSPs; (ii) conducting compliance visit to banks to ensure the quality and quantity of STRs, LCTRs; (iii) assisting Customs in implementing the requirements under Article 6 of the AML LD to ensure receiving CNBIR; (iv) transmitting (in 3 instances) the UNSCR lists to banks; (v) developing internal software; (vi) imposing sanctions on non compliant reporting entities for non compliance with AML/CFT requirements; and (vii) answering requests from domestic LEAs and assisting the High Office of Oversight in asset verification of public officials.

323. FinTRACA's annual budgets for 2006 and 2008 were not separate from the DAB budget. The salaries of staff are still being determined and paid by the DAB. An independent budget has been allocated to FinTRACA since 2009 (around US\$200.000 per year). Other costs (i.e. rent of the new premises; development of a fiber optic network; salaries of two senior staff) are covered by foreign donors.

324. The average salary of FinTRACA staff is much lower than the average for similar functions in the private sector. For this reason, several employees have left FinTRACA to work for banks, which is creating a problem of resources for FinTRACA.

325. Several softwares have been developed internally by FinTRACA and are available to the analysts:

- FinTRACA's Management and Analytic System collects the STRs, LCTRs and CNBIRs received and provides the analyst with the capacity for data mining;
- The I2 enables the visualization of transactions;
- The Index search helps detect missing information in STRs;
- The Working Tracking System follows the progress of analyzed cases;
- The List Management and Matching system matches the names of public agencies officials (i.e. ministries, banks) with the information contained in FinTRACA's database.

326. FinTRACA has developed job descriptions for every position. When vacancies are announced, specific standards like education, skill sets, experience and expertise, are outlined in the job description. According to the authorities, although there are no clear written rules on the matter, prior to being hired a future employee must:

- Undergo criminal record and other checks through the proper channel in the Ministry of Interior (MOI);
- Undergo a medical checkup;
- Evidence his/her educational qualifications by means of certification from the Education Ministry and Higher Education Ministry.

327. FinTRACA employees, when hired, must sign a confidentiality agreement. However, no code of ethics for the DAB or FIU employees has been developed.

328. There are different types of trainings given to FinTRACA staff by various international agencies and organizations such as the World Bank, IMF, APG, EAG, and the US Treasury. Training sessions abroad have also been made available to FinTRACA. The training provided so far covered issues such as basic understanding of an FIU, basic and advanced analysis techniques, national and international cooperation, risks posed by NGOs, and preparation in view of the AML/CFT mutual evaluation of countries. Some of examples of workshops to which FinTRACA staff took part are indicated below:

Training title	Place	Organizer
AML & CFT standards	Kabul, Afghanistan (DAB)	World Bank
Financial analysis techniques	Delhi, India	US Treasury
AML & CFT standards	Beirut, Lebanon	IMF
Banking Supervision	Jakarta, Indonesia	APG & World Bank

Statistics (R.32)

329. FinTRACA maintains comprehensive statistics of STRs and LCTRs which are available in FinTRACA's database.

330. Number of STRs reported by banks:

	2007	2008	2009	2010	Total
Total	3	35	267	369	684

331. Of the 648 STRs received:

- 21 STRs (i.e. 3.3% of the total) were disseminated to LEAs;
- 455 STRs (i.e. 70% of the total) were archived;
- 173 STRs (i.e. 26.7% of the total) are still being analyzed.

332. As mentioned above, so far, the other reporting entities have not filed STRs.

333. Number of LCTRs reported by banks:

	2006	2007	2008	2009	2010	Total
Total	34,939	199,811	286,968	575,813	668,193	1,785,808

334. FinTRACA disseminated twenty one cases to the AGO, which, however, refused to launch an investigation, citing lack of evidence. These cases were forwarded to the MCTF and SIU for further evidence gathering. None of these cases were sent to the AGO by the MCTF or the SIU yet since they are still under investigation and some have been classified.

335. FinTRACA does not review periodically the effectiveness of the system to combat money laundering and terrorist financing.

Analysis of effectiveness

336. FinTRACA became operational and is receiving STRs and LCTRs from banks and reports from customs. It disseminated several reports to the prosecutor and exchanged information with LEAs. It also became an Egmont Group member and exchanged information with several counterparts.

337. However, The fact that the AML LD is still pending final Parliamentary approval five years after having been transmitted to the National Assembly raises serious concerns about Afghanistan's commitment to AML/CFT. This means that the entire AML/CFT framework could be deprived of a legal basis if Parliament were to reject the decrees.

338. In addition, FinTRACA is currently receiving STRs only from banks related to a limited geographical area. None of the other non-bank financial institutions or DNFBPs has filed a suspicious transaction report.

339. Article 38 of the AML LD allows FinTRACA to disseminate financial information to the AGO for investigation or action when there are grounds to suspect money laundering and financing of terrorism reported by financial institutions. However, this power does not extend to financing of terrorism cases reported by DNFBPs.

340. Overall, and as mentioned under criterion 26.3, FinTRACA does not appear to have the appropriate level of access to administrative and law enforcement databases to properly undertake the analysis of STRs. It is conducting a preliminary tactical and operational analysis but does not conduct strategic analysis.

341. FinTRACA usually obtains additional information directly from banks. It has never requested information from other non bank financial institutions and DNFBPs as it has never received an STR from any DNFBPs.

342. As discussed above, FinTRACA disseminates money laundering related financial information to the AGO who forwarded them to LEAs for further investigation. Thus far, none of the reported cases has led to a prosecution. As of February 2011, FinTRACA has made 386 disseminations related to 1241 persons in response to requests from law enforcement agencies. These requests went to nine law enforcement agencies, namely the NDS-MCTF and MOI-MCTF, SIU, CNPA, MOF- Revenue Service, AGO, Interpol, HOO, NDS 74.

343. FinTRACA's authority to share information as set forth in Article 26, paragraph 3 of the AML LD should be consistent with the general scope of the AML LD. It is not clear, however whether the scope of the AML LD allows for reactive dissemination since it is not expressly stipulated. In addition, by sharing the information with law enforcement agencies, FinTRACA places a high burden of work on its staff and distracts analysts from their responsibility to analyze STRs.

344. FinTRACA's budget does not seem to be sufficient considering notably that 50 percent of FinTRACA's operating expenses are covered by foreign donors. This fact raises questions about the sustainability of the FIU's operations FIU and FinTRACA's operational independence given the high probability that donor assistance will diminish, if not be entirely cut off, in the future. In addition, it seems that some decisions are signed by the Governor of DAB and not FinTRACA's director.

345. FinTRACA did not publish periodically annual reports, typologies and trends of money laundering and terrorist financing. No periodic review of the AML/CFT system's effectiveness has been conducted to date.

346. As discussed above, in-depth training on operational and strategic analysis is still needed for analyst.

2.5.2. Recommendations and Comments

347. The authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis to ensure that the establishment and functions of FinTRACA are grounded on a sound legal basis;
- Provide FinTRACA with the power/authority to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect terrorist financing reported by non-banks FI and DNFBPs;
- Ensure that FinTRACA raises awareness on the reporting requirement among all reporting entities and in particular provides money exchange dealers and DNFBPs with guidance regarding the manner of reporting, including the procedures to be followed when reporting;
- Ensure that FinTRACA asks non-bank financial institutions and DNFBPs for additional information;
- Ensure that FinTRACA (i) enhances the depth and quality of its STRs analysis, in particular by granting it access to the necessary financial, administrative and law enforcement information and enabling it to request on regular basis additional information from reporting entities; (ii) undertakes more in-depth tactical, operational and strategic analysis;
- Ensure that FinTRACA establishes mechanisms for cooperation with regulators, supervisors, reporting entities and law enforcement authorities to optimize its analysis and establishes an information flow that remains confidential while enhancing FinTRACA's analysis capacity;
- Enhance the coordination between FinTRACA and LEAs to whom it disseminates its reports so they can investigate and send the evidence to the AGO;
- Enhance FinTRACA's independence by securing its independent budget that takes into account its increasing financial needs. Also, provide FinTRACA with adequate funding and staff to enable it to perform its functions effectively;
- Ensure that FinTRACA periodically reviews the effectiveness of the system to combat money laundering and terrorist financing;
- Ensure that FinTRACA publishes annual reports, typologies and trends of money laundering and terrorist financing;
- Ensure that FinTRACA provides additional specialized and practical in-depth training to its employees. This training should cover, for example, predicate offenses to money laundering, analysis and investigation techniques and familiarization with money laundering and terrorist financing techniques, and other areas relevant to the execution of the FIU's functions;
- Due to its limited resources (funding and staff), FinTRACA should allocate most of its budget and staff to the execution of its core functions.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	PC	<ul style="list-style-type: none"> • The AML framework, including the reporting requirements, is not enforceable on the whole territory. • Absence of guidance regarding the manner of reporting to money exchange dealers and DNFBPs. • Absence of a legal basis to disseminate financial information reported by DNFBPs to AGO for investigation or action when there are grounds to suspect terrorist financing. • Limited direct or indirect access to administrative and law enforcement information. • Weak quality of tactical and operational analysis and absence of strategic analysis of STRs and other information. • Lack of adequate staffing. • Uncertainty about FinTRACA's operational independence due mainly to the reliance on external donors financing for a significant part of its budget. • No publication of periodic reports that include statistics, typologies and trends as well as information regarding FinTRACA activities.

2.6. Law enforcement, prosecution and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27, & 28)

2.6.1. Description and Analysis

Legal Framework

348. Article 134 of the Constitution stipulates that “discovery of crimes is the duty of the police and investigation and prosecution are conducted by the Attorney’s Office in accordance with the provisions of the law. The Attorney’s Office is part the Executive branch, and is independent in its performances. The structure, authority, and activities of the Attorney’s Office are regulated by law. Discovery and investigation of crimes related to the armed forces are regulated by a special law.”

349. Police Law no. 862 of 2005; Counter Narcotics Law of 2005; Customs Law 2009 Presidential decree no. 153 of 1366 on crimes against internal and external Security.

Designation of Authorities ML/FT Investigations (c. 27.1):

350. Some law enforcement agencies like the ANP were established before the issuance of the AML and CFT LDs and others were newly created in an attempt to reinforce the investigation in the predicated crimes, money laundering and terrorist financing. New agencies are the Major Crimes Task Forces (MCTF), SIU and IIU that were established within the Ministry of Interior (MOI), the

National Directorate of Security (NDS), the Anti-Corruption Unit of the AGO. Most of these agencies were set up with the assistance of foreign donor countries.

351. The MOI and the Attorney General's Office (AGO) are the primary financial enforcement and investigative authorities. The NDS and the Afghanistan Customs Department (ACD) at the MOF also have powers to investigate crimes.

352. The Afghan National Police (AFP) has two divisions responsible for AML/CFT, namely the Criminal Investigation Department (CID) in charge of investigating money laundering and the Counter Terrorism Unit (CTU) in charge of investigating terrorist financing cases.

353. The Sensitive Investigation Unit (SIU) which operates under the supervision of the deputy office for Counter Narcotics at the MOI is an intelligence unit involved in investigating drugs smuggling and related money laundering. There is no specific decree that establishes the unit. It was created based on Article 134 of the Afghan Constitution. It does not have an independent budget. It has been mainly funded and its staff trained by the US Drug Enforcement Administration. In total, the SIU has investigated 23 money laundering cases related to proceeds of drugs, and, in the course of these investigations, requested financial information from FinTRACA. The SIU is also present at the KIA to control smuggling.

354. The Intelligence and Investigation Unit (IIU) which operates under the supervision of the deputy office for Counter Narcotics at the MOI does not have investigative power but conducts undercover operations in drug trafficking, corruption, money laundering and terrorist financing cases. It has no independent budget and is funded by the UK SOCA.

355. The MCTF currently has two branches, one embedded within the MoI and the other within the NDS. The MCFT at the MOI under the supervision of the deputy office for Counter Narcotics was involved in several money laundering and terrorist financing and predicate crimes investigations. Also, the ACD has powers to investigate cases of smuggling.

356. The NDS is also competent in investigating major crimes and money laundering and terrorist financing cases.

357. As mentioned above, these agencies have the power to investigate money laundering and terrorist financing. However, there is no mechanism to coordinate the various agencies' work to ensure effective implementation of AML/CFT measures to counter the very serious money laundering and terrorist financing threats in Afghanistan. This impedes the development and implementation of coordinated policies to systematically prevent, investigate and prosecute money laundering and terrorist financing as well as freeze and seize launderers and terrorist's assets, monitor cash couriers, protect alternative remittance systems from abuse and to ensure that NPOs are not misused for terrorist financing. Coordination and cooperation between law enforcement agencies is undertaken for some high-profile cases. However where the predicate offenses span the mandate of more than one agency, it is unclear how issues of overlapping jurisdictions will be resolved for day to day operations.

Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):

358. While the authority to postpone or waive the arrest of suspected persons is not expressly found in laws or other texts, law enforcement and prosecutorial authorities do have recourse to these measures in practice. Decisions to arrest or seize, or to do both, are issued based on Article 45 of the AML LD. According to the authorities, they are subject to tactical considerations and can be postponed to enable further investigations or to avoid interfering with the prosecution of a crime.

359. According to Article 45, paragraph 3 of the AML LD, “the authority may, by substantiated ruling issued at the request of the [...] judicial authority competent to investigate the predicate and money laundering offences and carrying out such operation, delay the freezing or seizure of the money, or any other funds and property or advantage, until the inquiries have been completed and, if necessary, order specific measures for the safe keeping thereof.” The law enforcement agencies mentioned that they often use this technique in drug trafficking cases. However, it does not appear that they use it for money laundering and terrorist financing cases as well.

Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):

360. According to Article 44 of the AML LD, for the purpose of obtaining evidence of the predicate offense and evidence of offenses provided for under the LD, the judicial authorities may order for a specific period: (i) the monitoring of bank accounts and the like; (ii) access to computer systems, networks and servers; (iii) The placing under surveillance or tapping of telephone lines, facsimile machines, or electronic transmission or communication facilities; (iv) The audio or video recording of acts and behavior or conversations. The judicial authorities may also order the seizure of, or obtaining of information about, notarial and private deeds, or of bank, financial and commercial records. However, these operations are only possible only when there are “strong grounds for suspecting that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons suspected of participating in” money laundering or a predicate offense.

361. Pursuant to Article 45 of the AML LD “(1) no punishment may be imposed on competent judicial authority who, for the sole purpose of obtaining evidence relating to offenses referred to in the AML LD, perform acts which might be construed as elements constituting any of the money laundering offenses; (2) The authorization of the competent judicial authority should be obtained prior to any such operation. A detailed report must be transmitted to the relevant authority upon completion of the operation; and (3) the authority may, by substantiated ruling issued at the request of the competent judicial authority competent to investigate the predicate and money laundering offenses] carrying out such operation, delay the freezing or seizure of the money, or any other funds and property or advantage, until the inquiries have been completed and, if necessary, order specific measures for the safe keeping thereof.” According to this text, these powers are limited to *judicial* authorities and do not extend to other LEAs.

362. While such techniques have not been used to date in the investigation of money laundering or terrorist financing, they have been used to investigate the predicate offenses (in particular, drug trafficking and smuggling).

363. The AML LD mentions wire tapping as one of the measures that may be ordered by the courts for the purpose of obtaining evidence on the money laundering offense or its predicates

(without restriction) (Article 44). The validity of information obtained by wire tapping, however, is unclear: Judges of the Supreme Court met during the assessment considered that the information collected through wire tapping constituted “strong evidence” in a trial for terrorism, terrorist financing or drug-related offense, but “weak evidence” in cases of alleged corruption. Moreover, the authorities mentioned that a high level official suspected of having accepted bribes was arrested on the basis of recorded telephone conversations, and that the charges against him were subsequently dropped on the grounds that Afghan law “prohibits” wiretap evidence in corruption cases.

Additional Element—Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):

364. The MCTF, the SIU and the NDS, which are the competent authorities in investigating and collecting information related to money laundering and terrorist financing offenses, reported that they make regular use of special investigative techniques. No statistics are kept on the use of these techniques for combating money laundering, terrorist financing and the underlying predicate offenses.

Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):

365. To date, authorities have not considered putting in place specialized investigation groups for conducting multi-national cooperative financial investigations.

366. On the national level, the cooperation between the MCTF, SIU, IIU and NDS takes place at the deputies’ minister of interior level meetings thus ensuring in some major cases co-operation and information sharing among law enforcement and other competent authorities.

Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):

367. Money laundering and terrorist financing methods, techniques and trends are not reviewed by law enforcement authorities on a regular, interagency basis. No analysis or studies have been conducted or disseminated.

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

368. Article 16 to 19 of the Police Law states that in normal cases, the police may resort to body search of a person if : (1) that person is arrested and held in custody; (2) there is evidence proving that he/she possessed items to be confiscated; (3) he/she fails, or does not want, to present identifying documents; (4) there is evidence proving that he/she possesses items that will pose a danger, or whose possession is illegal; (5) the police is uncertain about the identity of the stopped person; or (6) provided for by the law in other cases. The body search of a woman must be performed by a policewoman or a female who is assigned to the police.

369. No additional provisions grant LEAs with the power to compel production, search premises and seize and obtain necessary documents for the financial investigation from FIs and other businesses or persons were found in the relevant laws.

370. In practice, LEAs rely on FinTRACA’s access to financial information to identify suspected assets. They made 386 requests for information to FinTRACA related to 1241 persons. These requests came from nine Law Enforcement Agencies, namely the NDS-MCTF and MOI-MCTF, SIU,

CNPA, MOF- Revenue Service, AGO, ANP, HOO, NDS. The AGO do not conduct financial investigation frequently.

Power to Take Witnesses' Statement (c. 28.2):

371. The AGO has the power to summon witnesses, hear their testimony, and discuss with them all matters related to the alleged crime when this is beneficial for the investigation. Article 37 of the Interim Criminal Procedure Code is applicable to all investigations and claims related to money laundering as well as to the underlying predicate offenses and all related procedures.

Statistics (R.32)

372. Several agencies informed the assessment team that they conducted few money laundering and/or financing or terrorism investigations. However, no consolidated statistics were provided regarding the number of money laundering and terrorist financing cases investigated by different LEAs.

Adequacy of resources – LEA (R. 30)

Funding

373. LEAs operating expenses are mostly covered by external donors. This fact raises questions about the sustainability of their operations and independence given the high probability that donor assistance will diminish, if not be entirely cut off, in the future.

Training

374. The different LEAs have received various types of training both in and out of the country: FinTRACA conducted trainings for the AGO, judges and the CNPA; the World Bank gave a three-phase course to some of the law enforcement agencies on money laundering and terrorist financing methods; the US Department of Treasury conducted a one week training focused on financial investigative techniques for LEAs and for judges; and the UK Government trained the AGO.

375. The level of training of LEAs' officers, including prosecutors and judges, and their ability to deal with complex cases is still not sufficient. They need to receive in-depth money laundering and financing of terrorism training i.e. on the scope of predicate offenses, money laundering and terrorist financing trends and typologies, techniques to investigate and prosecute these offenses and techniques for tracing property that is the proceeds of crime or is linked to finance terrorism.

Analysis of Effectiveness

376. Several agencies were established to create a new framework to fight against the main asset generating crimes and money laundering. They include the Major MCTF, SIU and IIU that were established within the Ministry of Interior, the NDS, and the Anti-Corruption Unit of the AGO. Several LEAs were set up with the assistance of foreign donor countries, most of which still ensure a presence for training purposes.

377. A challenge that the authorities face throughout the various phases of law enforcement action (investigation, prosecution and trial) is the lack of clarity in criminal procedure matters and in the type of evidence that is necessary to secure a conviction. Procedural elements are spread out in various texts, not all of which were provided to the assessment team (see under recommendations 1 and 2 for more detail), and, as indicated in the case of wire tapping above, seem to be given different interpretations from one case to another.

378. Overall, the criminal process seems both cumbersome and slow, particularly at the level of the AGO. While this may be explained in part by the lack of clarity in criminal procedure, other factors may play a role, such as the lack of sufficient expertise in criminal financial matters (despite the provision of training), and the lack of coordination between the various authorities that are in charge of investigating money laundering and terrorist financing cases.

379. Additionally and as mentioned under Recommendation 26 (criterion 26.5 and analysis of effectiveness), none of the reported cases led to prosecution due to the lack of understanding between FinTRACA and the AGO. The level of evidence required by the AGO to start a judicial investigation is not clear to FinTRACA and LEAs. The AGO forwarded the cases to other law enforcement agencies for further collection of evidence.

380. At the time of the assessment, money laundering had been investigated in some instances, rarely prosecuted, and had not been referred to the courts. Again, there may be several reasons for this, notably the following:

- Lack of coordination between newly established authorities mentioned above (i.e. NCTF, NDS) and absence of coordinated policies to fight money laundering and the financing of terrorism;
- While the AML LD allows for money laundering and terrorist financing convictions based on the laundering of property generated by any criminal activity, and does not require a conviction for the predicate crime, there seems to be little appreciation for the fact, in many instances, money laundering is conducted by the perpetrator of the predicate crime;
- It appears that the LEAs concentrate their investigations solely on the predicate crime and do not follow its proceeds to examine potential money laundering activity;
- Further, in discussions with the AGO and the Ministry of Interior, it became clear that LEAs are under the belief that money laundering cases can only be generated by STRs and not by separate law enforcement actions. In practice, however, experience has shown that most money laundering cases are developed through the vigorous investigation of the predicate crimes and by following the proceeds generated from those crimes; more importantly, money laundering crimes must be pro-actively investigated, using such techniques as undercover operations and the use of electronic surveillance;
- Although all law enforcement entities have received training on money laundering typologies, there is a startling belief among the authorities that Afghanistan is not vulnerable to money laundering.

381. In conclusion, it appears that the investigatory framework of Afghanistan is not effective in the fight against money laundering and terrorist financing.

2.6.2. Recommendations and Comments

382. In order to comply fully with Recommendations 27 and 28, the authorities are recommended to:

- Appoint and adequately resource dedicated financial investigators to deal with (i) asset based investigations allied to the predicate crimes within their jurisdiction - including terrorism; (ii) money laundering and or terrorist financing allied to the predicate crime;
- Investigate money laundering and or terrorist financing as a standalone crime irrespective of whether the source of information emanates from the FinTRACA or any other source;
- Provide AML/CFT training to all investigative agencies at senior level and in particular for all dedicated financial crime investigators;
- Improve the LEAs' understanding of ML and TF risks and develop a national strategy addressing such risks and deploy the staff accordingly;
- Use more frequently special investigative techniques such as the controlled delivery to detect and investigate predicate crimes;
- Although not specifically required under the standard, in order to avoid duplication of efforts by LEAs, enhance dialogue amongst the competent LEAs and increase the effectiveness of investigations into money laundering or terrorist financing cases. In addition, introduce the concept of 'lead-agency' of multi agency working on cross-cutting crimes relating to money laundering and/or terrorist financing issues that could greatly improve the overall effectiveness of the AML/CFT regime.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> • Lack of effectiveness due to the limited use of investigative powers in money laundering and terrorist financing cases and to the fact that the rule of law is not upheld on the entirety of the Afghan territory. • Whilst there are legal provisions to wave or postpone seizure of funds, little evidence was produced to show this was actually done in practice. • There is no evidence of standalone investigations into money laundering or terrorist financing. Those investigations that have taken place are generally associated with overt proceeds from the principal involved in the predicate crime. • Law Enforcement action against money laundering and terrorist financing is not effective. A general misunderstanding of investigative powers across all investigative agencies and the MOI contribute to the

		lack of investigations into money laundering and terrorist financing, and a lack of coordination between different competent law enforcement agencies.
R.28	PC	<ul style="list-style-type: none"> • Lack of effectiveness due to the limited use of investigative powers in money laundering and terrorist financing cases and to the fact that the rule of law is not upheld on the entirety of the Afghan territory. • Access to financial information by LEAs is limited and is not timely. • Lack of complete statistics has prevented assessors from fully evaluating the effectiveness of this recommendation.

2.7. Cross-Border Declaration or Disclosure (SR.IX)

2.7.1. Description and Analysis

Legal Framework

383. Article 6 of the AML LD requires any person leaving or arriving in Afghanistan to declare an amount equivalent to Af 1,000,000 (approximately US\$20,000) in cash or negotiable bearer instruments. The decree includes Customs personnel among the list of officers authorized to implement the section of the AML LD on cross-border declarations and disclosure; police officers and employees of the Financial Intelligence Unit are also listed among the authorized officers. According to the legislative decree, a failure to declare is punishable by a fine equivalent to the amount being carried.

384. Customs derives its authority at the border from the Customs Law of 2005, enacted pursuant to Article 42 of the Afghan Constitution. This law focuses exclusively on the movement of goods across borders and does not make direct reference to the transportation of currency or negotiable bearer instruments.

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

385. Article 6 paragraph 1 of the AML LD stipulates that any person bringing in or taking out an amount equivalent to or exceeding Af 1,000,000 (around US\$20,000) in cash or bearer negotiable instruments must report the fact through a written declaration to the proper authorities. The decree defines bearer negotiable instrument as a “writing representing a promise to pay money, (including bills of exchange, promissory notes or certificates of deposit) which may be payable to the bearer.” The decree does not include travelers’ checks, incomplete instruments that are signed but omit the payee’s name, and negotiable instruments in a form that would allow the title to pass upon delivery.

386. The currency and negotiable bearer instruments (CNBIR) disclosure form must be filled out in the event that a person is carrying over the prescribed amount in currency or bearer negotiable instruments, has made a false declaration, or is suspected of money laundering or financing terrorism. The CNBIR form in its original is comprised of three copies, one of which remains with the person declaring the currency, another copy retained is by Customs and is then sent to FinTRACA on a monthly basis. Customs official at International Airport (KIA) accumulate regular disclosures over a

period of a month and then send them on to FinTRACA. A third copy is kept with Customs at the airport. According to the Kabul KIA Customs Director, two more photocopies of the form are made and distributed to the NDS and Interpol, both of which are present at the border crossing at KIA.

387. Enforcement of the cross border currency declaration regime is limited to persons departing from KIA. The Customs authorities at KIA stressed that the outbound declaration regime is being applied to all departing passengers; however, other officials indicated that the requirement is not applied to “VIP passengers” departing from KIA. Furthermore, the Customs authorities are only screening passengers and not luggage, cargo or mail.

388. The declaration regime is not applied to arriving passengers at KIA, nor to persons entering or existing Afghanistan at any other official border crossing.

Request Information on Origin and Use of Currency (c. IX.2):

389. Customs and other authorized officers at the border, upon discovering a failure to declare or a false declaration, do not have clear authority to obtain further information on the origin and intended use of the funds and bearer instruments. The CNBIR Declaration form includes fields on the origin and intended use of funds and bearer instruments, however there is no provision in the decree that obliges the passenger to disclose this information.

390. Article 6 paragraph 1 of the AML LD, which, as mentioned above, obligates any person leaving or arriving in Afghanistan to complete a CNBIR form in the event that they are carrying over Af 1,000,000 in cash or bearer negotiable instruments and stipulates sanctions only when the person fails to make a declaration; the Article is silent on the application of sanctions in the event of a false declaration.

Restraint of Currency (c. IX.3):

391. Article 6 of the AML LD gives the “authorized officer” the power to stop or restrain currency or bearer negotiable instruments in the case of a false declaration or suspicion of money laundering or terrorist financing. The language of Article 6 maintains some ambiguities as to who precisely is authorized to conduct searches, in some cases mentioning not only the “authorized officer,” but also an “authorized officer, and any person assisting such an officer.” Without elaborating further as to who or which agency would supply the assisting officer. These ambiguities could in part be leading to the confusion with respect to implementation of the declaration requirement at the KIA border crossings. Additionally, there are no provisions, which indicate a period of time for which an authorized officers can restrain currency or a bearer negotiable instrument for the purpose of determining whether or not evidence of money laundering or terrorist financing may be uncovered.

392. The assessment team learned that in practice, Customs authorities with the assistance of NDS and police officers present at the airport restrain the currency and arrest the carrier in the event of a false declaration, suspicion or due to a lack of proper documentation allowing for the transportation of currency out of Afghanistan. The individual and the seized currency are handed over to the police then to the AGO after completing a CNBIR form with Customs.

393. KIA Customs authorities stressed that to legally transport currency or bearer negotiable instruments in excess of Af 1,000,000, an authorization letter must be obtained from the Central Bank. According to them, this letter serves as a validation of that fact that the origin of the funds being transported is licit. However, no provision of Afghan law requires a courier of currency to obtain an authorization letter from the Central Bank. Moreover, according to FinTRACA, the DAB had never issued such an authorizing letter and has no intention of pursuing an authority to do so.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4):

394. CNBIR forms are retained by Customs, the FIU, the person making the declaration, NDS and Interpol in the event that the amount carried exceeds the prescribed threshold, a false declaration was made, and when there is a suspicion of money laundering or terrorist financing.

Access to Information by FIU (c. IX.5):

395. According to Article 6, paragraph 7 of the AML LD, the FIU receives hard copies of all CNBIRs from Customs authorities located at KIA on a monthly basis. The FIU shared with the assessment team physical copies of the CNBIR reports received during the course of 2010 from Customs officers at KIA. According to the FIU Director, 95 percent of all CNBIRs collected at KIA are for disclosure of cash exceeding the legally prescribed limit. Four Kabul-based MSPs are serving as the primary couriers of currency out of KIA and the agents of those MSPs are the individuals filling the vast majority of CNBIR at KIA. The decree stipulates that the FIU should receive CNBIRs within 5 days of a seizure being made by authorities at the border. In practice, the assessment team learned that the presence of an official from the FIU at KIA facilitates its direct involvement at the time that Customs makes a seizure of currency and thus ensures the FIU's receipt of a copy of the declaration.

Domestic Cooperation between Customs, Immigration, and Related Authorities (c. IX.6):

396. Despite the presence of a multitude of law enforcement authorities at KIA, there is no clear indication either in the AML LD or in practice that this facilitates adequate cooperation and information sharing between all the relevant authorities. For instance, Article 6, paragraph 2 lists three distinct 'authorized officers', while Article 6 paragraph 6 makes reference to an "authorized officer, and any person assisting such an officer." The array of Afghan government agencies at KIA are assisted by a security firm, which has the primary responsibility for screening all persons coming into the airport, and foreign government mentors, who are providing assistance geared towards increasing the technical expertise and capacity of the Afghan authorities.

397. Based on the information provided, the assessment team concluded that Customs authorities at KIA are sharing information with the FIU in a timely manner, as prescribed by the AML LD. Customs also appears to have a working relationship with other law enforcement agencies present at the border, involving them in case of a false or suspicious CNBIR and the detention of a person transporting currency. According to KIA Customs authorities, a copy of a CNBIR is provided to the FIU, NDS, and Interpol, all of which are present at KIA.

398. The information sharing channel between Customs and the FIU was abruptly shut down in late 2009 when an MOU between the Ministry of Finance and DAB was dissolved. According to the Customs and the FIU, the MOU between the two agencies was in place in order to facilitate information sharing on cross-border currency declarations and bearer negotiable instruments at KIA. The MOU also clarified responsibility of the FIU and Customs at the KIA border crossing, where the presence of numerous authorities creates confusion and fragmentation in the implementation of the legal regime. According to Customs, the MOU expired in late 2009 and therefore had to be renegotiated. However, the authorities at the FIU stated that the MOU was cancelled by the MOF due to a disagreement over which agency holds the responsibility for the collection of CNBIRs and retention of currency in the event of a false declaration at KIA. The dissolution of the MOU precluded Customs from sending copies of CNBIRs to the FIU for the month-long period while the MOU was being renegotiated. A new MOU came into force in early 2010, according to both the FIU and Customs.

399. Given the need for the operational independence of the FIU from the Central Bank, an MOU between the DAB and MOF governing the activities of the intelligence unit raises concerns as it may potentially afford the DAB operational control over FinTRACA. The assessment team has requested a copy of the original and current MOU, but has not received dated and signed copies of the documents.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

400. The Customs authorities at KIA stressed that they were not responsible for coordinating international cooperation and stated that their understanding was that Interpol, which is also present at KIA and receives a copy of CNBIRs, handles international requests. Authorities could not comment on whether or not any such requests for cooperation had been received or issued by Afghan authorities or the nature of cooperation with Customs authorities in jurisdiction such as the United Arab Emirates, Pakistan and Iran.

401. FinTRACA engages in international cooperation through the Egmont Group of FIUs. The assessment team is not aware of any requests for international cooperation based on a CNBIR.

Sanctions for Making False Declarations/Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8):

402. A failure to declare currency or bearer negotiable instruments in the amount equal to or exceeding Af 1,000,000 (around US\$20,000) upon entry or departure from Afghanistan is punishable by a fine equal to the value of the currency or bearer negotiable instrument being transported. The AML LD does not explicitly make reference to sanctions in the event of a false declaration. The existing sanctions regime on cross-border declarations does not appear to be effective, dissuasive and proportionate.

403. Neither Customs authorities and nor the FIU were not able to provide statistics or relay anecdotally any incidents when this statute of the AML LD has been applied. However, both the FIU and Customs stated that in practice, a false declaration or a failure to declare currency at KIA has resulted in the seizure of the currency and the arrest of the person carrying the funds. In one instances relayed to the assessment team by authorities, three outbound passengers were arrested for a failure to

declare and the currency they were transporting was seized. At the outset of the investigation, the currency was moved to the DAB for safe-keeping and FinTRACA proceeded with an investigation based on the CNBIR completed at the airport. In the course of the investigation, it was discovered that the passengers had not paid taxes on the money they were transporting out of Afghanistan, which was apparently earned through legitimate business activities. After paying the MOF the back taxes on the US\$1,000,000, the couriers and the currency were released.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

404. Customs, as well as the FIU and police officers, have the authority under the AML LD to seize the currency or bearer negotiable instrument in the event that the funds are suspected of being tied to money laundering and financing of terrorism. In practice, Customs seizes the assets and arrests the carrier of the currency, reports the incident to the FIU and transfers the individual to NDS for further investigation. The assessment team does not have any evidence that the sanctions have ever been applied in accordance with the decree, nor that Afghan law enforcement has pursued an investigation into money laundering or terrorist financing in connection to assets seized at KIA.

Confiscation of Currency Related to ML/TF (applying c. 3.1-3.6 in R.3, c. IX.10):

405. Article 6 paragraph 6 of the AML LD authorizes the police, Customs and the FIU to seize currency or bearer negotiable instruments that are suspected to be tied to a “covered offense.” The report of such seizure should be reported to the FIU, which is supposed to analyze the case and disseminate it to the AGO for prosecution in case of suspicion of money laundering or terrorist financing.

Confiscation of Currency Pursuant to UNSCRs (applying c. III.1-III.10 in SR III, c. IX.11):

406. In the absence of officially established mechanisms for disseminating the UNSCRs lists to the relevant authorities, Customs authorities at KIA are not receiving this list and could not verify that in practice the names of travelers are checked against the various UN sanctions lists. Customs does not have explicitly stated legal authority to freeze the assets of UNSC-listed individuals. (See discussion in section 2.4 of the report for additional information on the legal framework and the implementation of SR III).

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

407. Afghanistan does not appear to have a formal system in place for its Customs services to identify unusual cross-border movements of gold, precious metals or precious stones and to notify their counterparts in other countries of these movements. The assessment team was not able to determine whether Customs or other competent authorities have ever notified any country of such a movement or if they cooperate with foreign Customs agencies with a view toward establishing the source, destination, and the purpose of the movement of such items in order to take appropriate action.

Safeguards for Proper Use of Information (c. IX.13):

408. There do not appear to be any procedures in place safeguarding information with respect to cross-border currency declarations at KIA. In fact, quite the opposite appears to be the case in practice; as the Customs authorities at KIA indicated to the assessment team, the original CNBIR form is made of three carbon copies, one to be retained with Customs, one to be sent to the FIU and the third to be retained by the passenger. Apparently, upon completion of the form by the traveler, the form is photocopied in order to distribute it to the other law enforcement agencies present at KIA. This deviates from advisable practices; the carbon copies of the CNBIR should remain just with Customs, FinTRACA and the passenger. Upon analysis of the information recorded in the form, the corresponding report should be disseminated to law enforcement, in the event of evidence of money laundering or terrorist financing.

Training, Data Collection, Enforcement and Targeting Programs (c. IX.14):

409. No training specific to the implementation of cross-border currency declarations has been provided, with the exception of the training offered by FinTRACA on the proper method for filling out CNBIRs.

410. No official data collection appears to be taking place and enforcement is limited.

Additional Element—Implementation of SR.IX Best Practices (c. IX.16):

411. The authorities have not given consideration to the implementation of the measures set out in FATF International Best Practices Paper on Cross Border Transportation of Cash by Terrorists and other Criminals.

Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.17):

412. Customs authorities maintain only paper records, but relayed to the assessment team that they have filled in a request for a computerized system to the Ministry of Finance.

Statistics (R.32)

413. Customs indicated that they do not maintain official statistics on currency movement and seizures at KIA. However, FinTRACA provided the assessment team with a spreadsheet detailing statistics on CNBIRs collected at KIA on a monthly basis, including the currency in which the cash was being transported for the period from January 2007 – December 2010. The spreadsheet provided by the authorities includes data on CNBIRs received in late 2009 and early 2010, purportedly the period during which the MOU between the MOF and DAB was not in force and Customs was not disseminating CNBIRs to FinTRACA.

Adequacy of Resources—Customs (R.30)

414. The Customs official from KIA stated that the MOF offers special training to Customs officers in operating the baggage scanning equipment at the airport. Additionally, out of approximately 110 staff in the Customs office at the airport, 19 have received more advanced training

and are considered ‘professionals’ in their field the Customs official was not able to specify what type of skill set distinguishes the regulatory staff and the professional staff at KIA. It was also not immediately apparent what the training entails nor how the officers are selected to receive this training. Additionally, Article 6 paragraph 4 of the AML LD stipulates that “a person shall not be searched except for a person of the same sex”; however, the assessment team did not receive any indication from the authorities that separate training on searches of female versus male passengers has been provided to Customs officials. Note that in practice, a separate screening facility for women entering KIA is set up and in use upon entry into the airport.

Analysis of effectiveness

415. The extremely limited implementation of the cross-border declaration system in Afghanistan is a severe impediment to the effectiveness of the regime. Afghanistan’s notoriously porous borders, the central government’s limited jurisdiction across the country and the nascent capacity of law enforcement exacerbate the challenges to implementation. The authorities were not able to tell the assessment team the definitive number of official border crossings in Afghanistan and stated clearly that CNBIR are only being filled out and collected for outbound passengers at Kabul International Airport.

416. The limited implementation of the regime at KIA is further hampered by the proliferation of government agencies at this border crossing. According to Customs authorities at KIA and other sources that spoke with the assessment team, there are upwards of 40 different agencies and departments present at KIA. While the AML LD clearly establishes three competent authorities (police, Customs, and the FIU), it does not make clear which agency is responsible for the implementation of each of the elements of the decree. The level of disorganization and disorientation is apparent in the dispute that ensued between Customs and FinTRACA that led to the abrogation of an MOU between MOF and DAB and the reported failure of Customs to transmit CNBIRs to the FIU during the period of the renegotiation of the MOU.

417. The lack of official statistics being collected at the only border where the declaration requirement is in place hampers the ability of the assessment team to determine the effectiveness of the regime at KIA. Authorities from a variety of law enforcement agencies operating at KIA were only able to relay limited anecdotal evidence of currency seizures. This lack of evidence demonstrating the implementation of the sanctions provisions within Article 6 of the AML LD, given the known risk factors such as the fact that Afghanistan is a largely cash-based economy and estimates of US\$3-4 billion dollars in cash couriered out of KIA annually (see SRVI for further details), is just one of the factors leading the assessment team to conclude that the implementation of SR IX on outbound currency and bearer negotiable instruments at KIA is ineffective.

2.7.2. Recommendations and Comments

418. The implementation of SR IX is based on mechanisms that are inconsistent and incomplete. The implementation of SR IX does not appear to be effective at KIA. The authorities should take the necessary measures to enable them to comply with SR. IX. Furthermore, the validity of the AML LD is in question, undermining the entirety of the legal regime with respect to SR IX.

419. In order to comply fully with Special Recommendation IX, the authorities are in particular recommended to:

- Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that, as the security across the country improves, the AML/CFT framework with respect to SRIX is implemented;
- Implement cross-border currency declarations for inbound and outbound transportation of currency and bearer negotiable instruments and extend these requirements to outgoing travelers at the VIP section, incoming travelers, and shipment of currency through containerized cargo and mailing of currency or bearer negotiable instruments by a natural or legal person at all official border crossings in Afghanistan;
- Clearly define the term “bearer negotiable instruments” to include monetary instruments in bearer form such as: travelers checks; negotiable instruments (including checks, promissory notes and money orders) that are either in bearer form, endorsed without restriction or made out to a fictitious payee, or otherwise in such a form that title can pass upon delivery; and incomplete instruments (including checks, promissory notes and money orders) signed, but with the payee’s name omitted;
- Take legislative steps to ensure that Customs has the authority to collect and request further information from the carrier of currency or bearer negotiable instruments on the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of money laundering or terrorist financing;
- Provide Customs with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found, where there is a suspicion of money laundering or terrorist financing; or where there is a false declaration;
- Establish in law effective, proportionate and dissuasive sanctions for false cross-border currency declarations;
- Establish in law effective, proportionate and dissuasive sanctions for the physical transportation of currency or bearer negotiable instruments that are related to money laundering or terrorist financing;
- Clarify the responsibility of each agency operating at the border and specifically designate the authority that is responsible for the implementation of SRIX;
- Ensure that the prescribed threshold for declaration does not exceed US\$/EUR 15,000;
- Ensure that customs seek closer cooperation with other neighboring countries, such as establishing mechanisms for regular information exchange on cash seizures and cross-border transportation reports;

- Ensure that customs report unusual movements of precious metals and stones to the countries of origination or destination;
- Introduce electronic record keeping of CNBIR declarations and implement strict safeguards to ensure proper use of information by the appropriate authorities;
- Train more Customs officers.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"> • No cross-border currency declaration for inbound passengers. • Limited implementation of the cross-border currency declaration regime for outbound passengers (only implemented at KIA and excluding the VIP section). • Customs do not, in practice, require the declaration of bearer negotiable instruments. • The currency declaration threshold prescribed by the AML LD exceeds the US\$/EUR 15,000 threshold. • No legal stipulation for monitoring or sanctioning false cross-border currency declarations. • In practice, Customs authorities are arresting individual carrying undeclared currency, a power not delegated to Customs and not explicitly prescribed for in the decree. • The effective implementation of the existing legal framework is hampered by the fact that the AML LD does not delineate clear lines of responsibility among the three authorized implementing agencies. • Customs does not have the professional capacity to adequately address the scope of the problem. • Customs does not maintain comprehensive records or statistics of currency declarations and seizures. • Absence of reporting of unusual movements of precious metals and stones to the country of origin. • Lack of cooperation with neighboring countries. • Absence of adequate and uniform sanctions.

3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

Scope and legal basis of the preventive measures

420. The Afghan legislative framework for financial institutions consists primarily of the 2004 AML Legislative decree (the “AML LD”), which includes preventive measures for all financial

institutions in relation to both money laundering and terrorist financing, and the 2005 DAB Regulation on the responsibilities of financial institutions in the fight against money laundering and terrorist financing (the “AML/CFT RR”). The 2004 CFT Legislative decree (the CFT LD) also provides preventive measures for wire transfer.

421. Most of the financial activities listed under the standard are offered in Afghanistan. The main financial institutions in Afghanistan are banks and MSPs. Insurance companies do operate but, according to the authorities, do not offer life insurance or investment linked insurance products. The AML LD nevertheless specifically includes the “underwriting and placement of life insurance and other investment related insurances, including insurance undertakings and insurance intermediaries (agents and brokers) in its listing of activities that financial institutions may conduct.” For this reason, the legal framework which will be applicable to insurance companies once they start offering life insurance and other investment related insurance is part of the write-up below. There is however no securities sector in Afghanistan.

422. The table below details the type of financial institution performing each financial activity in Afghanistan, the legal framework that regulates them, and the relevant AML/CFT supervisor.

Financial activity	Type of financial institution that performs this activity	Legal framework	AML/CFT Supervisor
Acceptance of deposits and other repayable funds from the public	Banks ⁶³	Banking Law (Art. 33.1)	DAB
	Depository Micro Finance Institutions (DMFIs)	DAB Regulation No12 June 30,2006	DAB
	Non-DMFIs accepting only mandatory deposits	No	Fintraca
Lending	Banks	Banking Law (Art. 33.2)	DAB
	Depository DMFIs	DAB Regulation No12 June 30, 2006	DAB
	Non-DMFIs	No	Fintraca
Financial leasing	Banks	Banking Law (Art. 33.2)	DAB
	DMFIs	DAB Regulation No12 June 30,2006	DAB
The transfer of money or value	Banks	Banking Law (Art. 33.5)	DAB

⁶³ Pursuant to Article 1.1.2 of the AML/CFT RR, DAB is also considered to be a financial institution to the extent that it engages in commercial activities.

Financial activity	Type of financial institution that performs this activity	Legal framework	AML/CFT Supervisor
	Money service providers, MSPs (including e-money institutions)	MSP Regulation, No 2 November 25,2009	DAB
	DMFIs	DAB Regulation No12 June 30, 2006	DAB
Issuing and managing means of payment (e.g., credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).	Banks	Banking Law (Art. 33.5)	DAB
	MSPs (check cashing)	MSP Regulation, No 2, November 25,2009	DAB
Financial guarantees and commitments.	Banks	Banking Law (Art. 33.4)	DAB
Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	Banks	Banking Law (Art. 33.3)	DAB
Participation in securities issues and the provision of financial services related to such issues.	-	-	-
Individual and collective portfolio management.	Banks	Banking Law (Art. 33.8)	DAB
Safekeeping and administration of cash or liquid securities on behalf of other persons.	Banks	Banking Law (Art. 33.7)	DAB
	DMFIs	DAB Regulation No12 June 30, 2006	DAB
	MSPs (Short term safekeeping)	MSP Regulation, No 2, November 25, 2009	DAB
Otherwise investing, administering or managing funds or money on behalf of other persons.	Banks	Banking Law (Art. 33.8)	DAB
Underwriting and placement of life insurance and other investment related insurance.	Insurance companies Insurance brokers	Insurance Law January 18,2009 Insurance procedures July 10,2008	Ministry of Finance

Financial activity	Type of financial institution that performs this activity	Legal framework	AML/CFT Supervisor
Money and currency changing.	Banks	Banking Law (Art. 33.3)	DAB
	Foreign Exchange Dealers	Regulation 1 July 9, 2008	DAB

423. The AML LD and the Banking Law are considered primary legislation for the purposes of this assessment. The AML/CFT RR is considered as an enforceable mean, as it sets out some mandatory requirements with sanctions for non-compliance established under the AML LD and DAB Law and is issued by a competent authority.

Assessment of the effectiveness of the preventive measures

424. Pursuant to paragraph 25 of the FATF Handbook for countries and assessors,⁶⁴ “during the on-site visit, examined countries should organize meetings with a range of government Ministries and agencies, as well as the private sector.” Accordingly, these visits should include “a representative sample of financial institutions.”

425. While meetings were organized with two relatively minor banks, repeated requests from the assessment team to meet with one or both of the two largest banks in Afghanistan were denied by the authorities.⁶⁵ The purposes of these requests were to enable the team to assess the implementation of AML/CFT preventive measures by financial institutions, to form a better understanding of the Afghan banking sector, and, ultimately, to provide detailed recommendations to the authorities as to how to improve the overall effectiveness of their AML/CFT framework in the banking sector. As a result of the authorities’ refusal, however, the assessment team was not given the opportunity to assess fully the level of implementation of the existing preventive measures in the Afghan banking sector.

Customer Due Diligence and Record Keeping

3.1. Risk of money laundering or terrorist financing

426. No particular financial activity or profession has been exempted of applying AML/CFT measures on the basis that there is low or little risk of money laundering or terrorist financing.

427. Both the AML LD and the AML/CFT RR impose clear and direct obligations on financial institutions with respect to the prevention of money laundering and terrorist financing. The authorities

⁶⁴ which apply to assessments of APG members: the Revised Procedures for APG mutual Evaluations 2011-2011 specifically mention in para. 16 that the procedures should be read in conjunction with the FATF Handbook for countries and assessors.

⁶⁵ According to information provided by DAB, these two banks represented 37% of the deposits in the Afghan commercial banks and 66% of the loans, at the time of the onsite visit (see under section 1.3 above).

have not yet conducted a systemic review or assessment of potential money laundering and terrorist financing risks affecting financial institutions that could serve as a basis for applying enhanced and/or reduced measures in the financial system. The existing AML/CFT legal and supervisory frameworks have therefore been developed without considering the levels of money laundering and/or terrorist financing risk. With the exception of business relationship with PEPs where financial institutions are required to have appropriate risk management systems to detect these customers, the AML LD does not provide for financial institutions to apply risk sensitive approaches to compliance with customer due diligence obligations.

428. Meetings with Afghan authorities and financial institutions' representatives revealed that their understanding of money laundering and terrorist financing risks is limited. The account opening documentation of some financial institutions nevertheless includes risk-based elements in relation to PEPs and foreign jurisdictions. However, based on the interviews with some of the institutions met, these policies did not appear to be implemented effectively.

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

3.2.1. Description and Analysis

Legal Framework

429. As mentioned above the main relevant texts are the AML LD, which applies to all financial institutions, the Banking Law, which applies exclusively to banks, and the AML/CFT RR, which apply to all financial institutions supervised by DAB.

430. Article 2.1.d AML LD covers all the financial activities listed in the FATF methodology's glossary under the definition of financial institutions. The scope of the AML/CFT RR is different and is related to a list of financial institutions defined in Article 1.1.2. This list includes commercial banks, branches and representative offices of foreign banks, MSPs, foreign exchange dealers, payment systems operators, security services providers, non-depository credit institution (finance companies, leasing companies, mortgage companies), microfinance depository institutions (credit unions and cooperative banks), microfinance non-depository institutions, insurance companies, and private pension plans, to the extent that these institutions are required to be licensed, permitted, regulated or supervised by DAB.

431. Institutions that are required to be licensed, permitted, regulated or supervised by DAB are banks (Article 84 of the DAB law), MSPs (Article 90 of the DAB law), foreign exchange dealers (Article 75 of the DAB law), securities service provider (Article 92 of the DAB law), and depository microfinance institutions (Article 2.2.3 of the Banking Law and Regulation on depository microfinance institutions). Consequently, because non-depository credit institutions (namely finance companies and leasing companies), microfinance non-depository institutions, insurance companies, and private pension plans are not currently licensed, permitted, regulated or supervised by DAB, they are not subject to the AML/CFT RR despite their listing in Article 1.1.2 mentioned above. Regulations are under preparation for mortgage companies and leasing companies by DAB.

Prohibition of Anonymous Accounts (c. 5.1):

432. Pursuant to Article 8 of the AML LD, financial institutions are prohibited to “keep anonymous accounts, or accounts in obviously fictitious names.” In addition, section 1.3.2. of the AML/CFT RR points out that “financial institutions shall not open anonymous or accounts with fictitious names.” While the AML/CFT RR would comply with c.5.1 for financial institutions regulated by DAB, the enforceability of its section 1.3.2 is subject to interpretation, as section 1.5.2. provides a list of violations of the AML/CFT RR leading to enforcement actions which does not cover the failure to implement the requirements of section 1.3.2. Pursuant to section 1.5.2., enforcement actions “are not limited to” the listed violations, however the enforceability of section 1.3.2 has never been tested. The AML LD imposes sanctions for non-compliance with its Article 8 but the reference to “obviously” fictitious names introduces an uncertainty, as the financial institutions should be able to determine through CDD if the account’s name is fictitious without having to assess if it is obviously fictitious or not.

433. Numbered accounts are not prohibited in Afghanistan but according to section 1.3.2. of the AML/CFT RR, “if the bank opens a numbered account, the identity of the client must be known to a sufficient number of staff to perform identification and subsequent monitoring of the accounts.” However, the enforceability of this requirement is also subject to uncertainty as it is not included in the violations listed in section 1.5.2. of the AML/CFT RR. There is no reference to numbered accounts in the AML LD, but the standard CDD requirements apply to all types of accounts, and require from financial institutions the same level of identification of customers, verification of their identity and availability of records for all accounts. The supervisory department at DAB has indicated that there are no numbered accounts held in the country.

When is CDD required (c. 5.2):

434. Pursuant to Article 9.1 of the AML LD, CDD is required in the following circumstances :

- When carrying out transactions equal to or exceeding Af 1,000,000 (US\$23,242);
- In receipt of an electronic transfer that does not contain complete originator information;
- When there is a suspicion of money laundering or financing of terrorism;
- When the reporting entity has doubts about the veracity or adequacy of previously obtained customer identification data; or
- When establishing business relationship with any person.

435. Article 1.4.3 of the AML/CFT RR specifically relates to occasional transactions: It states that financial institutions must not carry out occasional transactions in excess of Af 500,000 (US\$11,621) on behalf of customers who refuse to identify themselves or refuse to disclose and document the source of their funds. The identification of customers who initiate occasional transactions in an amount between Af 500,000 and Af 1,000,000 (US\$23,242) may rely on documentation and recording of name and address only. The identification of customers who initiate occasional transactions of Af 1,000,000 and above should include all the CDD measures required in the AML/CFT RR (in the same way as for account opening) with two exceptions: i) in the case of

corporations, “the articles of association and board resolution are not required,” and ii) the financial institutions are encouraged, but not required, to verify the identification documents supplied.

436. The Af 1,000,000 threshold for CDD set out in the AML LD is too high as it equals to more than US\$23,000⁶⁶ while FATF designated threshold is US\$15,000. In addition, the AML/CFT RR’s exceptions in the identification and verification of occasional customers that are legal persons are not in line with the standards.

Identification measures and verification sources (c. 5.3):

437. Articles 9.1, 9.2 and 9.3 of the AML LD require financial institutions to identify a natural person and verify his or her identity. The verification has to be done “by the presentation of an original national identity card or passport that is current and bears a photograph, a copy or record of which shall be retained by the reporting entity, or such other documentation as may be prescribed in regulations by Da Afghanistan Bank” (Article 9.2).

438. The verification requirements for natural persons are detailed in section 1.3.3. of the AML/CFT RR as follows: “the financial institution must attempt to verify the information submitted, and retain a copy of the identification document. In addition, the financial institution shall record the permanent address, telephone number (if any), approximate date of birth, place of birth, occupation, and name of employer (if applicable). The financial institution must make reasonable attempts to verify all of this information by means such as telephone calls, visits to the customer’s home or place of work, or by any other appropriate and effective means.”

439. The AML/CFT RR tries to take into account the Afghan context and refers to verification techniques applicable in the country such as telephone calls, visits to the customer’s home or place of work. But the AML/CFT RR also introduces subjective assessments (“must attempt to verify,” “reasonable attempts to verify”) which do not comply with the standard.

440. Articles 9.1, 9.2 and 9.3 of the AML LD require financial institutions to identify legal persons “by the production of its current certificate of registration, license, or articles of association, a copy or record of which shall be retained by the reporting entity, or such other documentation establishing that it has been lawfully registered and that it is actually in existence at the time of the Identification as prescribed in regulations by Da Afghanistan Bank.”

441. In addition to the identification documents required by the AML LD, the AML/CFT RR contains the following additional identification requirements for legal persons:

- Corporations and partnership: Name of entity, principal place of business operations, mailing address, contact telephone and fax numbers, taxpayer identification number or other official number, the original or certified copy of the certificate of incorporation and articles of association;

⁶⁶ As of 1/29/2011, A 1,000,000 = US\$23,242.

- Other legal persons: name of client, mailing address, contact telephone and fax numbers, official identification number, and a copy of the documentation confirming the legal existence;
- Single proprietorships: If the proprietorship is not registered, the account must be opened in the name of the proprietor as an individual, with proper identification of the natural person.

The requirement to verify the identity of legal persons is included in section 1.3.3.b. of the AML/CFT RR but not in primary or secondary legislation in the AML LD.

Identification of Legal Persons or Other Arrangements (c. 5.4):

442. Pursuant to Article 9.4. of the AML LD, “[d]irectors, employees or agents acting or purporting to act on behalf of a customer shall provide appropriate evidence, including but not limited to a current power of attorney issued by a competent authority under which such person is acting as a representative, and also provide proof of identity, along with verification of identity of the natural person on whose behalf such agents acts or purports to act.” There is no requirement in the AML LD to verify that a person purporting to act on behalf of a natural person is so authorized.

443. Financial institutions regulated by the AML/CFT RR should, pursuant to section 1.3.3., identify those who have authority to open or operate an account.

444. Based on Article 1.3.3.a. of the AML/CFT RR, “in cases where an account is opened by one individual on behalf of another individual, the identification procedure must be performed on both.” This identification procedure suffers however from the limitations indicated in relation to c. 5.3.

445. Section 1.3.3. of the AML/CFT RR requires to obtain from corporations and partnerships, in addition to valid registration documents, the original or a certified copy of the certificate of incorporation and articles of association.

446. There are no requirements in relation to other legal persons, such as organizations, charities, clubs or associations.

Identification of Beneficial Owners (c. 5.5; 5.5.1):

447. The AML LD does not require identifying the beneficial owner for all customers, but only for customers that are legal persons.

448. Pursuant to Article 1.3.3. of the AML/CFT RR, in all cases, “if there is any doubt that the customer is not the beneficial owner of the funds, the financial institution is responsible for taking reasonable steps to identify the beneficial owner.” Article 1.3.3.b.1 of the AML/CFT RR requires financial institutions to identify the owner of a corporation or a partnership, whether they are individuals or other legal persons. Accordingly there is no requirement to identify the ultimate beneficial owner, or to verify the identity of these persons. In relation to charities, clubs and associations, Article 1.3.3.b.2 only requires financial institutions to identify those exercising control or significant influence over the assets.

Identification of Beneficial Owners – Legal persons (c. 5.5.2):

449. Article 9.3 of the AML LD requires a legal person to provide documentation regarding its ownership structure. The obligation does not refer to the control structure and is the responsibility of the legal person, not the financial institution; the AML LD does not require the financial institutions to understand the ownership and control structure of the customer.

450. Article 9.3 of the AML LD also requires financial institutions to take reasonable measures to verify the “actual owners” of such legal person. There is however no definition of “actual owners” in the AML LD. In addition to the general provision indicated under c.5.1. to take reasonable steps to identify the beneficial owner in case of doubt, the AML/CFT RR requires the identification of the owners of a corporation or a partnership “whether they are individuals or other units.”⁶⁷ In relation to charities, organizations, clubs and associations, Article 1.3.3.b.2 requires “the identification of those exercising control or significant influence over the unit’s assets.”

451. While enforceable, the AML/CFT RR does not constitute secondary legislation. Consequently there is no requirement in primary or secondary legislation to determine who is the person who exercises ultimate effective control over a legal person or arrangement.

Information on Purpose and Nature of Business Relationship (c. 5.6):

452. Article 1.3.3.b.1 of the AML/CFT RR requires financial institutions to obtain information on the nature and the purpose of the corporate customer’s business, but only in relation to corporations and partnership. In relation to other legal persons, financial institutions should obtain a description of the purpose and activity of the unit pursuant to Article 1.3.3.b.2 of the AML/CFT RR. However, the AML/CFT RR does not apply to the insurance sector and non-depository microfinance institutions.

453. There is no requirement to obtain information on the purpose and intended nature of the business relationship with natural persons.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 and 5.7.2):

454. The AML LD does not require financial institutions to conduct ongoing due diligence of the business relationship.

455. Financial institutions subject to the AML/CFT RR are required to monitor customer’s account activity, on a regular basis, reasonable schedule, to be able to establish patterns, the deviation from which may indicate suspicious activity (Article 1.3.5 of the AML/CFT RR). This element is not enforceable as it is not listed in section 1.5.2. among the provisions subject to possible enforcement actions. In addition, the AML/CFT RR lacks precision as it does not require financial institutions to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and where necessary the source of the funds.

⁶⁷ Pursuant to Article 1.3.3.b, unit clients are corporations, partnerships, organizations, charities, clubs and associations.

456. Financial institutions subject to the AML/CFT RR are also required AML/CFT RR to undertake regular reviews of their customer's identification records (Article 1.3.4. of the AML/CFT RR). These reviews should take place whenever there is a material change in the business relationship between the customer and the financial institution or transactions begin to deviate from the unusual pattern. The obligation to update CDD records is limited to establishing patterns, while it should include a more systematic and proactive requirement to update existing records, particularly for higher risk categories of customers or business relationships.

Risk—Enhanced Due Diligence for Higher-Risk Customers (c. 5.8):

457. Except for PEPs, which are the object of Recommendation 6 below, financial institutions are not required to perform enhanced due diligence on higher risk categories of customers. There are no requirements regarding higher risk business relationships or transactions, such as non-resident customers or private banking.

Risk—Application of Simplified/Reduced CDD Measures (c. 5.9 to c.5.12):

458. The authorities do not require financial institutions to apply reduced or simplified measures where there are low risks of money laundering or terrorist financing.

Timing of Verification of Identity—General Rule (c. 5.13 – c.5.14):

459. The AML LD and the AML/CFT RR do not address the timing of verification and its completion. There is no specific requirement to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. The authorities consider that this is covered by the obligation to identify and verify the identity of their customers. But the practice of financial institutions met by the assessors is to complete the verification process following the establishment of the relationship, which indicates that the requirement is not clear enough.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15):

460. Pursuant to Article 11 of the AML LD, if a reporting entity is unable to meet its identification obligations, or if any doubt remains as to the true identity of the customer or the beneficial owner, it must not open the account, commence or continue business relations or perform the transaction. In addition, the reporting entity must submit a suspicious transaction report. The requirement to submit an STR if the client is not properly identified is also mentioned in Article 1.1.2.f.2 of the AML/CFT RR.

461. It has to be noted that Article 11 of the AML LD refers to the identification procedures, and not the verification procedures, although both are considered under Article 9 of the AML LD. In addition, it refers to the notion of “beneficial owner” which is not mentioned in relation to the identification procedures. Finally, the requirement goes beyond the standard as financial institutions are required to submit an STR, as opposed to being required to “consider making” an STR.

Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

462. There is no requirement to terminate the business relationship and consider filing an STR where financial institutions have already commenced the business relationship and is unable to comply with CDD obligations.

Existing Customers—CDD Requirements (c. 5.17):

463. There is no specific requirement to apply CDD measures to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. However, this is captured by the requirements to conduct ongoing due diligence pursuant to Article 1.3.4. of the AML/CFT RR.

Existing Anonymous-account Customers—CDD Requirements (c. 5.18):

464. Anonymous accounts and accounts in “obviously” fictitious names are prohibited. There is no requirement to perform CDD measures on holders of existing anonymous accounts or accounts in obviously fictitious names.

Analysis of effectiveness (R.5)

465. Overall, CDD requirements are not effectively implemented. While the disconnect between legal requirements and the local realities regarding identification is an explanation, it also relates to weak supervision which does not give the incentive to perform CDD when it is obviously possible.

466. While banks represent the largest share of the formal financial sector, meetings with the country’s largest banks have been denied by the authorities. Consequently, the assessment team was not given the opportunity to assess how effective the implementation of the CDD measures is across the banking sector. Moreover, due to the security situation, the preventive measures are not enforced across the country. In particular, a number of financial institutions such as foreign exchange dealers, money service providers and microfinance institutions are not licensed and not supervised in parts of the country. The situation is particularly acute in the Kandahar province, one of the top opium cultivating regions, where the hawaladar and foreign exchange sectors are very significant and totally unregulated. In general, banks use similar internal policies across the country, but the security situation still makes internal controls and supervision challenging. Given the above, it is very unlikely that CDD measures are implemented in these regions where the rule of law is not upheld.

467. Based on the interviews with financial institutions and DAB supervisors, the level of implementation of the CDD requirements appears to be very low. This can be explained by a number of reasons. A first reason could be the large disconnect between the legal requirements and financial institutions policies, on the one hand, and the local realities regarding identification on the other. A large number of the population is illiterate and does not have identification documents. The existing identification documents generally don’t contain the minimal identification elements required by the AML LD such as the full date of birth, a permanent address and photo ID, and, according to the authorities, can easily be forged. In addition, the information in the business register is not sufficient to satisfy the identification requirements (see the write up under Section 5.1 below for more details). A second reason is that the financial institutions’ internal anti-money laundering policies which were

shared with the assessors have obviously not been thoroughly checked by the supervisor because they are often incomplete or in contradiction with the legal framework. Finally, a third reason could be the current weaknesses of the supervisory framework in terms of capacity, resources, strategy, and enforcement, prevents effective implementation of basic requirements. No sanctions have ever been pronounced for failure to comply with CDD obligations (see the write up under Section 3.10 below for more details). Furthermore the authorities had to recognize, during interviews with the assessment team, major CDD breaches in relation to the difficulties currently encountered by a major bank. This recognition, despite any sanctions having been pronounced in respect to these breaches, further reinforces the role of the weaknesses in supervision in the build-up of the crisis.

Scope of CDD requirements

468. The effectiveness of implementation of CDD measures depends on the type of business relationships, transactions, and activities. While the authorities and financial institutions indicated that there are no numbered accounts in Afghanistan, the internal AML policy of one of the banks met by the assessors mention procedures to follow in relation to “confidential numbered accounts.” In relation to occasional customers, one bank indicated to the assessors that it accepts walk-in customers even though its AML policy notes that “no business transaction will be conducted with walk-in customers.” Non-depository micro-finance institutions met by the assessors had no internal CDD measures in place, and there were no AML/CFT policies in place in insurance companies according to their regulator. In the absence of supervision, there is no basis to establish that the CDD requirements are being implemented by foreign exchange dealers.

CDD for natural persons

469. As mentioned above, there is a large disconnecting between the legal requirements and financial institutions policies, on the one hand, and the local realities, on the other, regarding identification of natural persons. A large number of the population does not have identification documents. A small number of customers use passports and the most common identification document is the tazkira which is estimated to be held by approximately 60% of the population.

470. The identity of the tazkira’s applicant is normally confirmed by the local registry of population. Many registers have been destroyed during the recent wars and conflicts in Afghanistan. For this reason, it is common practice for the village elders or local religious authorities, to give a testimony on behalf of the applicant, stating that the applicant is indeed from the family he claims to be from. If the applicant has living relatives, his father or uncle may also testify in person to the local district official that the applicant is a kin. Then it is sufficient that the name of the applicant's relative is in the local register of population. After the identity of the applicant has been confirmed, the matter is referred to the provincial police. Older tazkiras do not contain a picture of their holder. More recent tazkiras do but a large number of tazkiras were issued when the holder was a child and there is no obligation to renew it during adulthood. The photographs are therefore of little help for identification purposes. Tazkiras have a number, but each local registers has its own serials, which means that different persons might have the same tazkira number issued by different provinces. There is no mention of the date of birth but an estimate of the age of the holder at the time of the application (e.g. age 15 in 2011). In addition, the authorities and private sector representatives met by the mission indicated that it is easy to buy a forged tazkira for less than US\$50. Finally, in some border areas with

Pakistan, tazkiras are not issued but there is instead a card without picture delivered by the Governor of the province.

471. Another issue is to obtain an address as there is generally no street name or house number. Verification of the address is made difficult by the absence of postal service, which prevents for example from confirming a customer's address. In some cases banks' staff goes to visit their customer in order to verify their address. But this does not seem to be common practice, and appears generally limited to lending activity.

472. Verification of the identification is difficult in the absence of a centralized database of tazkiras. Some financial institutions send verifications requests to the Ministry of Interior but generally don't receive an answer. In addition, it appears from financial institutions' policies that the introduction of customers by a third party or a financial institution's staff member is considered to be equivalent to verification of identity.

473. Financial institutions met had commercial software in place to monitor if their new customers are included in international sanctions lists. The monitoring was generally done at the moment of account opening with no ongoing monitoring, or monitoring of existing customers. One institution met by the assessors indicated that it uses biometry (fingerprints) to identify customers. It was however not clear to what extent this identification process was being implemented.

474. In addition, some financial institutions' internal policies are not in line with the AML LD. One policy requires "to make all reasonable efforts to determine the true identity of all customers," while the AML LD requires to identify and verify all natural persons. On the same line, another financial institutions' policy indicates that it is "not allowed to start a banking relationship until due diligence, appropriate and sufficient for the circumstances, has been carried out."

CDD for legal persons and arrangements

475. The same disconnect between the legal requirements and the local realities are obvious in relation to the identification and verification of legal persons. The information available on the business licenses is limited to the address and name of the president and the vice-president of a company, without date of birth, or relation to shareholders or owners. Business registration is fragmented between different administrations (see section 4) and the information submitted by a legal person at the time of registration does not satisfy the CDD requirements. The investment agency has a website with information on the companies that it registered, but this information is very limited as it does even not include the name of the president and the vice-president, and is not regularly updated. Financial institutions met by the assessors have indicated that they sent requests for verification to AISA but that they generally don't receive any answer. In addition, the verification process is limited to ensuring that the license submitted is not forged or expired, and, overall, there seems to be no willingness to understand the ownership of the legal person. The authorities indicated, in relation to the troubles experienced by the country's main commercial bank, that they had discovered the existence of false and forged documents, which enabled the beneficial owners of assets to hide their true identity from the bank.

476. While the weaknesses in identification records are real and prevent the effective implementation of the CDD requirements across the customer base, they should certainly not affect

high risk customers, particularly in relation to major money laundering threats. Indeed, it is conceivable that most of the ultimate beneficial owners of significant assets are travelling abroad and have passports. Consequently, the weaknesses in the business and civil records should not prevent financial institutions from taking measures to identify and verify the beneficial owner in these cases, and the supervisor from enforcing the requirements. The problem of identification of natural persons may be more acute in relation to threats of financing of terrorism or the domestic laundering of smaller proceeds.

Risk

477. While the authorities did not decide that financial institutions can apply reduced or simplified measures where there are low risks, or define higher risks situation other than PEPs, some financial institutions classify customers into risk categories. One of the banks met by the assessors indicated having approximately 30 percent of non-resident customers, but neither this bank nor the other bank met by the assessors considered this category as higher risk. Among other potential higher risk categories not considered by financial institutions is private banking, which appears to be very limited in Afghanistan. One of the banks met by the assessors considers as high net worth customers those with more than US\$15,000 in assets, and counts less than 300 of them, but does not apply enhanced due diligence measures. Financial institutions met by the assessors do not have any fine tuned risk policies with focus on certain geographic/customer risks such as the poppy/heroin producing regions, arms trafficking routes or commercial activities subject to corruption. The internal policy of one institution refers to an outdated list of non-cooperative jurisdictions.

Timing of verification

478. While the legal framework is unclear on the timing of verification, internal AML policies indicate that the completion of the CDD process can take place after the establishment of the business relationship. In one bank it is for example possible to make a cash deposit followed by an international transfer without having completed the CDD process.

Failure to satisfactorily complete CDD

479. If a reporting entity is unable to meet its obligations with respect to the identification procedures, or has doubts as to the true identity of the customer or beneficial owner, it should normally refrain from opening the account, commencing or continuing business relations or performing the transaction. But some financial institutions met by the assessors consider that having sent a letter to the investment agency (AISA) regarding the verification of identity of legal persons, or to the Ministry of Interior regarding natural persons, is sufficient for them to proceed, even if no response is received.

Existing customers

480. While there is no specific requirement to apply CDD measures to existing customers, some internal policies of financial institutions contain elements in this regard. But based on the weaknesses in the effective implementation of CDD measures to new customers, it is unlikely that these elements for existing customers are implemented.

Foreign PEPs—Requirement to Identify (c. 6.1):

481. Pursuant to Article 13.a of the AML LD, financial institutions should, in addition to performing normal due diligence measures, have appropriate risk management systems to determine whether the customer is a politically exposed person (PEP).

482. A definition of PEP is given in Article 2 of the AML LD. It means any person who is or has been entrusted with a prominent public function in the Islamic Republic of Afghanistan or in other countries, for example, heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state-owned entities, and important political party officials. This definition includes all family members of such persons, and close associates who have business or financial relationships with such persons.

483. While the definition of a PEP is quite comprehensive and goes beyond the minimum required by the standards as it includes domestic PEPs, the risk management systems do not apply to potential customers, or customers whose beneficial owner is a PEP.

Foreign PEPs—Risk Management (c. 6.2; 6.2.1):

484. According to Article 13.b of the AML LD, financial institutions are required to obtain senior management approval for establishing business relationships with PEPs. Article 1.4.1 of the AML/CFT RR indicates that the opening of accounts or the handling of occasional transactions from PEPs must be approved by the financial institution's chief executive officer or general manager.

485. Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, there is no requirement to obtain senior management approval to continue the business relationship.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3):

486. Pursuant to Article 13.c of the AML LD, financial institutions should take reasonable measures to establish the source of wealth and source of funds of customers identified as PEPs.

487. Article 13.c of the AML LD does not include requirements related to beneficial owners identified as PEPs.

Foreign PEPs—Ongoing Monitoring (c. 6.4):

488. Based on Article 13.d of the AML LD, financial institutions which are in a business with a PEP should conduct enhanced ongoing monitoring of the business relationship.

Domestic PEPs—Requirements (Additional Element c. 6.5):

489. Article 2 of the AML LD extends the requirements to PEPs who hold prominent public functions in the Islamic Republic of Afghanistan.

Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):

490. The 2003 United Nations Convention against Corruption has been signed by the President and ratified by the Senate and the Parliament of the Islamic Republic of Afghanistan in August 2008. It has been published in the official gazette. The HOO has been created by presidential decree in July 2008. The establishment of the HOO is in line with Article 6.1 .of the United Nations Convention against Corruption, calling for the establishment of an oversight body to prevent corruption. The HOO is also responsible for communicating key UNCAC benchmarks among government institutions and ensuring compliance with these benchmarks.

Analysis of effectiveness (R.6)

491. Corruption is a major proceeds generating crime in Afghanistan (see section 1), however, the current requirements with respect to PEPs do not appear to be implemented in practice and the system is particularly ineffective in view of the existing threats.

492. The two banks met by the assessors considered that they have the relevant procedures in place. Their internal policies generally differ from the domestic legal framework. Some elements go beyond the AML LD and the AML/CFT RR and are closer to the FATF standards (such as the requirement to determine if the beneficial owner is a PEP), but others are more limited than the Afghan framework (some PEPs are considered having low risk accounts and consequently monitored only once a year). The FIU has requested financial institutions to send their list of PEPs. On this basis, the FIU is planning to consolidate a list of PEPs who hold accounts in Afghanistan and to send it back to financial institutions. It is worth mentioning that some financial institutions are owned or controlled by PEPs.

493. There are constitutional and legislative obligation for senior officials to declare assets to the High Office for Oversight and Anti-Corruption (HOO). Pursuant to Article 154 of the Afghan Constitution, asset disclosure is mandatory for the President, Vice-President, Ministers, the Attorney General and members of the Supreme Court. Article 12.2. of the law on combating corruption makes asset declaration mandatory for deputy ministers, directors, members of the national assembly, members of provincial and district councils, members of independent commissions and bodies, ambassadors, governors, judges, military and police officials, district administrators, prosecutors, high ranking officials, and employees of financial, accounting, audit and procurement departments of each government institution. According to the HOO, approximately 200 asset disclosures made to the HOO have then been published in a State-owned newspaper. These disclosures are handwritten and only available in hard copies, which makes them difficult to access and search by financial domestic financial institutions, not to mention foreign financial institutions.

494. The scope of persons subject to the mandatory asset disclosure mechanism is somewhat similar to the definition of PEPs, the major exception being that it does not cover important political party officials and all family members of PEPs, and close associates who have business or financial relationships with such persons. It should however be mentioned that no connection is made between the AML framework and the asset disclosure mechanism, other than by a request sent by the HOO to the FIU to verify the asset disclosures of a dozen ministers.

Cross-Border Correspondent Accounts and Similar Relationships—Introduction

495. According to section 1.4.2. of the AML/CFT RR, financial institutions must not open correspondent accounts at, or for other financial institutions that are unlicensed or otherwise unregistered or domiciled in countries that have been designated by the FATF as non-cooperative in the fight against money laundering and terrorist financing. Financial institutions are required to apply due diligence to determine whether their customer is another financial institution and, if so, to ensure that such correspondent customers are in compliance with applicable anti-money laundering laws and regulations prior to opening an account. On-going enhanced monitoring must be applied to correspondent customers.

Requirement to Obtain Information on Respondent Institution (c. 7.1):

496. While based on section 1.4.2. of the AML/CFT RR general CDD measures apply in relation to cross-border correspondent banking, there are no additional requirements to gather information about a respondent institution to understand the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision.

Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):

497. Section 1.4.2. of the AML/CFT RR requires financial institutions to ensure that correspondent customers are in compliance with applicable anti-money laundering laws and regulations prior to opening an account, but it is vague and is not clearly enforceable as these requirements are not listed in section 1.5.2. among the provisions subject to possible enforcement actions.

498. Consequently, there are no specific and enforceable requirements to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective.

Other requirements related to cross border correspondent relationships (c. 7.3-c.7.5):

499. There are no requirements to obtain approval from senior management before establishing new correspondent relationships and to document the respective AML/CFT responsibilities of each institution, nor to address situations where "payable-through accounts" are maintained.

Analysis of effectiveness (R.7)

500. According to DAB, Afghan banks do not hold accounts for foreign financial institutions but have accounts in financial institutions abroad. Based on information received from the Central Bank at the time of the onsite visit, Afghan banks had 104 correspondent accounts in 34 countries. Most of the correspondent accounts are located in Germany (27), followed by the USA (11), and the United Kingdom (8). There are also accounts in financial centers such as Dubai, Luxembourg, Switzerland, Bahrain, Hong-Kong, Singapore or the British Virgin Islands.

501. Afghan banks hold correspondent accounts in a number of countries which have been listed by the FATF as having strategic AML/CFT deficiencies. These include Iran, Pakistan, Tajikistan, Turkey and Indonesia. Three correspondent accounts are open for Afghanistan banks in Iran and two are open in other countries (Germany and the UAE) in banks with Iranian capital.

502. It is interesting to note that in the case of Afghanistan some hawaladars operate similar cross border correspondent relationships. This is particularly the case with the UAE, Pakistan and Iran along the following scheme: An Afghan licensed MSP operates for Afghan MSPs customers who want to settle their accounts with foreign MSPs or financial institutions. In the case of relations with Dubai, this Afghan MSP would physically transfer the cash of its customers to the UAE, and distribute it to respondent MSPs in Dubai. In addition to the absence of legal framework, assessors have noticed that even normal due diligence measures are not performed in relation to these cross-border correspondent MSPs relationships.

Misuse of New Technology for ML/TF (c. 8.1):

503. There are no specific requirements AML/CFT RR to have policies in place to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

Risk of Non-Face-to-Face Business Relationships (c. 8.2 and 8.2.1):

504. There are no specific requirements AML/CFT RR to have policies in place to address risks associated with non face-to-face business relationships or transactions.

Analysis of effectiveness (R.8)

505. Afghanistan presents the interesting feature to combine both financial transactions characteristic of a cash-based economy (preponderance of MSPs and exchange dealers), with the most advanced forms of financial intermediation (mobile banking, internet banking, “web surfer card.”

506. All the main banks offer internet banking services on their websites. In some cases these services are limited to consulting accounts and printing out statements but most of the banks enable the customer to perform all type of transactions online including domestic and international transfers. Financial institutions met by the assessors indicated that non-residents, often Afghan citizens, operate their Afghan bank account from abroad thanks to the internet banking capabilities. The authorities did not conduct any study of the AML/CFT threats and vulnerabilities of the internet banking sector, and do not have a clear picture of its extent either.

507. Mobile banking is also developing. Some banks offer the possibility to make balance inquiries and see the last transactions through mobile phone. One telephone operator offers the possibility to transfer funds from one account to another using the mobile phone, using a MSP license. While started in 2008, and claiming hundred of thousand of accounts, the service currently appears limited to a few thousands of active accounts, mostly used for the payment of salaries which are generally quickly withdrawn in cash. This MSP has partnered with a commercial bank in order for the customers to be able to send funds to a bank account, and plans to partner with other banks.

508. Based on the information provided to the assessors the risks appear limited because of the limited scope of the activity both in number of active customers and of the amounts transferred. Nevertheless, the current CDD measures are not sufficient, especially if the service were to expand. The measures in place to identify and verify the customer are less comprehensive than the standard

CDD measures, there are a number of intermediaries in the CDD process, and the supervisor has never conducted an inspection of this business.

509. Finally, one of the financial institutions met by the assessors is delivering web surfer cards to its customers which appear to be traceable and accordingly do not raise particular issues.

3.2.2. Recommendations and Comments

Recommendations 5, 6, 7 and 8

In order to comply fully with all four Recommendations, the authorities should:

- Ensure that the legal basis for the AML framework is sound;
- Ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country.

Recommendation 5

510. The weaknesses in the identification and verification of customers are a major vulnerability in Afghanistan. It is related to structural deficiencies in the civil and business registration of persons which should be urgently addressed. This said, both the authorities and the financial institutions should not take excuse of the context to be complacent towards large scale laundering processes where the ultimate beneficial owner is often a well identifiable passport holder. The introduction of enhanced CDD in relation to higher risk categories of customer, business relationships or transaction, as well as a risk-based approach in supervision, and the systematic closure of higher risk accounts in case of failure to satisfactorily complete CDD could support progress in effective CDD in the short term. In relation to lower risk natural persons, alternative methods such as biometric identification and verification, already experimented by some institutions, could be considered.

511. In order to comply fully with Recommendation 5, the authorities should:

- Require in primary or secondary legislation financial institutions to undertake CDD measures when carrying out transactions above US\$15,000;
- Remove from the AML/CFT RR the inadequate exceptions in the identification and verification of occasional customers that are legal persons;
- Review the AML/CFT RR to require verification of the identity of natural persons in all cases;
- Require in primary or secondary legislation financial institutions to verify the identity of legal persons;
- Require in primary or secondary legislation financial institutions to verify that a person purporting to act on behalf of a natural person is so authorized, and identify and verify the identity of that person;

- Require financial institutions not supervised by DAB to verify the legal status of the legal person or legal arrangement;
- Require in primary or secondary legislation financial institutions to determine whether a customer is acting on behalf of another person;
- Require financial institutions to understand the ownership and control structure of corporate customers;
- Require in primary or secondary legislation financial institutions to determine who are the persons who exercise ultimate effective control over a legal person or arrangement;
- Require financial institutions to obtain information on the purpose and intended nature of the business relationship for natural person;
- Require financial institutions not supervised by the DAB s. to obtain information on the purpose and intended nature of the business relationship with legal persons;
- Require in primary or secondary legislation financial institutions to conduct ongoing due diligence of the business relationship;
- Put in place detailed and enforceable regulations on ongoing due diligence;
- Clarify current requirements to update of CDD records and ensure that they apply to all financial institutions;
- Require financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions;
- Require financial institutions to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers;
- Prohibit financial institutions to open an account, commence business relations or perform a transaction in case of failure to satisfactorily complete the verification of identity, and require them to consider making a suspicious transaction report;
- Require financial institutions to perform CDD measures on holders of existing anonymous accounts.

In addition, in order to improve the implementation of the CDD measures, the authorities should consider:

- Establishing a proper system of identification of natural persons and a comprehensive register of legal persons requiring information on the ultimate beneficial owner;

- Developing and implementing a supervision strategy aiming at sanctioning financial institutions failing to implement existing CDD measures in cases where information is available and verifiable.

Recommendation 6

512. In order to comply fully with Recommendation 6, the authorities should:

- Require financial institutions to put in place appropriate risk management systems to determine whether a potential customer or a beneficial owner is a PEP;
- Require financial institutions to obtain senior management approval to continue the business relationship, where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP;
- Require financial institutions to take reasonable measures to establish the source or wealth and the source of funds of beneficial owners identified as PEPs.

513. In addition, in light of the extreme threat of laundering of the proceeds of corruption, the system in place is particularly ineffective and the authorities did not implement simple mechanisms which could have increased the efficiency of preventive measures regarding PEPs. Accordingly, the authorities should consider:

- Make assets disclosures available online both in Dari and in English to assist financial institutions inside and outside Afghanistan to determine if their customers are PEPs;
- Create a list of PEPs to be sent to financial institutions, based on the list of civil service positions that are required to disclose assets according to the constitutions and the anti-corruption law. Such a list could also be used in the analytical work of FINTRACA.

Recommendation 7

The authorities should require financial institutions to:

- Gather information about a respondent institution to understand the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision;
- Assess their respondent institution's AML/CFT controls, and ascertain that they are adequate and effective;
- Ensure that senior management's approval is obtained before establishing new correspondent relationships;
- Document the respective AML/CFT responsibilities of each institution;
- Take measures to address risks related to the maintenance of "payable –through accounts."

Recommendation 8

- Require financial institutions to have policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes;
- Require financial institutions to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Elementary weaknesses in business registration and in natural persons' identification systems prevent the consistent implementation of CDD measures. • Absence of effective implementation of the existing measures in cases where information is available and verifiable. • Threshold to undertake CDD for occasional customers is too high (US\$23,000). • Inadequate exceptions in the identification and verification of occasional customers that are legal persons. • Limitations to the AML LD requirement to verify the identity of natural persons for financial institutions subject to the AML/CFT RR. • No requirement to verify the identity of legal persons in primary or secondary legislation. • No requirement in primary or secondary legislation to verify that a person purporting to act on behalf of a natural person is so authorized. • No requirement that financial institutions not supervised by DAB verify the legal status of a legal person or legal arrangement. • No requirement in primary or secondary legislation that financial institutions determine whether a customer is acting on behalf of another person. • No requirement to understand the ownership and control structure of the corporate customer. • No requirement to determine who are the persons who exercise ultimate effective control over a legal person or arrangement. • No requirement to obtain information on the purpose and intended nature of the business relationship for natural persons. • No requirement of financial institutions not supervised by the DAB to obtain information on the purpose and intended nature of the business relationship for legal person. • No requirement in primary or secondary legislation to conduct ongoing

		<p>due diligence of the business relationship.</p> <ul style="list-style-type: none"> • Regulations on ongoing due diligence are not enforceable for financial institutions subject to the AML/CFT RR, non-existent for the other financial institutions. • Regulations on update of CDD data and information are limitative for financial institutions subject to the AML/CFT RR, non-existent for the other financial institutions. • No obligation to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • No requirement to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. • No requirement to take measures in case of failure to satisfactorily complete the verification of identity. • No requirement to terminate the business relationship and consider making a STR where the financial institution has already commenced the business relationship and is unable to comply with CDD obligations. • No requirement to perform CDD measures on holders of existing anonymous accounts.
R.6	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Absence of requirement to determine whether a potential customer or a beneficial owner is a PEP. • No requirement to obtain senior management approval to continue the business relationship, where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP. • No requirement to take reasonable measures to establish the source or wealth and the source of funds of beneficial owners identified as PEPs.
R.7	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • No requirements, other than normal CDD, to gather information about a respondent institution to understand the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision. • Absence of requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. • Senior management's approval not needed before establishing new correspondent relationships. • Absence of documentation obligation on the respective AML/CFT responsibilities of each institution. • Absence of measures to address risks related to the maintenance of "payable –through accounts."

R.8	NC	<ul style="list-style-type: none"> • No requirement for financial institutions to have policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • No requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.
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3.3. Third Parties and Introduced Business (R.9)

3.3.1. Description and Analysis

Requirement to obtain CDD elements from Third Parties (c. 9.1-5):

514. There are no elements in the AML LD or AML/CFT RR pertaining to intermediaries or other third parties. The central bank indicated that there are no intermediaries or brokers currently acting in relation to the operations it supervises, but that no legal provision prohibits these activities.

515. The legal framework for the insurance sector refers to brokers in Article 3.1. of the Insurance Law dated January 18, 2009. Brokers are regulated in Article 57 of the “Insurance procedures to accompany the insurance law of the Islamic Republic of Afghanistan” of July 10, 2008, which is still in force according to the Ministry of Finance. A broker can represent several insurers and include legal and natural persons. He is licensed by the insurance department of the Ministry of Finance.

Analysis of effectiveness (R.9)

516. According to the authorities, there are no intermediaries or third parties operating in the financial sector including the money services business, other than in the insurance sector. The authorities recognized that in remote areas of the country, persons were acting as intermediaries but they do not consider this to take place on a commercial basis. This said, the reliance on intermediaries to perform elements of the CDD process is nevertheless mentioned in internal AML policies of financial institutions.

517. Based on information provided by the authorities, one insurance broker was licensed at the time of the assessment. The authorities indicated that brokers can sell products from both domestic and foreign insurance companies. An example was given of an Afghan insurance broker selling Iranian insurance products. The insurance supervisor did not provide information on the type of products that are sold by brokers, but were doubtful that it includes life insurance products.

3.3.2. Recommendations and Comments

518. While the reliance on intermediaries does not seem very developed yet, it is legally possible and used in practice, making the absence of any rules a significant source of vulnerability.

519. In order to comply fully with Recommendation 9, the authorities should:

- Set out rules governing the reliance on intermediaries or other third parties to perform elements of the CDD process or to introduce business, ensuring notably; that the elements

that may be performed by third parties are limited to those listed under criteria 5.3 to 5.6 of the methodology; that the information collected by the third parties may be immediately available to financial institutions; the financial institutions are required to satisfy themselves that the third parties are regulated and supervised; and that the ultimate responsibility for customer identification and verification remains with the financial institutions relying on the third party.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none"> No rules governing reliance on intermediaries or other third parties to perform elements of the CDD process or to introduce business.

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

3.4.1. Description and Analysis

Legal Framework

520. Financial institutions' secrecy and confidentiality obligations are determined by Article 29 of the Banking Law and Article 34 of the January 18, 2009 Insurance Law. Elements ensuring that financial institution secrecy laws do not inhibit the implementation of AML/CFT measures are notably found in the AML LD.

Inhibition of Implementation of FATF Recommendations (c. 4.1):

521. Article 29 of the Banking Law on secrecy obligations requires "present and past administrators and employees of a bank [...] to keep secret, not to use for personal gain and not to permit to be examined by others unless required by law, any information that they obtained in the course of their services to the bank, except that such information may be disclosed to the officers, staff and agents of Da Afghanistan Bank, including the inspectors, auditors, conservators and experts appointed by Da Afghanistan Bank, and to such other persons by order of a court of competent jurisdiction."

522. Pursuant to Article 34 of the Insurance Law, "Whenever the civil service worker revealed the secret documents or mysteries of insurance will come under the legal prosecution" (translation provided by the authorities).

523. Based on Article 7 of the AML LD, reporting entities, supervisory authorities and auditors should comply with the requirements of the AML LD "notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any other law or otherwise." Article 26 of the AML LD further requires any reporting entity to submit, without charge, any information, documentation and records to the FIU, for the purposes of exercising its functions as specified in the AML LD.

524. Article 39.3 of the AML LD gives broad powers to the FIU to “enter any business premises” in which “it believes, on reasonable grounds, that there are records relevant to ensuring compliance with Articles 4 to 45” of the AML LD. Pursuant to Article 39.4 of the AML LD, the FIU may transmit any information from or derived from such examination to the appropriate domestic or foreign law enforcement authorities, “if the Financial Intelligence Unit has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with [this] Law, a criminal offence, a money laundering offence or an offence of the terrorism of terrorism offence.”

525. Article 44 of the AML LD gives powers to the judicial authorities to access information that could be covered by secrecy, including notarial and private deeds, or bank, financial and commercial records (see section 2). However these powers are only available when there are “strong grounds for suspecting” that these documents are or may be used by persons suspected of participating in money laundering or one of its predicate offenses.

526. The reference to “strong grounds” in Article 44 of the AML LD might inhibit the implementation of the AML/CFT framework, in relation to investigations, prosecutions and mutual legal assistance. In addition, there are no provisions in the Afghan legal framework to enable the sharing of information between financial institutions in cases where it is required in the FATF standards, in relation to cross border correspondent relationships, intermediaries or third parties, and information on wire transfers.

Analysis of effectiveness (R.4)

527. The FIU, supervisors and law enforcement agencies did not express difficulties in implementing the AML/CFT framework due to financial secrecy. This said, law enforcement agencies do not often use their powers to request information from financial institutions, and it appears from discussions that the reference to “strong grounds” in Article 44 is indeed limiting their capacity to access relevant information.

3.4.2. Recommendations and Comments

528. In order to comply fully with Recommendation 4, the authorities are recommended to:

- Ensure that the legal basis for the AML framework is sound and ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country;
- Amend the wording of Article 44 of the AML LD in order to lower the current threshold of “strong grounds” that judicial authorities’ face to access information covered by financial secrecy;
- Enable the sharing of information between financial institutions in cases where it is required in the FATF standards, in relation to cross border correspondent relationships, intermediaries or third parties, and information on wire transfers.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Sharing of information between financial institutions in cases where it is required in the FATF standards is not possible. • Disclosure of information covered by secrecy or confidentiality requirements is subject to restrictive conditions which hamper access to relevant information in practice.

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

3.5.1. Description and Analysis

Legal Framework

529. The provisions regarding record keeping can be found in Article 14 of the AML LD, Article 1.3.8 of the AML/CFT RR, and Article 39 of the Banking Law.

530. Requirements for wire transfers are specified in Article 29 of the CFT LD and, to some extent, Article 5 of the AML LD and Section 1.4.4 of the AML/CFT RR.

Record Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1):

531. According to Article 14.a of the AML LD, reporting entities should maintain, for at least five years, all necessary records on transactions, both domestic and international.

532. In addition, pursuant to Article 39 of the Banking Law, banks are required to keep on file for at least ten years the pertinent documents for each one of their transactions, namely:

- the application and all contract documents pertaining to the transaction (including credit, guarantee and collateral agreements);
- the financial records of the bank's counter parties (including borrowers and guarantors), and any other documentary evidence on which the bank relied in approving the transaction;
- a signed written record of the decision of the bank approving the transaction;
- the account agreements with its customers; and
- other documents as DAB may specify by regulation (No additional documents have been specified by DAB yet).

533. Pursuant to Article 1.3.8. of the AML/CFT RR, financial institutions are required to maintain account information and transactions records of clients at least five years for account information, upon the cancellation of the account, and at least five years for transaction records, upon the recording of the transaction. These records include “information about the account holder or initiator of transaction the amount deposited or withdrawn from the account, the date and time of the transaction, the source and destination of the funds, and the method of transmittal of funds

withdrawal, etc.” These requirements are listed in Section 1.5.2. of the regulations among the provisions subject to possible enforcement actions.

534. While transactions’ record keeping requirements are comprehensive, the legal framework does not envisage the possibility for records to be maintained for more than five years if requested by a competent authority in specific cases and upon proper authority.

Record Keeping for Identification Data, Files and Correspondence (c. 10.2):

535. According to Article 14.b of the AML LD, reporting entities should keep records on the identification data obtained through the customer due diligence process “as required by article 9” for at least five years after the business relationship has ended.

536. Information required by Article 9 of the AML LD does not include business correspondence.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

537. According to Article 14.2. of the AML LD, the identification data and transaction records should be available to domestic officials who are legally authorized. This is the case for FINTRACA and the DAB supervisors (see above in relation to R.4). Judicial authorities are authorized to access financial information based on Article 44 of the AML LD, but only based on a court order, when there are “strong grounds for suspecting that these documents are or may be used by persons suspected of participating in predicate offences.” This reference to “strong grounds” constitutes a high threshold, which may inhibit access to identification data and transaction records by law enforcement authorities.

538. Pursuant to Article 1.3.8. of the AML/CFT RR, financial institutions with branches or sub-offices are required to establish and maintain a centralized database of information from their branches and sub-offices on the identity of customers, principals, beneficiaries, agents and beneficial owners, and on all large cash transactions and suspicious transactions. This requirement is susceptible to facilitate timely access to reports. However, it is not sufficient to by-pass the high threshold set out in the AML LD.

Analysis of effectiveness (R.10)

539. The FIU and law enforcement authorities did not express any difficulty in accessing information from financial institutions in a timely manner. Problems are more related to the limited information collected by financial institutions than the keeping of records.

Special Recommendations VII

540. In Afghanistan, funds transfers are conducted by banks and money service providers (MSPs). International money transfer companies such as Western Union operate through regulated banks and MSPs. MSPs typically use telephone, fax, e-mail, and some of the larger MSPS also have proprietary messaging system to communicate the funds transfer information.

541. Article 5 of the AML LD stipulates that “[a] financial institution and the money remittance service shall include accurate originator information and other related messages on electronic funds

transfers and other forms of funds transfers and such information shall remain with the transfer.” This requirement does “not apply to an electronic funds transfer other than a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer” (emphasis added). Further, the wire transfer requirement does not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf. The first exemption is completely the opposite of the exemption provided for in the SR VII of the FATF standards (i.e. the card-based electronic funds transfers) and goes beyond the standards. The second exemption however is in line with the standards.

542. On the other hand, the CFT LD and the AML/CFT RR apply to all cross-border and domestic wire transfers without any exemptions.

543. The AML LD also requires that any transfer to or from foreign countries of monies or securities involving a sum equal to or exceeding Af 1,000,000 (about US\$22,000), or its equivalent in foreign currency must be conducted by or through an authorized financial institution or an authorized money transmission service. The authorized financial institutions and the authorized money transmission services are banks and licensed MSPs. The carrying of cash or monetary instruments of Af 1millionor above is not prohibited as such but must be reported in writing to the relevant authority at the border as per Article 6 of the AML LD.

Obtain Originator Information for Wire Transfers (applying c. 5.2 and 5.3 in R.5, c.VII.1):

544. Article 29 (1) of the CFT LD specifically provides that “All cross-border wire transfers must be accompanied by precise information on the person ordering the transfer, particularly his or her name, and as applicable, account number. In the absence of an account number, a unique reference number shall accompany the transfer.” This article nevertheless fails to require the originator’s address (or a national identity number, customer identification number, or date and place of birth) which is called for under SR VII.

545. Pursuant to Article 29 (3) of the CFT LD, the methods for implementing Article 29 (1) of the same LD are to be established by regulation of DAB. The AML/CFT RR issued by DAB states that “[a]ll cross-border wire transfers must be accompanied by accurate information on the individual or unit initiating the transfer, including name, passport number or national identity card number, and account number [...]. In the absence of an account number, a unique reference number shall accompany the transfer.” The requirement for the address is substituted with a requirement for the national identity number.

546. The requirements on wire transfers apply to all transaction regardless of the amounts. In addition, Section 1.4.3. (occasional transactions) of the AML/CFT RR further requires the sender to provide documentation on the source of the funds and record name and address if the cross-border wire transfer exceeds Af 1,000,000 (about US\$22,000). See section on “When the CDD is required” (c. 5.2 for further detail).

547. Neither the CFT LD nor the AML LD specifically requires verification of the identity of the originator. Wire transfers are not subject to customer identification and verification requirements with

the exception of incoming wire transfers without full originator information and wire transfers that falls under the category of occasional transactions which are set at Af 1,000,000 (about US\$22,000) or above. Consequently, verification of the originator is not required unless the transaction is above Af 1,000,000. This threshold is substantially above the standards which is set at US\$/EUR 1,000.

548. Further, the Section 1.4.3. (occasional transactions) of the AML/CFT RR requires financial institutions not to carry out occasional transactions in excess of Af 500,000 (US\$10,000) on behalf of customers who refuse to identify themselves or refuse to disclose and document the source of their funds.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):

549. As stated above, financial institutions including money remittance service providers are required to include the full and accurate originator information for all the cross-border wire transfers regardless of the amount. There is no separate procedure for batch transfers.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):

550. Article 29 of the CFT LD and Section 1.4.4 of the AML/CFT RR both state that in principle, all domestic wire transfers must be accompanied by the full and accurate originator information. However, in certain circumstances, instead of full originator information, only an account number or a unique reference number can accompany the domestic transfer. Moreover, the CFT LD and the AML/CFT RR set out different sets of circumstances where this may apply AML/CFT RR. The CFT LD states that this situation applies if “all information concerning the person ordering the transfer can be made available to the financial institutions of the beneficiary and the competent authorities by other means”, whereas the AML/CFT RR states that this situation applies if the financial institution has or will have access to identifying information on the beneficiary. This slight discrepancy may be confusing for financial institutions and may lead to uncertainty as to under what circumstances the account number or a unique reference number can be included alone in lieu of full originator information. In addition, neither the CFT LD nor the AML LD and AML/CFT RR specify when full originator information should be made available to the beneficiary financial institution and to the appropriate authorities.

551. The AML LD does not differentiate the requirements on domestic and cross-border wire transfers.

Maintenance of Originator Information (“Travel Rule”) (c.VII.4):

552. While they do not specifically refer to the case of intermediary or beneficiary institution, all the relevant laws and regulations mentioned above require that accurate originator information and other related messages must accompany the wire transfers and remain with the transfer. All the transaction records are kept for five years as per Section 1.3.9. of the AML/CFT RR and Article 14 of the AML LD.

Risk-Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

553. The CFT LD and the AML/CFT RR do not contain all the provisions related to this requirement. Article 9 of the AML LD sets out the conditions under which identification and

verification of the customers' identity are required. One of the conditions is the receipt of an electronic transfer that does not contain complete originator information. However, this circumstance is not considered to be a factor in assessing whether a wire transfer or related transactions are suspicious and as appropriate to report to the FIU. There is no requirement for the beneficiary financial institution to consider restricting or even terminating its business relationship with financial institutions that fail to meet SR VII requirements.

Monitoring of Implementation (c. VII.6):

554. Section 1.5.1. of the AML/CFT RR specifies that the Financial Supervision Department (FSD) of DAB conducts compliance examination of financial institutions against the requirements set force in the AML/CFT RR. Rules and requirements on wire transfers are examined during the on-site examination as described below in the section of this report dealing with supervision of AML/CFT compliance. Consequently, the deficiencies noted with respect to the DAB supervision (for example, general lack of resources and lack of the examiners' lack of expertise) also apply to its monitoring of the implementation of the wire transfer rules.

Application of Sanctions (c. VII.7: applying c.17.1–17.4):

555. The wire transfer rules in AML LD are enforceable; however, it is not clear whether the rules provided in the AML/CFT RR are fully enforceable because wire transfer rules are not listed in section 1.5.2. of the AML/CFT RR as one of the cases subject to enforcement actions. While the section 1.5.2. mentions that enforcement actions are not limited to those listed, it also refers to the applicability of the acts specified in the section.

556. Where applicable, the same sanctions apply to wire transfers as other AML/CFT obligations. For the type of available sanctions, please see the section 3.10. and subsection on "Sanctions."

Additional elements—Elimination of thresholds (c. VII.8 and c. VII.9):

557. The requirements for wire transfers under the CF TLD, AML LD and the AML RR apply to all transfers regardless of the amount.

Analysis of Effectiveness

558. The discrepancies on the wire transfer rules noted above between the AML LD, CFT LD and AML/CFT RR create confusion: sometimes the AML/CFT RR satisfies the requirements of the standard which the AML LD or the CFT LD fail to meet the criteria in their entirety; or the AML LD meets certain aspects of the requirements, but the AML/CFT RR doesn't.

559. As stated earlier, the current language in the AML LD exempts from the wire transfer rules all the electronic transfers which are not card based transfers. In other words, it applies only to card based transactions, which is exactly what the SR VII intended for exemption. This seems more of an error rather than an intentional policy decision. neither the CFT LD nor the AML/CFT RR have this exemption. Financial institutions met by the assessors interpret the AML LD as requiring to include originator information on all electronic transfer, except for debit or credit card transfers.

560. All the banks in Afghanistan use SWIFT for international transfers. Some of them do not offer wire transfer services to walk-in customers; they only transfer funds electronically for their account-based customers. The two banks met by the assessors indicated that they consider wire transfers as presenting a higher risk of money laundering or terrorist financing than other financial activities, and, in an effort to mitigate those risks, require more documentation than required under the decrees and regulations such as source of funds and income (even below the threshold required by the regulation) and supporting documents such as invoices. One bank mentioned that they do entertain walk-in customers; however, if this is the case, details and documentation required for account opening must be applied and the transfers must be approved by branch manager, MLRO, COO, or CEO. Small transfers (not in excess of US\$10,000) to embassies/high commissions in payment of visas and renewal of passports/salary transfer/or other genuine purposes are exempted from those requirements, and a copy of the sender's identification card or passport will suffice.

561. According to DAB officials, a wire transfer without complete originator information is rejected by the financial institutions and an STR is filed. One of the banks which the assessment team met has an internal policy which requires the Head of Departments to ensure the "authenticity" of all inward transfers (both domestic and cross-border). If a suspicion arises, then the funds must be placed in a separate account, advice from the MLRO or COO must be sought and an STR must be filed with DAB.

562. Some banks have an internal maximum threshold above which they refuse to conduct wire transfers. These thresholds are of Af 500,000 (about US\$10,000) or equivalent for both inward and outward remittance per transaction and Af 1,250,000 (about US\$25,000) or equivalent for remittance value over a single month. This seems to apply to walk-in remittance transfers although this is not clearly stated in the internal document.

563. Overall, detailed information is required from the originator, but, due mainly to the limited number of banks that the assessment team was enabled to meet and the weaknesses identified in supervision, it was not possible to establish that this requirement is properly implemented throughout the banking sector. In addition, the challenge posed by the availability and reliability of identification documents in Afghanistan mentioned in the write-up for Recommendation 5, also applies in the context of the implementation of the wire transfer requirements.

564. Pursuant to Section 2.4.2. of the MSP Regulation, MSPs must use an MSP ledger issued by DAB to record all their transactions. The MSP ledger requires detailed information about the sender (i.e. the customer) beyond full originator information. Similarly, detailed information is required about the beneficiary of the funds (see SR VI for more details).

565. MSPs mentioned that obtaining some of the required information is challenging.

566. No sanctions have been imposed for failure to comply with wire transfer requirements.

3.5.2. Recommendations and Comments

Recommendation 10

567. In order to comply fully with Recommendation 10, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country;
- Introduce in primary or secondary legislation the possibility for a competent authority to request that records are maintained for more than five years, in specific cases and upon proper authority;
- Require in primary or secondary legislation that financial institutions keep records of business correspondence;
- Review the wording of Article 44 of the AML LD in order to lower the current threshold of “strong grounds” that judicial authorities’ face to access identification data and transaction records.

Special Recommendation VII

568. In order to comply fully with Special Recommendation VII, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Harmonize the wire transfer rules in the AML LD, CFT LD, and AML/CFT RR;
- Require verification of originator information for transactions above US\$/EUR 1,000 or their equivalent in Af;
- Clarify the rule on domestic wire transfer requirements in particular with respect to the conditions under which financial institutions can send only an account number or a unique identifier in lieu of full originator information;
- Require financial institutions to adopt procedures that establish, on the basis of the risk of money laundering and terrorist financing, how to identify and deal with wires that are not accompanied by full originator information;
- Add the maximum time frame of three days within which full originator information should be made available to the beneficiary financial institution and to appropriate authorities upon request;
- Ensure that all elements of the wire transfer rules are enforceable (especially relating to the requirements in the AML/CFT RR);
- Although this is not specifically required under the standard, to increase effectiveness, consider revising the MSP ledger to make it less onerous for smaller value transactions;

- Ensure that wire transfer rules are implemented.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Absence of possibility for a competent authority to request that records are maintained for more than five years, in specific cases and upon proper authority. • No requirement to keep records of business correspondence. • Access to identification data and transactions records by judicial authorities is subject to restrictive conditions which hamper access to relevant information in practice.
SR.VII	PC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • No requirement to verify originator information for transactions above US\$/EUR 1,000 and below Af 1 million (about US\$22,000). • Lack of clarity on the domestic wire transfer rules with regard to the condition under which only an account number or a unique identifier can be sent. • No requirement to adopt risk-based procedures for transfers which are not accompanied by full originator information. • Lack of clarity on the enforceability of some elements of the wire transfer rules. • Effective implementation by banks throughout the sector has not been established. • Inadequate implementation by MSPs.

3.6. Monitoring of Transactions and Relationships (R.11 and 21)

3.6.1. Description and Analysis

Legal Framework

569. Relevant provisions regarding monitoring of transactions are included in Article 12 of the AML LD.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

570. Pursuant to Article 12.1. of the AML LD, financial institutions are required to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

Examination of Complex and Unusual Transactions (c. 11.2):

571. Article 12.1. also requires financial institutions to examine the background and purpose of such transactions and to set forth their findings in writing. In addition, Article 12.4 AML LD requires reporting entities to send an STR to the FIU for all transactions requiring special attention as per Article 12.1 AML LD. This obligation goes beyond the standards.

Record Keeping of Findings of Examination (c. 11.3):

572. Based on Article 12. 1 of the AML LD, these findings have to be available for competent authorities and auditors. Pursuant to Article 12.2. and 14 AML LD, findings have to be kept for 5 years.

Analysis of effectiveness (R.11)

573. The obligation to send an STR on all transactions requiring special attention appears counter-productive because, by imposing an automatic reporting, it does not encourage financial institutions to have a better understanding of these transactions. Gathering and maintain background information regarding unusual transactions is however important for CDD purposes and does not need to be reported to the FIU if the transaction has a reasonable explanation and is not suspicion. Financial institutions met by the assessors did not appear to pay special attention to complex and unusual transactions let alone set forth their findings in writing.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):

574. Pursuant to Article 12.3. AML LD, financial institutions are required to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply anti-money laundering and combating the financing of terrorism requirements equivalent to those contained in the AML LD.

575. It has to be noted that under Recommendation 21, special attention should be given to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF recommendations which is a higher threshold than the equivalence with the AML LD.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

576. There is no requirement to examine transactions with persons from or in countries which do not sufficiently applying the FATF recommendations when these transactions have no apparent or visible lawful purpose. Article 12.4. of the AML LD nevertheless requires financial institutions to report to the FIU an STR in cases where they perform transactions or have business relationships with persons from countries which do not or insufficiently apply AML/CFT requirements equivalent to the AML LD.

577. Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

578. The legal framework does not provide for the possibility to apply counter-measures in cases where a country continues not to apply or insufficiently applies the FATF Recommendations.

Analysis of effectiveness (R.21)

579. Overall, the current framework is not effective at requiring financial institutions to give special attention to transactions from countries which do not or insufficiently apply the FATF recommendations, which is a serious issue as three countries neighboring Afghanistan were under FATF monitoring at the time of the onsite visit.

580. Notwithstanding the requirement in Article 12.3. of the AML LD, financial institutions do not receive updated information on concerns about weaknesses in the AML/CFT systems of other countries from the FIU or the supervisor. No information has been circulated following the issuance by the FATF of lists of countries with strategic deficiencies regarding AML/CFT. Some financial institutions met by the authorities mentioned the name of countries which were indicated either by their mother company, or following trainings organized by the FIU. None of these countries was one the three countries neighboring Afghanistan under FATF monitoring at the time of the onsite visit (Iran, Pakistan and Turkmenistan). The requirement to report transactions with persons from or in countries which do not or insufficiently apply AML/CFT requirements equivalent to those of the AML LD, has not been followed yet by the financial institutions met by the mission. The FIU did not indicate what percentage of STRs it has received was filed on the basis of Article 12.3. of the AML LD.

581. In relation to Iran, on the one hand, one of the banks met by the assessors indicated that it was not able to use the correspondent account it has with an Iranian bank. On the other hand, the DAB supervisory department indicated that “there is no need” to give special attention to transactions with Iran. Two Afghan banks have correspondent accounts in Iranian banks, and two other banks have correspondent accounts in banks in third countries and with Iranian shareholders. At least two Afghan banks have Iranian shareholders. It should be reminded that since February 2009, the FATF urges all jurisdictions to apply effective counter-measures to protect their financial sectors from money laundering and financing of terrorism risks emanating from Iran. In particular, the FATF urged jurisdictions to protect against correspondent relationships being used to bypass or evade counter-measures and risk mitigation practices.

582. In relation to Pakistan, one hawaladar met by the assessors indicated that he transfers every year hundreds of millions of dollars e which he justified as cash smuggling from Pakistan to Dubai. He explained this transit through Afghanistan by the tough exchange control restrictions in Pakistan which were said easier to circumvent through the border between Pakistan and Afghanistan. Four Afghan banks have correspondent accounts in Pakistan.

583. Trade and financial flow with Turkmenistan are more limited than with Pakistan and Iran and no Afghan bank had correspondent accounts in this country at the time of the onsite assessment mission.

3.6.2. Recommendations and Comments

584. Due to its geographical proximity with countries with strategic deficiencies regarding AML/CFT, the current lack of action of the authorities is of particular concern.

585. The authorities should:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country;
- Remove the obligation to report STRs on all transactions and business relationships subject to special attention as it appears counter-productive, discouraging a financial institution to better understand these transactions, the end-results being an STR in all cases;
- Expand the requirement under Article 12.3. of the AML LD, to jurisdictions which do not or insufficiently apply the FATF recommendations;
- Provide for the possibility to apply counter-measures in cases where a country continues not to apply or to apply insufficiently the FATF Recommendations.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Obligation to report STRs on all transactions subject to special attention appears counter-productive, as it discourages to better understand these transactions. • Financial institutions met by the assessors did not appear to pay special attention to complex and unusual transactions.
R.21	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Requirement to give special attention to business relationships and transactions with persons from some countries is vague and should be enlarged to countries which do not or insufficiently apply the FATF recommendations. • Obligation to report STRs on transactions from some countries appears counter-productive, as it discourages to better understand these transactions.

		<ul style="list-style-type: none"> • Absence of possibility to require domestic financial institutions to apply counter-measures in cases where a country continues not to apply or insufficiently applies the FATF Recommendations. • Absence of effectiveness of the measures in place, notably because of authorities' lack of action in relation to neighboring countries monitored by the FATF.
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3.7. Suspicious Transaction Reports and Other Reporting (R.13-14,19, 25 & SR.IV)

3.7.1. Description and Analysis

Legal Framework

586. The reporting requirements for financial institutions and DNFBPs are set in primarily in (i) the 2004 AML LD; (ii) the AML/CFT RR; and (iii) the MSP Regulation.

Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):

587. Article 16 of AML LD requires reporting entities (see section 1 for the list of reporting entities) to file a suspicious transaction report (STR) when they (a) suspect that any transaction or attempted transaction may be related to or derived from the commission of an offense; (b) suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations. STRs can be submitted to FinTRACA in a form and by any rapid means of communication as may be determined in regulations of DAB.

588. Reporting entities should also be required to report a suspicious transaction even if it became clear only after completion of the transaction that there were grounds for suspicion. After having submitted a STR, reporting entities must report without delay any additional information that might confirm or invalidate the suspicion.

589. Article 17 of the AML LD specifies the obligations of compliance officers or auditor if they suspect that (i) any transaction or attempted transaction may be related to or derived from the commission of an offense; or (ii) has information that it suspects are relevant to an act preparatory to an offence of the financing of terrorism or relevant to an investigation or prosecution of a person or persons for an offense, or may otherwise be of assistance in the enforcement of the AML LD.

590. In addition to Article 16 of the AML LD, part A, 1.1.2 F of the AML/CFT RR defines suspicious transaction as “a transaction, or attempted transaction, or contact of any kind between parties with the intent to facilitate a transaction, regardless of amount or means of payment or ultimate completion of transaction, where any of the following circumstances exist: 1) there is no underlying legal or trade obligation, purpose, or economic justification; 2) the client is not properly identified; 3) the amount involved is not commensurate with the business or financial capacity of the client; 4) taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under law and regulations; 5) there are circumstances relating to the transaction which are observed to deviate from the profile of the client and/or the client's past transactions with the financial institution; 6) the transaction appears

to be in any way related to an unlawful activity or offense that is about to be, is being, or has been committed; or 7) it is a transaction that is similar or analogous to any of the foregoing.”

591. According to Article 12, paragraph of the AML LD, reporting entities should report to the FIU, as STRs, i) all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose; and ii) business relationships and transactions with persons from countries which do not or insufficiently apply AML/CFT requirements equivalent to those contained in the AML LD.

592. The AML/CFT RR also specify the acceptable mode of reporting:

- “By courier: Reports may be delivered to the FIU during normal business hours or by special arrangement with the General Director. Courier must present documentation to prove that he represents the reporting organization indicated on the report. Reporting entities must ensure that delivered media are securely packaged and sealed to prevent tampering in-route;
- Electronic (preferred). Reports may be submitted by secure electronic mail. For this option, the reporting entity must sign an Electronic Signature Agreement with the FIU and must abide by the terms of the Agreement. A template agreement is posted on the FinTRACA website.⁶⁸ Reports that are not submitted in accordance with the terms of the Agreement will not be accepted.”

593. The MSP Regulation, No 2, issued by DAB in April 2006 (MSP Regulation) also specifies in its article 2.3.7 that MSPs should submit required reports on suspicious transactions to the FIU or other repository of such reports as may designated by the laws of Afghanistan. No other repository were created or designated to far.

594. Finally, it is worth mentioning that the list of predicate offenses required to be reported do not include all categories of offenses defined under Recommendation 1.

STRs Related to Terrorism and its Financing (c. 13.2):

595. As mentioned above, there is an obligation imposed by the AML LD to report suspicious transactions related or linked to terrorist financing. However, deficiencies in the financing of terrorism offense scope limit the reporting requirement: the collection of funds for terrorist individuals, terrorist organizations or for carrying out terrorist acts, for example, is not criminalized and is therefore not subject to reporting (for more details, please refer to SR.II). There was no indication provided to the assessors those STRs had been received specifically in relation to terrorist financing.

⁶⁸ at <http://www.fintraca.gov.af/reports.asp>

No Reporting Threshold for STRs (c. 13.3):

596. According to the AML LD, all suspicious transactions including attempted transactions should be reported if they may be related to or derived from the commission of an offense, regardless of the amount of the transaction.

Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

597. There is no impediment to the reporting of suspicious transaction based on the fact that the transaction or attempted transaction may, among other things, involve tax matters. However, FinTRACA has never received reports that are related to tax matters.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

598. As mentioned before, article 16 of the AML LD requires the reporting of any transaction or attempted transaction that may be related to or derived from the activities which have been criminalized under Afghan law.

Protection for Making STRs (c. 14.1):

599. Article 42 of AML LD stipulates that no proceedings for breach of banking or professional secrecy shall be instituted and no civil, administrative or criminal action may be brought or any professional sanction taken against any person who in good faith transmits information or submits reports in accordance with the provisions of the AML LD. Also, no civil, administrative or criminal action may be brought against any reporting entity or its directors or employees by reason of any material loss resulting from the freezing of a transaction by the FIU in case of seriousness or urgency of the case as provided for in article 30 of the AML LD.

Prohibition Against Tipping-Off (c. 14.2):

600. According to Article 48 para. 1(a) of the AML LD, a natural or legal person who intentionally discloses any information regarding a report required to be filled under the AML LD to the person or persons to whom the report relates or to any other person not entitled to such information should be punished like persons or corporate entities who commits the money laundering offense (Article 46 and 47).

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

601. According to Article 38 of the AML LD, the identity of the reporting party shall not appear in the report disseminated by FinTRACA to the AGO unless (i) there are reasons to suspect that the organization or its employee committed the offense of money laundering or if the information is necessary in order to establish facts during criminal proceedings; and (ii) if the submission of this information is requested in writing by the prosecutor or the competent court.

Consideration of Reporting of Currency Transactions Above a Threshold (c.19.1):

602. According to article 15 of the AML LD “a reporting entity shall report to the Financial Intelligence Unit in such form and manner and within such period as may be prescribed in regulations by Da Afghanistan Bank any transaction in cash in an amount as may be so prescribed, by Da Afghanistan Bank, unless the recipient and the sender are financial institutions.”

603. Article 1.1.2.a. of the AML/CFT RR, which applies to banks and MSPs, defines large cash transaction as a transaction in which one party receives, pays, or otherwise transfers cash, bullion, other precious metals, or precious stones, or any other monetary instrument with a value equal to or exceeding Af 500,000 (around US\$12,600). A large cash transaction also includes the completion of two or more such transactions by or on behalf of the same person during any two consecutive business days when the total value of the transactions is equal to or exceeds Af 500,000 (around US\$12,600).

604. The Regulation specifies that LCTRs should be filed no earlier than the first business day of the month and no later than the fifth business day of the month following the month during which the transaction occurred. If no reportable transactions occurred during this period, then a “NIL” reports should be prepared.

605. These reports are to be submitted to FinTRACA in electronic format. LCTRs must comply with the specification published on the FIU’s website.⁶⁹ According to the authorities, the specification was designed to facilitate direct extraction of reports from the reporting entity’s databases and to eliminate the possibility of formatting errors. For reporting entities that are not technically capable of direct extraction, a computer-based form is also supplied on the FinTRACA website. The form, once filled by the reporting entity, will generate reports that conform to the specification. Instructions for preparation of a “NIL” report are also posted on the website.

606. The MSP Regulation also specifies in its article 2.4.2. that every DAB licensee must submit reports to the Financial Supervision Department of DAB which monitors compliance with the reporting requirements and which will forward reports to the FinTRACA. The following reports must be submitted within 10 business days of the end of each financial month: a report on the number and aggregate volume of transmissions, where transmissions are broken down according to the following parameters: inbound and outbound; foreign and domestic; and currency of denomination of amounts transmitted; Exact and unaltered signed duplicate copies of each month’s transactions as provided in the official record books issued by DAB and bearing a number registered by DAB as having been issued to the licensee. No other means of duplication is allowed. When justified by specific business circumstances, licensees may propose to the DAB Financial Supervision Department and FinTRACA an alternative mode of reporting which, if accepted, may be used in lieu of the official record books.

607. In practice, the total number of LCTRs filed is as follows:

⁶⁹ <http://www.fintraca.gov.af>

	2006	2007	2008	2009	2010	Total	Volume of deposits (US\$ millions) As of Dec 2010	Ratio: Number of LCTRs for 1 US\$ millions of deposits.
Total	34,939	199,811	286,968	575,813	668,193	1,785,808		

608. The statistics provided by the authorities to the assessment included the names of the reporting entities, and showed that some banks started reporting later than others, and in an irregular manner.

Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c.19.2):

609. There is a computerized data base system available at FinTRACA that receives the electronic reports from banks and into which reports filed manually by MSPs are entered.

Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c.19.3):

610. All received reports are kept in the unified information-analytical system of FinTRACA. Access to this system is restricted to the employees of the FIU.

Guidelines for FI (c.25.1):

611. FinTRACA and the DAB do not provide financial institutions with guidelines to assist them in implementing and complying with their respective AML/CFT requirements. No guidelines on money laundering and terrorist financing techniques and typologies were provided to FI.

Feedback and Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.2):

612. No examples were provided to the assessment team that demonstrated that feedback was provided, at a general level (such as statistics for example) or at the specific level. Competent authorities, and particularly the FinTRACA, did not provide guidance to assist financial institutions on AML/CFT issues covered under the FATF recommendations not even with respect to a description of money laundering and terrorist financing techniques and methods or with respect to any additional measures that these institutions could take to ensure that their AML/CFT procedures are effective.

Statistics (R.32)

Number of STRs:

	2007	2008	2009	2010	Total
Total	3	35	267	369	674

613. The statistics provided by the authorities (which included a clear break-down per reporting entity but have been consolidated above for the purposes of this report) show the following:

- Only 14 out of 17 banks filed STRs. Three banks filed only one STR and a fourth filed only two. One of the medium size banks met during the mission mentioned that it never reported suspicious transactions because of the “very low risk” that its clients presented and “absence” of suspicion related to their accounts;
- Some banks only sent one STR and others are not reporting in a regular manner.

Analysis of effectiveness

614. The validity of the AML LD and the CFT LD has not been established since neither decree has been transmitted to parliament. In addition, the AML and CFT LDs are not applicable on the whole territory. (For more details, please refer to description under Section 1).

615. Meetings with Afghan authorities and representatives from financial institutions visited during the assessment revealed that both the authorities’ and the private sector’s understanding of money laundering and terrorist financing risk is weak.

616. FinTRACA requires all financial institutions supervised by DAB to report suspicion. However, all reports received to date have come exclusively from banks. No implementation regulations specifying the requirement of reporting were issued to other financial institutions (i.e. insurance).

617. Overall, the level of reporting of suspicious transactions is low and LCTRs are sent from banks to the FinTRACA in an inconsistent manner. Microfinance institutions met during the mission were not aware of the existence of the AML LD and, consequently, of their reporting obligations. Although the AML LD and implementing regulations are clear about the manner of reporting and the procedures that should be followed when reporting, the two banks that we met have internal policies and procedures that included different procedures and are not in compliance with the existing requirements. Some manuals did not include the requirement to report LCTRs.

618. Foreign exchange dealers never reported STRs and the supervision department at DAB considers that there are no risks in this sector.

619. When taking into account the small number of banks who reported suspicious transactions, the size of the banking system, and, in particular, the high risk of money laundering and of terrorist financing in Afghanistan, the number of STRs is surprisingly low. The level of reporting does not represent effective and adequate reporting across the whole of the banking sector. The enforcement of the reporting of attempted transactions has been weak and non-existent in other areas. FinTRACA received most of the reports after the suspicious transaction has been carried out.

620. According to FinTRACA personnel, the quality of STRs improved since 2006. They still face some problems regarding the accuracy of the date and completeness of data fields but usually request banks to complete such information. The FinTRACA only started to disseminate reports based on “serious” STRs in 2009. No disseminations were made during the first 3 years of the operation of

FinTRACA. Furthermore, no money laundering or terrorism financing prosecution has been launched by the AGO based on a dissemination from FinTRACA.

621. Representative from FinTRACA mentioned that the requirement for special monitoring of transactions under Article 12 of the AML LD has never been implemented. Reporting entities do not report complex, unusual large transactions and all unusual patterns of transactions automatically as required by the LD. They do not report transactions with persons from countries which do not or insufficiently apply the FATF Recommendations. Banks only report STRs based on Article 16 described above. There was no indication provided to the assessors that reports had been received specifically in relation to TF.

622. Although Article 48.1.A. prohibits directors and employees from disclosing the fact that a STR is being reported or provided to the FIU, however, there might be a lack of effectiveness in the implementation of protection for STR reporting and tipping off due to the lack of governance and transparency in Afghanistan.

623. When asked about reporting from the largest bank in Afghanistan that recently collapsed, FinTRACA staff specified that none of the STRs it had received from this bank were related to the fraudulent loans and transactions that led to the collapse. After the crisis erupted, DAB conducted an inspection, and found that there were 12 different levels of access to the information related to accounts and that the compliance officer only had limited access to KYC forms, accounts opening information and statements, and that he was therefore not able to conduct the proper due diligence and report when necessary. This explains at least in part why no STRs were filed with respect to the illegal transactions.

3.7.2. Recommendations and Comments

624. In order to comply fully with Recommendations 13, 14, and 25, the authorities are recommended to:

Recommendation 13 and 14:

- Criminalize participation in an organized criminal group and racketeering; trafficking in human beings and migrant smuggling; environmental crime; kidnapping, illegal restraint and hostage-taking so that they may constitute predicate offenses to money laundering and be subject to reporting;
- Address the deficiencies noted in the terrorist financing offense so they no longer limit the reporting requirement;
- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Issue implementing regulations for financial institutions other than banks and MSPs to clarify the requirements of the AML LD taking into consideration the specificities of the sector;

- Ensure that supervisors and FinTRACA draw up an action plan to encourage reporting across all sectors – a prioritized and phased plan based on potential risk posed by the different sectors may be necessary, given overall resources, to effectively bring this about. Training and effective enforcement should be implemented.

Recommendation 25:

- Ensure that competent authorities, and particularly the FinTRACA, provide guidance to assist financial institutions on AML/CFT issues covered under the FATF recommendations, including, at a minimum, a description of money laundering and terrorist financing techniques and methods; and any additional measures that these institutions could take to ensure that their AML/CFT procedures are effective;
- Establish a mechanism for providing feedback to reporting institutions including general and specific or case-by-case feedback;
- Consider reviewing the guidance provided by the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons;
- Provide specialized training to financial institutions to improve the quality and quantity of STRs;
- Strengthen the guidelines and feedback across all sectors to (i) incorporate different examples covering sectors other than banking, and (ii) provide more Afghan examples of money laundering and terrorist financing typologies.

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

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • The scope of the reporting requirement is too narrow because several of the FATF designated categories of offenses that should constitute predicates to money laundering have not been criminalized in Afghanistan. • Effectiveness was not established: Low level of reporting with respect to money laundering and none of the STR were related to FT cases; only banks have filed STRs; and AML LD is not enforced on the whole territory.
R.14	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • AML LD not enforced on the whole territory. • Absence of effectiveness in the implementation of protection for STR reporting and tipping off due to the lack of governance and transparency.
R.19	C	<ul style="list-style-type: none"> • This Recommendation is fully met.

R.25	NC	<ul style="list-style-type: none"> Guidelines are only predominately orientated towards the banking sector; no account is taken of other reporting entities. There is no effective feedback being offered via the FinTRACA or other competent body.
SR.IV	NC	<ul style="list-style-type: none"> The AML LD lacks Parliamentary approval. The AML and CFT LDs are not enforced on the whole territory. Deficiencies in the terrorist financing offense limit the reporting requirement. No reports have been received from any institution regarding terrorist financing.

Internal controls and other measures

3.8. Internal Controls, Compliance, Audit, and Foreign Branches (R.15 and 22)

3.8.1. Description and Analysis

Recommendation 15

Legal Framework

625. Article 18 of the AML LD (internal AML program at reporting entities) and Section 1.2.1 (internal controls and compliance) of the AML/CFT RR require financial institutions to develop internal policies and control system. The MSP Regulation (2006, last amended in 2009) and the Foreign Exchange Dealers Regulation (2008) also require MSPs and foreign exchange dealers respectively to have effective internal control system in order to prevent money laundering and terrorist financing.

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 and 15.1.2):

626. Article 18 of the AML LD requires reporting entities to develop internal policies, procedures and controls for the prevention of money laundering. The law specifies five elements that should be included in the internal AML program: a) development of policies, procedures and control including compliance management; b) designation of the administrative officials responsible for enforcing the policies, procedures and controls; (c) screening procedures to ensure high standards when hiring employees; (d) ongoing training; and (e) internal audit arrangement. Reporting entities are exempted from the requirements under (b) and (e) if their total number of staff and management is less than 5.

627. The AML/CFT RR provides further information on what policies and procedures should be established by financial institutions. Section 1.2.1 of the AML/CFT RR states that “[f]inancial institutions must designate one individual as an “AML officer” having primary responsibility for development and implementation of the anti-money laundering measures contained in the regulation”; however, it does not specify that the AML officer should be at the senior management level. Section

1.3.1 of the Regulation requires financial institutions to have “a customer acceptance policy that clearly indicates situations when a customer will be rejected.”

628. Pursuant to Section 2.3.7 of the MSP Regulation and the Section 1.3.2 of the Foreign Exchange Dealers Regulation, every licensee is obliged to take all necessary measures for the effective prevention of money laundering. These measures include effective internal control and communication procedures, instructions as to what action needs to be taken in circumstances where transactions are deemed to be related to money laundering are identified.

629. While the obligation to develop internal control policies, procedures and control is in the law and regulations, the type of information that should be covered under the internal policies, procedures, and control is not specified.

630. There is no requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

631. With regard to the insurance sector, neither the current Insurance Law nor its draft amendments require insurance companies to develop AML/CFT internal control policies and procedures. The AML LD is the only legal instrument which currently contains such a requirement. However, the AML/CFT RR does not apply to the insurance sector because, while the definition of financial institutions in the AML/CFT RR includes insurance companies, it is limited to financial institutions licensed or permitted, regulated and supervised by DAB, whereas insurance companies are licensed, regulated and supervised by AIA.

Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):

632. Article 18 of the AML LD requires the internal audit to check compliance with the LD and effectiveness of the measures taken to apply the LD. Section 1.2.1 of the AML/CFT RR requires the designation of an auditor who is different from the compliance officer, and who has responsibility for auditing the implementation of the policies and procedures, in particular, reporting to the FIU by the AML officer. Further, the regulation states that “[t]his audit function should report directly to the Board of Supervisors or Board of Directors (if applicable) or to senior management, and its reports should include examples, if any, of the AML officer's failure to implement these measures.” The focus is on the assessment of the AML compliance officer and internal compliance without regard to assessing whether the AML policies and procedures adopted adequately cover all money laundering and terrorist financing risks.

633. E-money institutions (EMIs) are required to have a chief internal auditor and this person cannot have other senior management positions and has to be separate from chief compliance officer. The internal audit function can be outsourced to another organization, or to an individual employed by another organization. In that case, information on this proposed outsourcing arrangement, including the identity of the third-party vendor, its experience in internal audit, and any existing affiliations between the third-party vendor and any of the executive officers of the EMI, needs to be disclosed.

634. EMIs are also required to submit an annual external auditor's report which includes the adequacy of internal audit and internal controls.

635. There are no specific requirements for MSPs (other than EMI) and foreign exchange dealers to have independent audit function. Since such function should take into account the size of business and risk to money laundering/terrorist financing, it may not be necessary under the standard for all MSPs and foreign exchange dealers; however, larger MSPs should have an independent audit function in order to ensure that internal control requirements are effectively implemented.

Ongoing Employee Training on AML/CFT Matters (c. 15.3):

636. Article 18 of the AML LD and Section 1.3.10 of AML/CFT RR require ongoing training for officials or employees of reporting entities. The Regulation states “[f]inancial institutions are responsible for training their staff in the requirements of this regulation and continually updating the skills of their staff as requirements and situations change. This training should include real-world examples of transactions that constituted money laundering and terrorist financing, and an awareness of the role that staff play in the overall process of detecting and punishing money launderers and terrorist financiers.”

637. Section 2.3.7 of the MSP Regulation as well as section 1.3.2. of Foreign Exchange Dealers Regulation requires continuous training of staff so that they are able to recognize transactions that might be related to money laundering. Further, Section 2.5.9. of the MSP Regulation requires EMIs to ensure training of its authorized e-money agents, covering their AML/CFT responsibilities, including customer acceptance and customer identification. DAB may, from time to time, at its discretion, specify the form, content, and frequency of update of this mandatory training. At this point, apart from EMI, all the other MSPs rely on training provided by DAB or donors. Foreign exchange dealers were not a priority for DAB so far, thus DAB has not reached out to them for the training yet.

Employee Screening Procedures (c. 15.4):

638. Article 18 of the AML LD requires that reporting entities to “[c]reate adequate screening procedures to ensure high standards when hiring employees.”

639. With regard to EMIs, MSP Regulation states that the EMI is responsible for carefully screening, selecting, and supervising their authorized e-money agents. It further suggests that “[t]o the greatest extent possible, an authorized e-money agent should be an established business in its community, whose commissions from handling MVT or other EMI transactions represent less than 50percent of its total revenue from all business activities. This criterion is not to be interpreted as a rigid requirement, but rather as an indication that a loss of reputation caused by misbehavior or incompetence in EMI activities would create a significant financial loss for the agent with regard to its other business activities.”

Additional Element—Independence of Compliance Officer (c. 15.5):

640. The independence of the auditor is ensured in the regulation, but the LDs and regulations are silent with respect to the independence of the compliance officer. Although this is not part of an essential criterion under the methodology, the independence of the compliance officer is very important in the context of Afghanistan and should be addressed: indeed, there is a notion of some people being above the law, which makes the work of the compliance officer very challenging. Ensuring his or her independence would promote more effective internal controls and increased compliance with AML/CFT requirements.

Analysis of Effectiveness

641. Banks are required to submit their AML/CFT policies and procedures during a bank license applicant process. The authorities maintain that the license is not granted if the proposed AML/CFT policies and procedures are poor, and, that as a consequence, all the banks have internal AML/CFT policies and procedures in place. This, however, could not be confirmed by the assessors considering that the sample of banks that they were given the opportunity to meet was not representative of the overall Afghan banking sector. The internal policies and procedure documents of three banks were shared with the assessors: they were quite comprehensive (despite the lack of precision on the decrees and regulations) and had a reasonable level of detail although there were variations in the quality, coverage, depth and scope of the documents, with some policies being in contradiction with the legal framework (see analysis of effectiveness under R.6). The assessors noted that the main challenge is in the implementation of these policies and procedures: they are not fully implemented for all types of customers, in the sense that some politically influential and important shareholders or customers were exempted from the application of the internal policies and procedures. This notably became apparent during recent troubles encountered by one of largest banks in Afghanistan.

642. Although there is no regulatory requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information, the assessors were informed that in practice all financial institutions allow AML/CFT compliance officer to have timely access to customer identification data, other CDD information and transaction records.

643. Each bank has its own AML training program. In addition, a new training institute, the Afghanistan Institute of Banking and Finance, was opened in September 2010 in order to train bank employees. The Institute offers a range of courses including on AML and risk management. AML training for all the employees of banks is relatively new and this needs to be strengthened.

644. Some banks seem to have relatively established audit functions in place where AML policies and procedures are all reviewed, and sample transactions and reporting requirements are tested. The reports are then sent to the chairman of the audit committee. The assessors were informed that internal auditors made various good suggestions to improve internal AML/CFT compliance requirements. However, the effectiveness of the AML audit could not be established because the assessors were not given the opportunity to meet with internal auditors.⁷⁰

645. The EMI has an internal control policy and procedure in place for which the AML compliance officer (MLRO) and a few other compliance officers are responsible. The compliance and training function for provinces outside Kabul is outsourced to a third party. The AML officers conduct central monitoring. The EMI compliance unit and the outsourced company are working closely to ensure the implementation of KYC/CDD and record keeping requirement in provinces and small towns. For example, outsourced entity collects KYC forms from EMI agents and checks

⁷⁰The assessors met with the chief of AML audit of one of the two banks met during the onsite visit. However, the chief auditor was not able to provide sufficient details on the implementation of the audit policies beyond 3 months since he was new to the bank.

whether information is filled appropriately and whether supporting documents were properly collected (such as a copy of ID). Then the file is brought to the Headquarters where it is passed down to registration unit. If there is a problem with a KYC form, then the form is sent to the AML compliance unit. Training of agents is also provided by the outsourced company.

646. MSPs who are not EMIs operate on a much smaller scale in terms of the number of employees, locations, and agents, etc. In many instances, MSP employees who are responsible for monitoring compliance with laws and regulations or for maintaining documents to demonstrate compliance are not always able to read or write adequately. Such conditions make it challenging for MSPs to develop internal control policies and procedures. However, the assessors were told that some MSPs follow certain internal rules and procedures as a matter of practice although they are not usually in formal internal policy and procedure documents. AML training of MSPs has been provided several times by the FIU and DAB supervision department: however, more awareness raising and training will be required for MSPs and foreign exchange dealers.

Recommendation 22

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):

647. Section 1.2.3 of the AML/CFT RR requires that “the overseas branches of Afghanistan-licensed or permitted financial institutions shall abide by the provisions of laws governing anti-money laundering of the country or region where they are located, and provide cooperation and assistance to the anti-money laundering efforts of law enforcement officials of their host country, according to the laws of that host country.” Thus, the AML/CFT RR does not require financial institutions to follow the home country regulation in countries which do not or insufficiently apply the FATF Recommendations. Neither does the Regulation specify what financial institutions should do when the home and host countries requirements differ.

648. Article 10.5 of the Banking Law specifies that with regards to foreign branches and representative offices of a domestic bank, DAB will only issue a permit if it is satisfied, following consultations with the bank regulator of the country where the office is to be located, that the office will be adequately supervised by that bank regulator in close cooperation with DAB. It does not specifically touch upon the AML/CFT; however, it is an element which may make it harder for Afghan banks to obtain a permit for foreign branch or subsidiary if AML/CFT measures cannot be implemented in the host country.

649. At this point, banks and other financial institutions in Afghanistan do not have overseas branches; however, MSPs have subsidiaries outside Afghanistan.

Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):

650. There is no requirement to inform home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because of the prohibition by host country’s laws, regulations or other measures.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

651. There is no specific provision which requires financial institutions to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide. Afghan banks currently have no foreign branches or subsidiaries.

3.8.2. Recommendations and Comments

Recommendation 15

652. In order to comply fully with Recommendation 15, the authorities are recommended to:

- Specify what should be covered under the internal control requirements;
- Require financial institutions to designate an AML/CFT compliance officer at the senior management level;
- Require financial institutions to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information;
- Guide and assist MSPs and foreign exchange dealers in developing internal control policies and procedures which are proportionate to the size of business and to the risk of money laundering and terrorist financing;
- Issue implementing regulations for AML/CFT RR financial institutions which are subject to AML LD and CFT LD but regulated by other competent authorities than DAB (for example, insurance companies);
- Ensure that all banks have effective internal audit systems in place, and ensure that they adequately cover all money laundering and terrorist financing risks;
- Require all the reporting entities to enhance their AML/CFT training programs to ensure that all relevant staff is aware of money laundering and terrorist financing risks and AML/CFT measures;
- For effective internal control, ensure that the compliance officer is independent.

Recommendation 22

653. In order to comply fully with Recommendation 22, the authorities are recommended to:

- Require foreign subsidiaries of Afghan MSPs to follow the laws and regulations of Afghanistan to the extent the host country's laws and regulations permit, and consider requiring the same for foreign branches and subsidiaries of Afghan banks. Ensure that this principle is observed in particular in countries which do not or insufficiently apply the FATF Recommendations;

- Require foreign branches and subsidiaries to apply the higher standard, to the extent that host country's laws and regulations permit, when AML/CFT laws and regulations in the host country and Afghanistan differ;
- Require foreign branches and subsidiaries to inform DAB supervision department when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because of the prohibition by host country's laws, regulations or other measures;
- Require foreign branches and subsidiaries to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

3.8.3. Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Lack of guidance on what should be covered under the internal control requirements. • Lack of requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • Lack of internal control policies and procedures with MSPs and foreign exchange dealers, having regards to the size of business and risk to money laundering and terrorist financing. • Effectiveness of internal audits was not established. • Insufficient training by all the reporting entities.
R.22	NC	<ul style="list-style-type: none"> • No requirement for foreign branches and subsidiaries of Afghan financial institutions to follow the laws and regulations of Afghanistan to the extent the host country's laws and regulations permit in particular in countries which do not or insufficiently apply the FATF Recommendations. • No requirement for foreign branches and subsidiaries to apply the higher standard, to the extent that host country's laws and regulations permit, when laws and regulations differ between host country and Afghanistan. • No requirement for foreign branches and subsidiaries to inform DAB supervision department when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because of the prohibition by host country's laws, regulations or other measures.

3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Legal Framework

654. The Afghan laws are silent on the issue of shell banks. DAB does not have a written policy to avoid the creation of shell banks. According to the authorities, the AML policies of the banks operating in the country do not allow for any kind of business relationship with any shell bank. This was true for the banks which the assessment team met.

Prohibition of Establishment of Shell Banks (c. 18.1):

655. Afghan laws do not explicitly prohibit establishment of shell banks; according to the authorities, no shell banks have been authorized by DAB. According to them, the requirements for establishing a bank set forth in the Banking Law, the Licensing Regulation, Circulars on Fit and Proper, and the licensing process for banks established by the DAB make it very difficult to establish shell banks in Afghanistan.

656. The Regulation on Bank Licensing and Permitting (2006) details the process related to licensing and permitting of commercial banks. The procedures provide for public notice for an applicant to announce intentions to obtain a banking license or permit, the maintenance of a public file regarding the application, collection of written comments by interested parties to the application and a procedure for a hearing during the deliberations on the application. The section 1.2.3. on investigations state that “DAB may examine or investigate and evaluate all facts related to a filing to the extent necessary to reach an informed decision on whether to grant a license or permit. Such investigations may include financial, criminal, personal and professional background checks of not only applicants for new licenses and permits and all persons and legal entities associated with them, but also persons associated with existing banks seeking new licenses or permits pursuant to the Banking Law, including but not limited to owners of qualifying holdings in the bank and administrators of the bank.” During the licensing process, organizational structure of the applying bank is assessed.

657. Further, two circulars were issued in 2010: the circular No.8 -8-89 "on qualifications for Chairmanship of the Board of Supervisors of a bank; fitness and propriety tests for shareholders and administrators; enhanced requirements for bank credit to related persons” and the circular No.89-03 “eligibility criteria for Board of Supervisor members, Management Board members, Committee members and other specified positions.” These circulars aims to ensure, among others, that the senior management, Board of Supervisor members and shareholders are fit and proper and have minimum required educational and other background to perform the jobs properly.

658. Pursuant to Article 6 of the Banking Law, a banking license is issued only to companies established and registered pursuant to the law of Afghanistan. Pursuant to Article 14, the banking license will be revoked if the bank has not made use of the banking license within six months after the date of its issuance, or the bank has ceased to engage in the business of receiving money deposits or other repayable funds from the public or making credits or investments. In addition, the license can also be revoked if the bank conducts its administration or banking operations in an unsound or

imprudent manner or otherwise violates a law, or a regulation or order of DAB or any condition or restriction attached to a license or permit issued by DAB.

659. DAB has issued 17 banking licenses and has undertaken on-site examination of all in the course of its supervisory functions.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

660. Similarly, Afghan laws do not explicitly prohibit correspondent banking with shell bank; however, banks met by the assessors indicated that they prohibit any correspondent relationship with shell banks as a matter of internal policy.

Requirement to Satisfy Respondent Financial Institutions Prohibition of Use of Accounts by Shell Banks (c. 18.3):

661. Financial institutions are not required to satisfy themselves that respondent financial institutions prohibit use of their accounts by shell banks.

3.9.2. Recommendations and Comments

662. In order to comply fully with Recommendation 18, the authorities are recommended to:

- Prohibit explicitly the establishment and operation of shell banks on the territory of Afghanistan, and establish clear sanctions for contravention to this prohibition;
- Prohibit explicitly financial institutions from entering into or continuing correspondent banking relationships with shell banks. In addition, DAB should require financial institutions to satisfy that respondent financial institutions do not permit their accounts used by shell banks. Compliance with Recommendation 18.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"> • Financial institutions are not required to refuse to enter into or continue correspondent banking relationships with shell banks. • There is no explicit requirement for financial institutions to satisfy that respondent financial institutions do not permit their accounts to be used by shell banks.

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 and 25)

3.10.1. Description and Analysis

Competent authorities—powers and resources: Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2)

663. The DAB has the power and authority to regulate and supervise banks including depository microfinance institutions, MSPs and foreign exchange dealers pursuant to the Law on Da Afghanistan Bank (DAB Law 2003). DAB currently has a draft law on financial leasing companies, and a draft regulation on mortgage companies. As for the insurance sector, the Afghanistan Insurance Authority (AIA) under the Ministry of Finance has the power and authority to regulate and supervise insurance sector under the power granted by the Insurance Law 2009.

664. With regard to supervision of AML compliance, Article 39 para. 1 of the AML LD provides that DAB may exercise its powers under Articles 45 to 52 of the Banking Law with respect to any matter covered by this law regarding entities licensed, regulated or supervised by it under the DAB Law. Article 45 of the Banking Law provides DAB with the power to inspect banks. According to Article 45(2) of the same law, “[e]ach domestic bank and each of its subsidiaries shall be subject to on-site inspections by inspectors of Da Afghanistan Bank or by auditors appointed by Da Afghanistan Bank.” Article 45(5) provides further that each domestic bank and each of its subsidiaries, and its each domestic branch office and representative office shall permit the inspection of DAB and the auditors appointed by DAB to enter their premises and shall cooperate fully with them in carrying out their duties. Articles 46-52 relate to enforcement measures.

665. With respect to MSPs and foreign exchange dealers, Article 90 and Article 70 of the DAB Law provide the power for DAB to supervise these financial institutions respectively. DAB has issued MSP Regulation (2006, last amended in 2009) and Foreign Exchange Dealers Regulation (2008), pursuant to the DAB law. These regulations include some components of AML/CFT preventive measures but more details are included in the AML/CFT RR, which subjects MSPs and foreign exchange dealers to AML/CFT requirements. In section 1.5.1. periodic examination of compliance, the AML/CFT RR provides DAB with the power to supervise the financial institutions subject to the AML/CFT RR. All the AML/CFT supervision of regulated institutions by DAB is undertaken by the financial supervision department (FSD) of DAB.

666. As far as other financial institutions are concerned, Article 39 para. 2 of the AML LD provides that “[t]he Financial Intelligence Unit or any person it authorizes may examine the records and inquire into the business and affairs of any reporting entity, other than any regulated entity, for the purpose of ensuring compliance with Articles 4 to 45 of this Law but cannot investigate the matter.” Article 39 aims to provide the FIU or its authorized person with the power to examine non-regulated entities which are subject to the AML LD. By the term “non-regulated” it means both financial institutions which are not under any regulatory regime, and those which are regulated by competent authorities other than DAB. Accordingly, financial institutions such as (non-depository)

microfinance institutions, leasing companies and mortgage finance companies (only draft laws exist at this point), unlicensed MSPs (Hawaladars) and unlicensed foreign exchange companies fall under the purview of the FIU. With the exception of unlicensed MSPs and unlicensed foreign exchange companies, the FIU has not reached out to non-regulated financial institutions to explain AML/CFT requirements or assess compliance therewith.

667. Article 39 para. 2 of the AML LD also allows the FIU to designate any person for the examination of reporting entities. FinTRACA can therefore authorize other supervisory authorities to undertake the examination. For example, the AML/CFT examination of the insurance sector could be assigned to the AIA once insurance companies start offering life insurance or investment linked insurance products. Neither the current Insurance Law nor its draft amendments⁷¹ subject insurance companies to AML/CFT requirements.

Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1):

668. DAB and FIU have the power to compel production of records. Article 3 of the DAB law states that DAB “shall be empowered to enter the offices and examine the accounts, books, documents and other records of any bank, foreign exchange dealer, payment system operator, money service provider, securities service provider, securities transfer system operator or other person who is licensed in accordance with this law and is registered with or by Da Afghanistan Bank, and to obtain such information from such person as Da Afghanistan Bank shall deem necessary for the proper discharge of its supervisory responsibilities.”

669. In addition, Article 45 of the Banking Law provides DAB with the power to compel production of all records. It states that DAB and its auditors shall be authorized to 1) enter any office of the bank or its subsidiary and to examine there the accounts, books, documents and other records of the bank or the subsidiary; and 2) require administrators, employees and agents of the bank or its subsidiary to provide all such information on any matter relating to the administration and operations of the bank or the subsidiary as they shall reasonably request.” The Article also provides that law enforcement officials shall, if necessary by use of force, assist DAB or its auditors upon DAB’s request to gain access to the premises of such bank or subsidiary and to examine the accounts, books and other records of such bank or subsidiary.

670. Further, for all reporting entities, Article 39 para. 3 of the AML LD provides the FIU with the power to enter any business premises if it believes on reasonable ground that there are records relevant to ensuring compliance with the AML LD, and to require reporting entities to forward all the information concerning operations and administrations. However, FinTRACA stated that it is very difficult to exercise this power over non-regulated entities.

671. The power to compel production of records is provided for in the aforementioned laws without being predicated on the need to require a court order.

⁷¹ The draft amendments to the Insurance Law contain a limited reference to AML/CFT in Article 224 entitled Money Laundering and Funding of Illegal Activity. It is stated that the use of insurance transactions for this purpose is prohibited and that the Director General shall prescribe rules for companies to report specified information to the Authority.

672. In terms of autonomy, Article 3 of the DAB Law states that DAB “shall be entirely independent in the pursuit of its objectives and no person shall seek to exercise improper influence on members of the decision-making bodies of Da Afghanistan Bank in the performance of their tasks or interfere in any other way in the activities of Da Afghanistan Bank.” In addition, DAB earns its own revenue and is therefore not dependent on budgetary appropriations from the central government to finance its supervisory activities.

Adequacy of resources – Supervisory Authorities (R. 30)

673. The FSD was established in the DAB in September 2003 when the DAB was re-established as the Central Bank of Afghanistan in 2003. The FSD began operations with only 13 staff. Since then, the number has increased to 54 staff as of January 2011. Salaries have also increased substantially.

674. In December 2008, Financial Transaction Supervision Section (FTSS) was created. This unit exclusively conducts AML/CFT supervision which began in 2009. There are currently 3 examiners in this section (there were 4 in 2010). The head of the unit has requested a permission to hire 10 more examiners (out of which, two are urgently needed by mid-March 2011).

675. The supervision department suffers from a high level of turnover of staff. Many supervisors moved to commercial banks or other private sector entities after spending 1-2 years at the DAB. Because of this, building capacity in the supervision department has been challenging.

676. DAB requires an undergraduate education (equivalent to a B.A. or B.S) or higher, and proficiency in the English language and computer skills to work in the FSD. According to DAB officials, the qualifications of the management and staff have improved considerably in recent years, with many staff possessing advanced degrees. A hiring process, consisting of a written examination followed by oral interviews conducted by the Human Resources Committee headed by the DAB Governor, has been instituted to recruit top-quality hires. New staff is also required to sign acceptance and understanding of a code of conduct that includes maintenance of confidentiality.

677. In terms of training, AML/CFT compliance examiners have received some in-country and some out-of-the country training. Prior to the creation of FTTS, FPD examiners received several AML/CFT training in DAB organized by the World Bank. After FTTS was created, all staff in the FTSS received trainings in DAB for about two months when they joined. In addition to that, two staff of this section participated in an external short term training organized by the World Bank and APG in 2009 and some internal training was provided by the US mentor who was stationed to work with the newly created FTTS unit. However, there is not yet a formalized, intensive training program available for the examiners which they can participate on a regular basis on AML/CFT. Developing such a program is a priority for the FSD, in cooperation with its foreign advisors. Additionally the FSD plans to train its staff in the basics of identifying financial fraud at an early stage, as well as elementary forensic accounting.

Sanctions: Powers of Enforcement & Sanction (c. 29.4); Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3); Range of Sanctions—Scope and Proportionality (c. 17.4):

678. Article 40 of the AML LD provides the DAB, any other supervisory agency, and the FIU with enforcement powers with regards to the compliance with the AML LD. DAB and other supervisory agencies are granted enforcement power over their respective regulated entities and the FIU over all other reporting entities which are not regulated. The range of administrative and civil sanctions provided in the AML LD which are available to the supervisors and the FIU are:

- revocation or suspension of a business license;
- a fine up to Af 3,000 (equivalent to US\$600);
- ordering the reporting entity to conduct an external audit of its affairs, at the expense of the reporting entity, by an auditor acceptable to DAB;
- ordering the reporting entity to do all or any of the following:
 - remove an administrator, officer or employee of the reporting entity from office;
 - ensure that an administrator, officer or employee of the reporting entity does not take part in the management or conduct of the business of the reporting entity except as permitted by DAB; or
 - appoint a person or persons acceptable to DAB as administrator of the reporting entity for such term as the order specifies.

679. Section 1.5.2 of the AML/CFT RR provides examples of violations leading to enforcement actions as:

- failing to set up an internal control system for anti-money laundering activities;
- failing to designate an AML officer;
- failing to identify customers properly;
- disclosing to customers or potential customers that reports are being filed about them to the FIU;
- failing to maintain account information and transactions records on clients, and updating the information; and
- failing to report large cash transactions or suspicious transactions to the FIU, as required.

680. The applicability of the enforcement measures specified in the AML/CFT RR is not clear. The above is given as examples since it states that “violations leading to enforcement actions include, but are not limited to.” At the same time, at the beginning of the section, it states that “[i]n cases where a financial institution is found to have committed any of the following acts,” which clearly limits the scope of application of the enforcement measures to those listed under the section 1.5.2. This will have impact on those provisions which are detailed in the AML/CFT RR but only broadly

covered in the AML LD as to whether failure to comply with such provisions can be properly sanctioned.

681. The Enforcement Regulation (2006) could also apply with respect to banks. This regulation was issued under the Banking Law and provides enforcement mechanism and procedures for unsafe and unsound practices by banks. If a violation of AML/CFT requirements is serious and considered to impact the safety and soundness of a bank, this Regulation may be applied. Part C of the Regulation specifies four levels of actions which are available to DAB. The first stage is the written warning; the second stage is the written supervisory order; the third stage is the plan to take corrective action; and the last stage is the order to take prompt corrective action. This last stage also allows the imposition of a fine which is not to exceed one percent of the sum of the common stock and share premium on common stock of the bank.

682. In addition to being subject to the sanctions listed in the AML LD and AML/CFT RR, MSPs are subject to Section 2.6.4 of the MSP Regulation which sets out the fee schedule for non-compliance with the MSP Regulation. For failure to submit monthly reports on time, letters of warning may be issued for the first three monthly offenses. If the violation continues, then a fine of Af 500 (US\$10) per day is imposed until the reports are submitted. If the violation lasts for an entire month, then a fine of Af 25,000 (US\$500) will be imposed and a written notification of possible suspension or revocation of license will be issued. If the violation continues for three consecutive months, it may result in the suspension or revocation of the license. If an MSP fails to submit annual license assessment on time, then letter of warning is issued for the first 15 days, a fine of Af 1000 per location after 30 days, and a second fine of Af 5000 after 90 days per location and a written notification of possible suspension or revocation of license.

683. Operating money services without a license will result in a referral to the Attorney General's office for closure of the business, confiscation of records and property, and prosecution.

684. Foreign exchange dealers are subject to the Foreign Exchange Dealers' Regulation (FED Regulation), in addition to the AML LD and the AML/CFT RR. Failure to submit quarterly reports on the number and total volume of transactions at each office and in aggregate, and quarterly lists of large (i.e. above Af 250,000 – about US\$5,000) individual transactions results in enforcement measures under the FED Regulation. These enforcement measures involve four steps: First, a written warning is issued; If the violation continues, the DAB issues a supervisory letter and the foreign exchange dealer must submit a plan of corrective action; If the violation persists further, a supervisory agreement is reached between the DAB and the foreign exchange dealer which is a formal written agreement of the corrective measures; finally, if the supervisory agreement is not fulfilled and the corrective action is urgently required, DAB may issue a cease and desist order. Operating expired licenses or no license at all may face immediate closure and fine of Af 20,000 (about US\$400).

685. Criminal liability is established under Article 39 (5) of the AML LD which provides that “[a]ny person who willfully or intentionally obstructs or hinders or fails to cooperate with the financial Intelligence Unit in the lawful exercise of the powers is guilty of an offence and shall be punishable by a fine of Af 5,000 (equivalent to US\$100) in the case of an individual or imprisonment of not more than three months, or both; and Af 25,000 (equivalent to US\$500) in the case of a body corporate.” It is interesting to note that this provision applies to the obstruction, hindrance, or

cooperation with the FIU; however, it does not mention DAB who is the supervisor of DAB “regulated entities.”

686. In addition, Article 48 of the AML LD establishes a criminal liability under the following circumstances. Commits an offense a person who:

- intentionally discloses any information regarding a report to the person;
- destroys or removes registers or records;
- performs or attempts to perform any of the operations under a false identity;
- knowingly discloses to the person about the investigation;
- communicates to the judicial authorities or to the officials competent to investigate criminal offenses records which contain errors or omissions without informing them of that fact;
- communicates or discloses information or records required to be kept confidential;
- intentionally fails to report a suspicion; or
- contravenes the provisions concerning international transfers of funds and originator information; or contravenes the provisions relating to AML/CFT preventive measures.

687. The penalty for the commission of these offenses are set as follows: in the case of a natural person, imprisonment for not less than six months and not more than one year or a fine of not less than Af 5,000 (equivalent to US\$100) and not more than Af 25,000 (US\$500), or both. With respect to corporate entities, a fine of not less than Af 25,000 (US\$500) and not more than Af 125,000 (US\$2,500). Persons found guilty of any offense or offenses set forth in the Article 48 may also be banned permanently or for a maximum period of five years from pursuing the trade or occupation which provided the opportunity for the offense to be committed.

688. The Supreme Council of the DAB issued in 2008 the Procedure for Corrective Actions Regarding AML/CFT Reporting. Paragraph 2 of these procedures states that “[v]iolations requiring corrective action shall be determined and documented by either a) the Director General of the FIU based on received reports; or b) the Supervision Department based on reporting entity examination. Regardless of who makes the determination, the Supervision Department must invoke this procedure and take corrective action in accordance with this procedure.” The documented violations will then be transmitted to the reporting entity by the FSD.

689. The procedure also clarifies the scale of the fine that can be imposed. Article 40 of the AML LD provides a fine of up to Af 3,000 on the reporting entity. The procedure interprets this to be a fine per transaction or occurrence. Accordingly category A violations (material violations) which are willful, negligent, and/or egregious violations such as filing to report, late reporting, omissions of key information, or misreporting of key information, shall result in a fine of Af 3,000 (US\$600) for each documented occurrence. Category B violations (clerical violations) which are clerical violations include misspellings, and transcription nature shall result in a fine of Af 1,000 (US\$200) for each occurrence. Category C violations (systematic and continuing violations) shall result in removal and

replacement of AML/CFT compliance manager and/or other staff; ordering of an external audit; and revocation of license.

690. While the Procedure for Corrective Actions, improves the available monetary penalties, the minimum fine is still too low. In addition, the maximum amount of criminal penalties is too low. This is valid for fines applicable to all the categories of reporting entities. In addition, the current monetary sanction regime fails to pay attention to violations that are systemic in nature (as opposed to per transaction or occurrence based). For example, the maximum fine for a failure in the internal control system, policies and procedures is only Af 3,000 (US\$600). FTTS is currently developing a new fee schedule matrix, but it is not clear whether it will address sanctions for systemic violation.

Market entry: Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7):

691. DAB has the authority to issue licenses to banks (including depository microfinance institutions), MSPs, and foreign exchange dealers. A few credit unions and microfinance institutions operate under the Micro Investment Support Facility Agency (MISFA) of Afghanistan. MISFA sets a code of conducts of its members; however, it is neither a regulator nor a self-regulatory agency. DAB is currently working on new regulations for financial leasing companies and mortgage finance companies. Insurance companies are licensed by the AIA.

692. In order to operate banking and insurance business, a legal entity has to be incorporated and registered with the AISA (please see the write-up for Recommendation 33 for more details). MSPs and foreign exchange dealers can be either legal persons or natural persons.

Banks

693. Article 12(5) of the Banking Law deals with to fit and proper criteria. As a condition for issuing a banking license or a permit, the applicant must satisfy the DAB that the owners having a qualifying holding in the bank, if they are natural persons, are fit and proper persons and, if they are legal persons, have administrators who are fit and proper persons. The same criteria apply to the approval to open a branch or a representative office. As per Article 22 of the Banking Law, no one can obtain a qualifying holding in a bank without prior authorization from the DAB. The DAB may issue the authorization if various conditions are met. The Banking Law defines qualifying holding, as “a direct or indirect holding in an undertaking which represents 10 percent or more of the capital or the voting rights or which makes it possible to exercise significant influence over the management of the undertaking in which the holding subsists.”

694. In the definition section of the Banking Law, the notion of “fit and proper person” is defined as “a person who may be regarded as honest and trustworthy and whose professional qualifications, background and experience, financial position, or business interests do not disqualify that person in the judgment of Da Afghanistan Bank to be an owner, administrator or conservator of a bank; no person shall be regarded as a fit and proper person if he has been convicted by a criminal court of an offense for which he was or could have been sentenced to imprisonment without the option of a fine unless such sentence was or would have been motivated by his religious or political views or activities, or if he has been declared bankrupt by a court of law, or if he, on grounds of personal

misconduct unrelated to his religious or political views or activities, has been disqualified or suspended by a competent authority from practicing a profession.”

695. “Administrator” is defined as any person who is a member of the board of supervisors, the management board or the audit committee of a bank, and for any office of a bank “administrator shall mean any officer of the bank assigned to work at that office.”

696. Pursuant to Article 22.2 of the Banking Law, DAB will review and authorize members of the board of supervisors, the management board and the audit committee of a bank when a new member is appointed. Article 7 of the Banking Law allows DAB to carry out financial, criminal, personal and professional background checks of owners and administrators of the bank for which the application is pending.

697. The Regulation on Bank Licensing and Permitting issued by DAB in 2006 notably provides further that the applicant must submit information about its shareholders, i.e. share and shareholder details, as well as “detailed information” on “related persons” and significant shareholders. However, the regulation does not explain what “detailed information” should be included and who “related persons” may be. Similarly, it doesn’t define “significant shareholders, but, under the Banking Act, this would mean those holding 10 percent or more of the capital or of the voting rights.

698. Section 1.2.3 informs that DAB “investigations may include financial, criminal, personal and professional background checks of not only applicants for new licenses and permits and all persons and legal entities associated with them, but also persons associated with existing banks seeking new licenses or permits pursuant to the Banking Law, including but not limited to owners of qualifying holdings in the bank and administrators of the bank.”

699. Late last year, the DAB issued two circulars relating to fit and proper, in the context of the Kabul Bank crisis and ongoing concern about the qualification of senior management and board members of banks (see background information in section 1.3). These circulars do not create new enforceable obligations but clarify and detail the existing framework:

700. The circular No.8 -8-89 entitled "on qualifications for Chairmanship of the Board of Supervisors of a bank; fitness and propriety tests for shareholders and administrators; enhanced requirements for bank credit to related persons" was issued on October 28, 2010. It sets further criteria according to which the chairman and deputy chairman of a bank should have higher qualifications in comparison to the rest of the members of the board. It also reinforces the separate duty and role of the board of shareholders, board of supervisors and board of management. For example, it specifically instructs that if a member of the board of shareholders is performing as chairman and deputy chairman of the board of supervisors of the related banks, then he/she must resign from this position. In addition, members of the board of supervisors are instructed not to interfere with daily activities of the bank and no members of the board of shareholders are permitted to have offices in the bank’s premises.

701. Furthermore, it elaborates on the fit and proper criteria for shareholders and members of the board of supervisors and board of management set out in the Banking Law. The criteria that are further specified and emphasized in the circular include a requirement to be free of any civil or criminal proceedings or enforcement action, or professional disciplinary action in relation to the

management of an entity, or commercial or professional activities, and demonstration of diligence, integrity and honesty.

702. The Circular No.8 9-03 entitled “eligibility criteria for Board of Supervisor members, Management Board members, Committee members and other specified positions” was issued to banks on December 20, 2010. It provides detailed requirements and criteria for board of supervisors, audit committee and senior management. These requirements and eligibility criteria focus on minimum required educational background and relevant experience for each of the following positions: board of supervisors, audit committee, chief executive officer, chief financial officer, chief credit officer, chief operating officer, chief internal auditor, chief compliance officer, chief risk manager, human resource director, and branch managers.

703. It is clear that the focus of the fit and proper test is limited to the management and, to some extent, shareholders of banks. There is no requirement to obtain information on and ensuring the fitness and property of the beneficial owners of a significant or controlling interest. In addition, there is no requirement to ensure that the beneficial owner is not associated to criminals.

704. With regard to foreign branches and representative offices of a domestic bank, as per Article 10.5 of the Banking Law, DAB will only issue a permit if it is satisfied, following consultations with the bank regulator of the country where the office is to be located, that the office will be adequately supervised by that bank regulator in close cooperation with DAB.

705. With respect to foreign banks, subsidiaries, branches, or representative offices, the same licensing and permit process apply as for the domestic banks. In addition, as general conditions for issuing a bank license or a permit, the parent bank should have a license to operate and must be properly supervised by the home country supervisor. If the parent bank has other subsidiaries or branches in other countries, the home country supervisor should adequately supervise those other subsidiaries and branches on a consolidated basis. As per Article 11 of the Banking Law, a license may be issued only if an agreement or arrangement of cooperation has been concluded between DAB and the competent foreign authorities that supervise the banking activities of the non-resident bank. There are foreign bank subsidiaries and branches operating in Afghanistan, but as explained under international cooperation (R40) below, DAB has not entered into a single MOU; only draft Memorandum of Understanding between supervisory authorities exist at this point .

706. Article 12 (5) of the Banking Law states that as part of the general licensing or permit conditions, internal control and risk management procedures of the bank must be adequate. Further, the licensing regulation also specifies the list of documents which need to be submitted to apply for a banking license. This includes the by-laws or any other governing document of the bank; policies and procedures for risk management, anti-money laundering, and internal control; and information about the organizational structure of the bank.

DMFIs

707. The Regulation on DMFIs (Licensing, Regulation, and Supervision of Depository Microfinance Institutions) issued in 2006 provides the detail of the licensing procedure. Applicants must notably submit the following information: a complete and accurate list of all proposed sponsors and investors, including contact information; a statement clearly describing the proposed relationship

between the DMFI and proposed sponsors and investors; a statement describing how the DMFI plans to fulfill its anti-money laundering responsibilities; and full biographical information on proposed administrators, including names, addresses, contact telephone numbers and/or email addresses, and a CV showing education and employment history.

708. The DMFI licensing requirement does not include mandatory criminal background check of administrators, sponsors, and investors. Furthermore, it does not require identification of beneficial owners.

MSPs and Foreign Exchange Dealers

709. DAB is authorized to issue a license for MSPs and foreign exchange dealers pursuant to Articles 90 and 75 of the DAB Law respectively. The Regulations on Money Service Providers and those for Foreign Exchange Dealers provide details of the licensing requirements and procedures.

710. One of the licensing requirements under the Regulation on MSPs is the demonstration by the applicant that the owners or proprietors of the business are fit and proper persons deserving of public trust and agree to apply the appropriate procedures for the prevention of money laundering and terrorist financing. The applicant should provide information on the bank accounts which are used in the conduct of the money service business. The applicant also needs to agree to abide by the terms of the “Money Service Providers Licensing Agreement.” The MSP licensing agreement is to be signed by the applicant and includes a declaration that the applicant (or the owner or proprietor if different from the applicant) has not been previously convicted of any premeditated criminal offenses of general nature nor penalized for tax evasion. During the application process, the applicant must provide a copy of national identification card, tax certification, tax identification number, original certification from the criminal department of the Ministry of Interior, among others. The license is valid only for up to 1 year. If one of the following conditions is met the application must be rejected: the applicant has been “convicted of any felony in any jurisdiction within the past 10 years; convicted of a crime involving a financial transaction in any jurisdiction within the past 10 years” or there are “charges pending against him/her/them in any jurisdiction for violations relating to a financial transaction within the past 10 years; and an adverse action [has been] taken against any business license by any jurisdiction within the past three years.”

711. Under the Foreign Exchange Dealers Regulation, the applicant must a) be at least 18 years of age; b) be the owner of personal property such as a house or apartment; c) take a license in the name of a single person, with the license valid at a single location of a business or multiple locations within the same province; d) be referenced by two businesspersons with at least three years of commercial experience; and e) provide a national taxpayer identification number and certification from the Criminal Department of the Ministry of Interior. As in the case of MSPs, a license will be rejected if the applicant was convicted of a felony within the previous 10 years. Annual renewal of the license is required.

712. The license is only valid for one year, and the renewal process enables DAB to have updated information about each licensee. It also provides DAB more control in an environment where the number of licensees is increasing annually and expected to increase further in the next years. The licensing requirement is more rigorous for MSPs than the foreign exchange dealers. This may be due to the fact that many foreign exchange dealers are single person operating the business or simply set up a stand on the streets, or even just standing on the streets. The set of documents required for a

MSP license is more substantial than that required of foreign exchange dealers and enables the regulators to conduct the background check of the applicants. The MSP license agreement also puts the onus on the applicant(s) to prove that he/she/they meeting the fit and proper criteria. There is, however, no requirement to obtain information on the beneficial owners of the applicant if it is a legal person.

713. The EMIs must apply for a special license which is granted under the MSP Regulation. Under the special license, the EMIs are allowed to offer three types of financial activities, namely transfer of money, check cashing (cash in/out for EMI is defined as check cashing activity) and (short term) safe keeping of money (stored value). The EMI licensing requirements are closer to those applicable to banks. The EMIs must submit, among other information, a list of the current and proposed shareholders possessing a qualifying holding of the EMI and biographical information on the board of supervisors (if any), and executive officers (chief executive officer, chief operating officer, chief financial officer, chief information technology officer, chief legal counsel, chief internal auditor, and chief compliance/AML/CFT officer). This biographical information must be sufficient for DAB to judge the fitness and propriety of the individuals, as well as their professional experience and capabilities. EMIs must meet the minimum capital requirement of Af 10,000,000 (US\$200,000) *plus* 1.5 percent of historical average e-money.

714. The EMI which currently operates in Afghanistan has a regulatory balance limitation on an account not to exceed Af 150,000 (US\$3,000) per customer as well as transaction ceiling of Af 10,000 (US\$200) per transaction, Af 30,000 (US\$600) per day and Af 150,000 (US\$3,000) per month if it is a non-salary payment or a loan disbursement. This only applies to outgoing transfers. It is not clear why the limitation is placed only on outgoing transfers.

715. These ceilings make the EMI products less vulnerable to money laundering and terrorist financing risk although it does not eliminate the risks. Current fit and proper test focuses on management and board members. There is no requirement to obtain information on and ensure the fitness and property of the beneficial owners of the applicant.

Insurance Companies

716. Article 11 of the Insurance Law of 2009 refers to the establishment of the insurance companies. The state insurance companies are established on a proposal by the Ministry of Finance and approved by the cabinet. The private and combined insurance companies are established in accordance with the provisions of the investment law and activity permit issued by the Ministry of Finance. In 2008, Insurance Affairs Department (also known as AIA) issued insurance procedures to accompany the Insurance Law. This procedures document elaborates on the incorporation of companies (chapter 4). Article 19 states that “an insurance company may only be incorporated if its senior management is fit and proper.” Fit criteria have three elements: no criminal conviction; no bankruptcy; and good reputation and work background. The business application form require applicant to provide details of the applicant, but also of the shareholders (10% or more of voting interest), direct and indirect owners. The applicant must submit a corporate structure chart including the direct or indirect owners of the applicant’s owner.

717. The draft amendments of the Insurance Law further requires that no person, alone or acting in concert with one or more other persons, may become a qualified participant, 20% of participant, 30%

of participant, or controller of an insurance company or insurance holding company without obtaining the prior written authorization of the Director General of the AIA. And each member of the participant, along with the managers and board of directors need to be submitted to the authority. If the applicant is acting on behalf of another person, identify of beneficial owner should also be presented.

718. With respect to insurance brokers and agents, the Insurance Law (amended in 2009) allows insurance brokers and agents to operate in Afghanistan and its Article 13 requires them to obtain a work permit from the Ministry of Finance (i.e. AIA). Brokers are regulated in Article 57 of the “Insurance procedures to accompany the insurance law of the Islamic Republic of Afghanistan” of July 10th 2008. A broker can represent several insurers and include legal and natural persons.

719. As mentioned above, the AML LD applies to insurance companies, brokers and agents that offer life insurance and other investment related products. According to the authorities, however, none of these products are currently offered in Afghanistan, except, possibly by one insurer, which is why they haven’t conducted any examination for AML/CFT purposes.

Ongoing supervision: Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other Financial Institutions (c. 23.7); Guidelines for Financial Institutions (c. 25.1):

720. Since its creation, the FSD has been reorganized several times. It is currently divided into five divisions: Licensing, General Supervision (which includes on-site and off-site supervision), Special Supervision (which deals with enforcement, targeted supervision and special cases of problem banks), Regulation, and AML/CTF compliance. The AML/CTF compliance division (FTSS) is the newest addition. This division is responsible for conducting AML/CFT examinations for banks and MSPs. Oversight of foreign exchange dealers on AML/CFT compliance has not began since they are focused on AML/CFT supervision of banks and MSPs as priority areas.

721. There are other financial institutions that are operating in Afghanistan without being regulated. They include (non-depository) microfinance institutions, financial leasing companies and mortgage finance companies. There is currently no designated supervisor for them although there is a draft regulation on financial leasing companies and mortgage finance companies which designates DAB as the supervisor. If financial intuitions do not have designated supervisors, the FIU has the power to examine these institutions with regards to the AML requirements as provided for in Article 39 of the AML LD, however, no supervision has been undertaken so far on these non-regulated institutions.

Examination Process for Banks

722. AML/CFT on-site examination is conducted by the FTSS at the same time as prudential on-site examination the findings of the AML on-site examination are integrated into the regular safety-and-soundness Report of Examination. Prudential regulations that are relevant for AML/CFT purposes are also considered in the AML/CFT section. Inadequate or poorly implemented institution's policies will result in a low rating for the "M" component of the "CAMELS" rating system for a bank, and the possibility of enforcement action against all types of regulated financial institutions.

723. The FTSS developed two basic AML/CFT examination manuals, one for banks and another for MSPs. The manuals contain the process of examination procedures and a list of questions for the examiners. The questions are based on the AML/CFT RR. The outcome of the examination is rated either as strong, generally strong, less than satisfactory, very weak, and non-compliant.

724. There are two types of on-site examinations, i.e. regular and targeted. Regular examinations are undertaken together with the prudential examination. The average cycle of AML/ CFT examination is once a year for every bank. However if banks are rated poorly in the CAMEL (i.e. if they have been evaluated as three or four), it is subject to two examinations a year, including for AML/CFT purposes. The AML/CFT examiners said that they do find a correlation between the weaknesses on prudential side and AML/CFT side and they are satisfied with the current scheduling.

725. The AML/CFT examiners spend about one week to 10 days if it is a normal examination, however, but can spend up to one month when dealing with a big bank and a complicated case. The scope of their inspection covers the general operation, management, compliance, internal audit departments of the bank. They visit the bank which is being examined and review inter alia whether the policies and procedures are sufficient and the KYC/CDD policies are followed, whether LCTR and STR have been reported, and records have been kept. Sample testing is also part of the examination. The examiners also mentioned that they provide guidance to banks on the spot if they find some deficiencies.

726. After the on-site examination, a report is drafted. The section on AML/CFT is compiled together with other sections and sent to the Director General of the FSD. After his review, it is sent to Governor for his approval. Once the Governor has approved the report, one copy thereof is sent to the bank which was examined and another to the Special Supervision Section. Special Supervision team reviews the report and suggests a list of corrective actions. If the suggestion is agreeable to the FTSS on AML/CFT, a letter mentioning the corrective actions is sent to the bank by the Special Supervision Section. Implementation time is usually given in the interval of 30 days, 60 days or 90 days, depending on the measures that the bank has to take. After this period, the Special Supervision Team conducts a targeted examination to establish whether the bank has addressed the deficiencies. If they have questions or do not have enough technical knowledge on certain issue, then they will ask the respective division (including the FTSS) for clarification. For example, if the bank developed a new KYC form as a result of the corrective measures required, then the Special Supervision team will bring the form back and review it with the FTSS staff. The assessors were told that in the past the cooperation and communication between these two departments have been poor, but have improve over the last year.

727. The statistics for on-site examination have only been maintained since the FTSS was created in FSD in December 2008. Between December 2008 and January 2011, FTSS conducted 38 AML/CFT Examinations of the 17 commercial and state owned banks.

Examination Process for MSPs and Foreign Exchange Dealers

728. The FTSS first informs the MSP association of an upcoming examination. The team of examiners then visits MSPs. The examiners write a report on each individual MSP as well as an overall report per territory to summarize their general findings.

729. Since the EMI is in the process of obtaining its new license for an EMI (as opposed to MSP license which it currently has), no examination has been conducted on EMI.

730. Maintenance of statistics on the number of licensed entities is kept accordingly but FPD does not seem to have the number of examination conducted on AML/CFT before FTSS was created. The FTSS could only provide a rough estimate of the total number of penalties imposed. In general, creation of institutional memories is quite weak and each staff's knowledge is limited and go back only to the beginning of each started the work in FPD. In other words, no one knows what happened before they arrived. Records seem to be scarce and this certainly needs to be improved.

731. Neither the FTSS/FPD nor FinTRACA has issued any formal guidelines to assist financial institutions implement and comply with their respective AML/CFT requirements. FinTRACA helped the Afghan Banks Association (ABA) in the development of the standard KYC forms for the banking industry but this is rather an industry-led initiative which FinTRACA assisted. Feedback is also provided during the training sessions which FinTRACA organized for reporting entities, with a participation of FTSS. Informal guidance is being provided during the on-site examination; however, more formal guidance will be useful to ensure that the same guidance is provided to all the financial institutions evenly.

Analysis of Effectiveness

Competent Authorities, Powers and Resources

732. Since September 2003, the FSD has been provided with continuous technical assistance from a foreign donor agency in developing all areas of supervision and regulation, including licensing, on-site examination and off-site monitoring, accounting and reporting reform, problem bank supervision, bank resolution, and the legal/regulatory framework. More recently (i.e. in the last year), an AML/CFT mentor was attached to the AML/CFT supervision division.

733. The FTSS examiners seem to believe that they do not need to understand the risk of money laundering and terrorist financing, and typologies and trends of money laundering and terrorist financing in Afghanistan because their job is "solely" to check the compliance of banks against AML/CFT requirements, regardless of the broader money laundering and terrorist financing context. This is of great concern, especially considering the money laundering and terrorist financing risks in Afghanistan.

734. The capacity of the FTSS is significantly too limited to handle the current workload. Moreover, the examiners lack the necessary AML/CFT knowledge and expertise to conduct their functions effectively. This undermines their confidence when conducting examinations. The fact that many of the examiners are young increases their need to be equipped with more skills, knowledge, and confidence. Going forward, it would be important to have a strategy and plan on AML/CFT examination, considering that the number of licensed MSPs and foreign exchange dealers are increasing. In order to effectively allocate resources, and to pay different level of attentions to different size of operators (for example, a solo foreign exchange dealer, versus a large operator of MSP).

735. Overall, the Afghan supervisory framework is weak and suffers from capacity and resources problems.

Sanctions

736. To date, three banks and a number of MSPs have been sanctioned for non-compliance as follows:

Case	Reason for Sanction	Sanction/Penalties	Year
Bank 1	Failure to file LCTR	Monetary fine of US\$10,000 and Removal of the compliance officer	2007
Bank 2	Failure to file LCTR	Monetary fine of Af 240,000 (about US\$5,000)	2010
Bank 3	Failure to file LCTR	Monetary fine of Af 150,000 (about US\$3,000)	2010
MSPs (about 80-100)	Failure to submit monthly reports or late reporting	Monetary fine of Af 1million total	August 2009-January 2011
Three MSPs	Failure to submit monthly reports	Revocation of three MSP licenses	2010
MSPs (over 100)	Failure to submit monthly reports or late reporting	Temporary closure (2-3 days)	August 2009-January 2011

737. The first sanction was imposed by FinTRACA on the violation of LCTR reporting requirement. Although the total sum of penalties cumulated to was more than US\$10,000 equivalent, FinTRACA imposed a US\$10,000 fine, which it considered to be not too lenient, but not too severe to wipe out the business. No warning was given before the monetary penalty was imposed because FinTRACA believed that the training they provided on LCTR and other reporting requirements prior to this action (5-6 times total) should have made reporting entities understand the reporting requirement. The second and the third sanctions were imposed on two different banks by FPD based on the accounts provided by FinTRACA and their off-site monitoring based on lack of LCTR reporting for 3 months.

738. The FPD revoked three MSPs' licenses in September 2010 for failure to comply with the reporting requirement (i.e. failure to submit a copy of the transaction ledger). In addition, more than 100 MPS were temporarily closed down because they were operating without having been granted an MSP license. Examiners mentioned that usually they found 10-15 MSPs per visit, who operated without a license. In the case of Jalalabad, they recalled that they temporarily closed 35 MSPs during one visit. These are temporary closures of about 2-3 days until these MSPs obtain a license from the licensing division of the FPD. Monetary fines of a total amount of more than Af 1million (about

US\$20,000) have been imposed on some 80-100 MSPs for failure to comply with the reporting requirement (both failure to report and late reporting). Some MSPs were fined multiple times. Examiners were not able to provide the assessors with the exact number of the cases of violation by MSPs and the exact figure of the total monetary penalties imposed on the MSPs. Since these are important statistics and basic ones for any supervisory authority to maintain, FSD should improve its record keeping of cases and maintain statistics which is readily available when required.

739. To date, all the sanctions imposed on banks and MSPs are either due to failure to report LCTR or monthly transaction reports or due to lack of license by MSPs. No sanctions have been imposed on banks as a result of AML on-site examination.

740. Up until 2008 sanctions were imposed directly by FinTRACA, however this practice has been changed and now sanctions are imposed by FSD even on occasions where FinTRACA find violations. The AML LD designates DAB as the authority having power to sanction, while FIU is designated for other reporting entities which do not have supervisory authorities. Since the law refers to “DAB,” it is not clear who in DAB has this power. The authorities’ interpretation is that since the FIU is mentioned separately, the reference to the DAB is meant to address units other than the FIU, i.e. FSD, the unit charged with supervision of financial institutions.

741. Overall, the sanction record is light, especially for banks since, unlike MSPs, they have been implementing AML/CFT requirements for some years and they do have resources to implement the requirements.

Market Entry

Banks

742. As of early February 2011, 17 banks have been licensed to operate in Afghanistan since 2003. Out of 17, two are state-owned banks, ten are private commercial banks, and five are branches of foreign banks. A moratorium on bank license has been imposed by the Supreme Council of DAB since 2008 (initially for 2 years, then extended for another 2 years). Thus no new bank license is expected to be issued until the moratorium is lifted. The assessors were told that the reason for the moratorium is the lack of supervisory capacity in DAB since there are already quite a number of banks operating in Afghanistan, relative to the size of its GDP, banking sector, and the supervisory capacity.

743. To date, there has been one case in which the application was rejected. It was rejected because the applicant did not fulfill all the requirements for application. Since the moratorium was imposed, the applicant has not come back to obtain a license. There is no case of the revocation or suspension of license of banks.

744. With regards to criminal background check of shareholders, board of supervisors and management, FSD contacts Criminal Division of the Ministry of Interior. In the case of non-residents, they contact Interpol division in the Ministry of Interior. In addition, they also contact AISA for shareholders who are legal persons. For non-residents, FSD understands that AISA usually obtains a letter from Embassies of the nationals who are shareholders or management for clearance. FSD also conducts their own research using on-line information, however due to a lack of MOU with foreign

supervisory authorities; they mentioned that it is difficult to receive information from foreign bank supervisors, in the absence of memorandum of understanding with foreign supervisors. This said the sources of information do not appear sufficient to perform a comprehensive background check: Interpol does not hold a criminal records database and, as indicated in section 5, the information held by AISA does not capture all companies and is not accurate.

DMFIs

745. To date, DAB has issued two DMFI licenses. Although the DMFI's licensing requirement does not include mandatory criminal background check of administrators, sponsors, and investors, authorities indicated that they do undertake criminal background check of all licensed entities by DAB.

MSPs and Foreign Exchange Dealers

746. As of end January 2011, FSD's licensing department has issued 320 licenses to MSPs. These 320 MSPs have 313 branches all together, indicating that each MSP have only one branch on average. In practice, many MSPs operate from only one location although some bigger MSPs have branches in other provinces. One MSP submitted an application to be an EMI, has 460 agents location at this point. These locations include both licensed financial institutions as well as small retail stores. The number of licensed MSPs has steadily increased with an exception of 2008. The total number of licenses issued for MSP HQs and branches per year and per zone (see two tables below) during the same period does not exactly match.

747. Initially the licensing regime was rolled out by FinTRACA. In a first stage, few hawaladars came forward to request a license because they had difficulties meeting the licensing requirements, notably those linked to the minimum capital. In order to address this challenge, DAB issued a new money service provider regulation in 2006 that streamlined the licensing process and substantially reduced the ongoing compliance burden for MSPs.

748. Afghanistan has made a good progress with the MPS licensing regime in 26 out of 34 provinces. The remaining 8 provinces include Heart, Helmand and Kandahar where, as a result of the security situation, licensing has not been undertaken. Although it is still in the midst of implementing it in all the provinces outside Kabul. The authorities believe that this success is due largely to the outreach effort undertaken by FinTRACA and FSD. They also believe that sanctions and enforcement actions (including law enforcement actions) helped send signals to Hawaladars. In addition, Hawaladars also faced pressure from banks since banks would not open an account for them unless they have an MSP license from DAB.

749. Surveys and outreach efforts have been organized by FinTRACA in Kabul, Herat, Mazar-e-Sharif and Qunduz in order to collect information on active MSPs and inform these MSPs about the regulatory requirements including the licensing process. FinTRACA has hired one officer in five zones (Kabul, Herat, Mazar-e-Sharif, Kunduz and Jalalabad), who provided findings on the MSP market in their respective province. These officers conveyed DAB's message on the licensing requirements, distributed copies of the regulations and the documents required for licensing. They also met with the heads of the Hawaladar Associations in each zone to brief them on the licensing and other regulatory requirements and obtain their support for the process. After agreeing on a timeframe,

a FSD and FinTRACA team departed Kabul for the each zone to license the MSPs. The number of MSPs operating in each zone differs from zone to zone. It is difficult for the authorities to estimate the number of non-licensed Hawaladars, especially those who are providing services outside the major Hawala markets in respective zones. These Hawaladars tend to be doing the Hawala business as a side business to their main business which may be unrelated to the transfer of funds.

750. With respect to foreign exchange dealers, FSD issued 679 licenses in Kabul as of January 2011. Licensing regime has been rolled out in Kabul zone; however, the same has not commenced in other zones due to limited resources, security concern, and as a result of prioritization. The number of license issued increased in 2005 but then decreased between 2006 and 2009. The new regulation was issued on foreign exchange dealers in 2006 and this seems to have caused the decrease. Prior to 2006, there was only one license for MSP and foreign exchange dealer since MSP license included the foreign exchange dealings. However in 2006, foreign exchange dealings were removed as one of the eligible activities of MSP and a separate licensing regime has been established. The assessment team was informed of the difficulty that supervisors face in assessing whether a particular person or business is a MSP or a foreign exchange dealer or both. Many money service providers prefer to apply for a foreign exchange dealer license because the licensing and reporting requirements are less strict than those applicable to MSPs and the licensing fees are lower.

751. The DAB will need to continue its efforts to license MSPs and foreign exchange dealers because there are still many provinces where Hawaladars operate without a license.

**Number of MSPs in Afghanistan
(2004-2011)**

Years	
2004	1
2005	1
2006	13
2007	84
2008	12
2009	86
2010	122
2011	1
Total of MSP HQs	320
Branches of MSPs'	313
M-Paisa agents	460

**Number of FXD in Kabul
(2004 – 2011)**

Years	
2004	10
2005	223
2006	74
2007	38
2008	46
2009	152
2010	134
2011	2
Total	679

Foreign exchange dealers are licensed only in Kabul at the time of the on-site visit. The licensing of foreign exchange dealers in other zones have not commenced.

Number of MSPs in Afghanistan (Per Zone)
(2004 – 2011)

Kabul	219
The rest of Kabul zone	9
Jalal Abad zone	43
Hirat zone	158
Gardez zone	37
Kandahar zone	44
Kunduz zone	50
Mazar zone	72
Total of MSPs HQs and Branches	632

Ongoing supervision

752. Afghanistan had to build its financial supervisory capacity from the scratch when DAB was re-established as the Central Bank in 2003. Since there was no capacity and expertise, financial supervision was minimal. This has been one of the grave concerns faced by the authorities. In addition, the FSD suffered from a high turn-over of staff. This challenge is not necessarily unique to financial supervisors but is seen in other parts of the government ministries and agencies. Considering the ongoing conflict in the country, it is difficult to rebuild the capacity quickly. Over the last couple of years, FSD seems to be strengthening its supervisory capacity. Parts of its staff have worked in FSD for the last 5-6 years or more. Some of them are taking more responsible positions today. The main focus and emphasis of FSD was initially placed on the development of supervisory capacity on prudential areas. However, recently more emphasis has been also given to AML/CFT, which resulted in the creation of the AML/CFT unit (FTSS).

753. Initially given the lack of capacity in the supervision department, FinTRACA had taken on some AML/CFT supervisory responsibilities. Before the establishment of the FTSS, FinTRACA conducted AML/CFT inspection in cooperation with the FSD. Each time FSD planned a prudential inspection of a bank, an official letter was sent to FinTRACA to announce the date of inspection so that the FinTRACA could send staff to cover the AML/CFT inspection. FinTRACA also played a key role in rolling out the licensing regime for MSPs.

754. Since FTSS was established in December 2008, the responsibility of AML/ CFT inspection of banks and MSPs have been passed to the FTSS which now conducts the inspections on its own. With respect to licensing of MSPs and foreign exchange dealers, because the licensing regime is still

in the midst of being rolled out, the FTSS and FinTRACA still conduct a joint operation. They send a joint team to the Hawala market to explain the licensing requirement and the process. For licensed MSPs, on-site examination has started in 2010 and has been undertaken solely by FTSS.

755. Examiners found that banks had generally sufficient internal control policies and procedures, however, the main deficiencies are implementation of the policies and procedures. They were not often thoroughly followed whether it is KYC/CDD requirement, LCTR/STR reporting requirement or other requirements. They also found that some banks had more systemic implementation deficiencies. One of the key reasons for their poor implementation record is insufficient training on AML/CFT.

756. Currently supervisors are undertaking on-site examination of every single MSP. Given the number of MSPs that exist in Afghanistan, this is a demanding task; nevertheless, this seems important at least initially because many MSPs still require a great deal of guidance in implementing AML/CFT requirements. In addition, given the MSP's high level of vulnerability to money laundering and terrorist financing risk, it would be useful for supervisors to assess each MSP. Meeting each MSP also helps establish a better working relationship.

757. During the roll-out of licensing regime and follow up on-site examination of MSPs and foreign exchange dealers, the examiners found that many MSPs are illiterate, thus they were not even aware of the AML LD. Due to this lack of knowledge, the compliance was very weak. About 80-90% of MSPs were not properly submitting the MSP ledger to DAB. MSPs maintain two ledgers, one for their own purpose, and another for DAB since DAB requires the use of specific MSP ledger and its duplicate copy to be submitted to DAB.

758. The current governance structure on approving examination reports concentrates too much decision-making power in the hands of the Director General of FSD. It would be advisable to institute proper checks and balances on the exercise of powers in the supervisory authority. Measures to mitigate this concentration of powers may include a decision power shared within a committee, and an ex-post review of decisions by an independent audit.

759. Finally, separating the initial on-site examination team and the follow up team seems to have resulted in the weak follow up system since the Special Supervision team does not have technical knowledge on AML/CFT compliance issues. They also lack context in which corrective actions were suggested. In order to rectify this problem, either better coordination or collaboration should be established or the follow up should be done by the same on-site examination team.

3.10.2. Recommendations and Comments

760. In order to comply fully with Recommendations 17, 23, 25 and 29, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that monetary penalties are proportionate, dissuasive and effective. The maximum amount of monetary penalties for civil (in the case of systematic failure) and criminal penalties should be raised in particular for large financial institutions;

- Impose fines which are proportionate, dissuasive and effective;
- Consider extending the criminal liability imposed on an individual who obstructs, hinders or fails to cooperate with the FIU to those who obstructs, hinders or fails to cooperate with DAB since DAB is also a supervisory authority;
- Ensure that all the provisions in the AML/CFT RR can be enforced;
- Ensure that criminal background check is required for administrators, sponsors, and investors of DMFIs during the licensing process; ensure that those with a criminal record not qualify as fit-and-proper and that the license is not granted;
- Require identification of beneficial owners of financial institutions during licensing process and whenever changes of management and shareholders occur; ensure that beneficial owners are subject to fit-and-proper tests;
- Develop a strategy for examination and schedule for all supervised entities. After the first round of examinations of MSPs and foreign exchange dealers, consider introducing a risk-based approach to supervision;
- Increase the number of AML/CFT inspections of MSPs;
- Initiate AML/CFT supervision of foreign exchange dealers, microfinance institutions, DFMIIs, financial leasing companies and mortgage finance companies, applying a risk based approach;
- Ensure that other regulated entities outside the scope of DAB's supervisory authority, ensure that either FIU or its designated person undertake the AML/CFT supervision (for example, in the case of insurance companies, brokers and agents);
- Develop sector specific guidelines to assist them with the implementation of regulatory requirements within the sector specific contexts;
- Although not directly required by the standard, it is recommended that measures are introduced by DAB to mitigate the current concentration of decision making-powers in the hands of the Director General of FSD, when bank examination reports are approved. A committee can be established to share decision-making responsibility. An independent auditor can conduct an ex-post review of decisions made by the committee.

3.10.3. Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors underlying rating
R.17	NC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Uncertainty as to whether all the provisions in the AML/CFT RR can be enforced. • Monetary penalties are not effective, dissuasive and proportionate.

		<ul style="list-style-type: none"> Overall insufficient application of sanctions for non-compliance with requirements other than those dealing with reporting and licensing.
R.23	NC	<ul style="list-style-type: none"> The AML and CFT LDs lack Parliamentary approval. No requirement to obtain information and to ensure the fit and properness of the beneficial owners of financial institutions. No criminal background check of administrators, sponsors, and investors of DMFIs to prevent criminals or their associates from owning or controlling financial institutions. No AML/CFT supervision on regulated entities other than banks and MSPs, and on non prudentially regulated entities. Lack of implementation of licensing regime for MSPs and foreign exchange dealers in 8 of the 34 provinces. Supervision of banking sector is not effective.
R.25	NC	<ul style="list-style-type: none"> Insufficient guidance provided by the financial sector supervisors.
R.29	NC	<ul style="list-style-type: none"> The AML and CFT LDs lack Parliamentary approval. No AML/CFT supervision on regulated entities other than banks and to some extent MSPs. Lack of supervision on foreign exchange dealers, microfinance institutions, DMFIs, financial leasing companies and mortgage finance companies. Deficiencies in the sanction regime also apply here. Overall supervisory regime is not effective.

3.11. Money or Value-Transfer Services (SR.VI)

761. This section briefly summarizes the description and analysis that has been done earlier in section 3 relating to on money or value transfer services. Please see earlier sections on preventive measures for detailed analysis of the Money or Value Transfer Services (MVT).

762. MVTs in Afghanistan are provided by Hawaladars and international Money Transfer Companies (MTOs) such as Western Union. There are two types of Hawaladars; those that have been licensed, and who are called Money Service Providers (MSPs) and those who haven't yet been licensed because the licensing regime is still being rolled out. International MTOs operate only through banks and MSPs, having them as agents. They are not locally licensed.

763. MSPs are allowed to undertake more than money remittance operation but other allowed activities are limited to check cashing and (short term) safekeeping of money. MSPs may undertake foreign currency exchange operations; however, since the 2006 amendments to the MSP Regulation, they need to apply for a separate license under the Regulation for Foreign Exchange Dealers. In 2010, DAB amended the MSP Regulation in order to include coverage of E-Money Institutions (EMIs).

Thus EMIs are one form of MSP although they must obtain a special EMI license. The amended MSP regulation is not always clear as to which provisions apply to MSPs versus EMI, or to both.

764. Over the last centuries, Hawaladars have played a critical role in facilitating economic transactions in Afghanistan and still have a dominant role in today's financial sector. Hawaladars have serviced the need of business and individuals during the time of conflicts and wars, and can be found throughout the Afghan territory, notably in locations where banks do not have branches. Hawala is a system developed based on trust. Its speed, convenience and accessibility all factors that contribute to explain why hawala is still commonly used despite the presence of banks.

765. Hawaladars are, however, vulnerable to money laundering and terrorist financing, especially in Afghanistan where the risk of both crimes is high. Many Hawaladars are cooperating with governmental authorities to fight money laundering, terrorist financing and any other crime. Two law enforcement agencies have an office in the Shahzadar Market in Kabul, which is one of the largest Hawaladars market in the country.

766. According to the authorities, however, some Hawaladars have nevertheless been complaisant or have knowingly transferred illegal proceeds. The intelligence gathered by both Afghan and foreign law enforcement agencies reiterates the fact that Hawaladars are being used to transfer the proceeds of crime, fund terrorists and help in hiding the proceeds derived from drug and arms trafficking. As a result, two Hawaladars in Kabul were arrested on charges of drug trafficking and are currently awaiting prosecution.

767. Large quantities of cash in various currencies (predominantly in US Dollars) are exported in bulk from Afghanistan mostly by Hawaladars with a few exceptions. Declaration of cross-border transportation of cash has been launched only in recent years and there is still poor implementation across the country (see the section on SR IX). Authorities do not have any reliable statistics to understand the scale of cross-border physical transportation of cash.

768. One Hawaladar which the assessment team met provides settlement services for other Hawaladars and, as a result, handles large amounts of cash every month. He transports, by flight, US\$4-5 million per day for 20 days or more per month to Dubai, which he duly declares at the airport. According to him, 95% of these funds are related to cash smuggling from Pakistan to Dubai, and carrying the cash through Afghanistan is the fastest method to transfer money: It takes half a day to one day to deliver the money, and neither commercial banks nor the Central Bank are able to transfer funds in such a speedy manner.

769. At the time of the assessment, one of the MSPs was waiting to receive an EMI license. It only provides domestic money transfer service, but is hoping to start international remittance service in the near future. This section will cover the issue of EMIs as relevant.

3.11.1. Description and Analysis (summary)

Legal Framework

770. Article 90 of the DAB Law governs the business of money services. It designates DAB as "responsible for the registration, licensing, regulation and supervision of money service providers."

DAB is thus empowered to issue regulation, set conditions and requirements for licensing, issue and revoke license, and require MSPs to report on transactions above a certain threshold.

771. In line with that provision, DAB issued the Regulation on Money Service Providers which sets out the licensing requirements, permitted and prohibited activities, measures to prevent money laundering, reporting requirements, application and annual assessment fees. It also subjects MSPs to supervision. The focus of the regulation is largely on AML/CFT.

Designation of Registration or Licensing Authority (c. VI.1):

772. DAB has the authority to issue license to MSPs. The Licensing Section of the FSD is the designated unit in DAB to issue licenses to MSPs and also maintains records of them. A license is granted if the applicant:

- can demonstrate that the owners or proprietors of the business are fit and proper persons deserving of public trust;
- has established at least one fixed address from which the business will be operated;
- agrees to apply the appropriate procedures for the prevention of money laundering and terrorist financing; and
- agrees to abide by the terms of the “Money Service Providers Licensing Agreement.”

773. The Money Service Providers Licensing Agreement includes a declaration that the applicant has not been previously convicted of any premeditated criminal offenses of general nature nor penalized for tax evasion. During the application process, the applicant must notably provide a copy of his/her national identification card, tax certification, tax identification number, original certification from the criminal department of the Ministry of Interior. If one of the following conditions are met, among others, a license must be rejected: the applicant has been “convicted of any felony in any jurisdiction within the past 10 years; convicted of a crime involving a financial transaction in any jurisdiction within the past 10 years; charges pending against him/her/them in any jurisdiction for violations relating to a financial transaction within the past 10 years; and an adverse action taken against any business license by any jurisdiction within the past three years.” In addition, the applicant should provide information on the bank accounts that will be used in the conduct of the money service business. The license is valid only for up to 1 year.

774. International Money Transfer Operators (MTOs) such as Western Union also operate in Afghanistan. However, they partner with either banks or MSPs and thus do not need to obtain a local license themselves. Western Union does not impose a ceiling limit to transfers to and from Afghanistan, unlike in some other countries, but many of its partners such as banks to impose their own internal ceiling. For example, a couple of banks limit transfers (both inwards and outwards) to a maximum of Af 500,000 (US\$10,000).

775. The EMI needs to apply for and obtain a special license to operate as an EMI which is granted under the MSP Regulation. At the time of the on-site mission, one MSP who is a telecommunication company providing e-money service was going through a new licensing process

as an EMI. The obligation to obtain an EMI license was introduced in late 2010 , and the licensing conditions are closer to that of banks than of MSPs: the applicant must notably submit a list of its current and proposed shareholders possessing a qualifying holding of the EMI and biographical information on the board of supervisors (if any), and of the executive officers (chief executive officer, chief operating officer, chief financial officer, chief information technology officer, chief legal counsel, chief internal auditor, and chief compliance/AML/CFT officer). This biographical information must be sufficient for DAB to judge the fitness and propriety of the individuals, as well as their experience and capabilities. EMI has to meet the minimum capital requirement of Af 10,000,000 (US\$200,000) *plus* 1.5 percent of historical average e-money.

776. The EMI has a regulatory transaction ceiling of maximum Af 10,000 (US\$200) per transaction, Af 30,000 (US\$600) per day and Af 150,000 (US\$3,000) per month if it is a non-salary payment or a loan disbursement. This only applies to outgoing transfers. It is not clear why there isn't a similar limitation on incoming transfers.

Application of FATF Recommendations (applying R.4-11, 13-15 and 21-23, and SRI IX) (c. VI.2):

777. MSPs are one of the types of financial institutions that are subject to the AML LD and AML/CFT RR. Thus, the preventive measures in the AML/CFT RR which include CDD, record keeping, STR reporting, LCTR reporting and wire transfers requirements also apply to MSPs. The deficiencies in the laws and regulations identified above in this section with respect to the preventive measures thus equally apply to MSPs.

778. In addition, Section 2.3.7. of MSP Regulation obliges every licensee to take all the necessary measures for the effective prevention of money laundering and terrorist financing as provided for in the legislation of Afghanistan. These measures must include, but are not be limited to providing:

- “continuous training of staff so that they are able to recognize transactions that might be related to money laundering;
- instructions as to what action they should take in such circumstances;
- effective internal control and communication procedures;
- submission of any required reports on suspicious transactions to the Financial Intelligence Unit or any other repository of such reports as may be designated by the laws of Afghanistan.”

779. Further, MSPs must use a transaction ledger (MSP book) provided by the DAB in which every single transaction must be recorded. The ledger requires MSPs to obtain and record detailed information about each customer including the following: customer's name, his/her father's name, customer identification code, ID card number, ID type, date of birth, address, contact number, current job, and monthly income. The same information is required for the beneficiary of the transfer, except that in lieu of monthly income, information on the relationship with sender is requested. In addition, the following information must also be recorded: date and amount of the transaction, currency type, source of money, transaction code, MSP license No, and transaction type (i.e. either money transfer,

check cashing or short term safe keeping). The information required on the MSP book does capture details about customer and beneficiary.

780. MSPs are required to submit to the DAB a copy of the entire MSP ledger every month, i.e. information about every single transaction regardless of the amount. Accordingly, no separate filing of LCTR is required.

781. MSPs are required to report suspicious transactions, but are not doing so in practice: so far, not a single STR has been filed by MSPs.

Monitoring of Value-Transfer Service Operators (c. VI.3):

782. The Licensing department of FSD is responsible for MSP licensing and the Financial Transaction Supervision Section (FTTS) is responsible for MSP supervision.

783. DAB conducts reviews of MSP' compliance with the applicable regulations as a part of its regularly-scheduled annual on-site examinations. During the on-site examination, the FSD team checks the validity of the license, establish whether the actual owner of the license is the same person as the one doing business and whether there are material changes to the licensee's situation.

784. The on-site examination is undertaken annually as part of the regular license assessment. The on-site examination is done by FTSS at the FSD, while off-site monitoring is done by FinTRACA based on the transactions reports (i.e. a duplicate of the ledger and the aggregated number and volume of monthly transactions) they receive from MSPs on a monthly basis. FSD also undertakes targeted examination if such is deemed necessary. In June 2008, the first examinations of MSPs were undertaken jointly by FSD and FinTRACA. At the time, the examination focused on bringing the MSPs under the regulatory framework and the submission of the MSP book. The main findings of the June 2008 examinations were that MSPs' reporting of transactions to DAB were at times erroneous and incomplete. No sanctions or penalties were imposed at the time because this was the first examination undertaken on MSPs. After this examination, FSD and FinTRACA conducted educational sessions on how MSPs should meet their reporting obligations.

785. No examination has been conducted on the MSP which is currently applying for an EMI license. This MSP is a joint venture with a foreign telecommunication company. Discussions led during the assessment with representatives of this MSP indicated that AML/CFT issues were taken seriously.

List of Agents (c. VI.4):

786. Section 2.2.2 (e) of MSP Regulation requires MSPs to provide FSD with a list of proposed agents, associates, and employees allowed to conduct business in the name of the licensee. The list is to be submitted with the application for license and/or for a license renewal.

787. The MSP Regulation requires EMIs to be responsible for carefully screening, selecting, and supervising their authorized e-money agents. "Authorized e-money agent" is defined as a legal entity or individual who has been authorized by an EMI to perform e-money account opening, cash-in, and cash-out services for its customers. The MSP Regulation specifies that, to the greatest extent possible, an authorized e-money agent should be an established business in its community, whose commissions

for handling MVT or other EMI transactions represent less than 50 percent of the total revenue of all its business activities. The regulation further clarifies that this criterion is not to be interpreted as a rigid requirement, but rather as an indication that a loss of reputation caused by misbehavior or incompetence in EMI activities would create a significant financial loss for the agent with regard to its other business activities.

Sanctions (applying c. 17.1-17.4 in R.17) (c. VI.5):

788. The DAB may revoke the license of an MSP if any of the following conditions specified in the Regulation on MSPs are met: “the licensee no longer satisfies the required conditions for the granting of a license”; “the licensee, its managerial staff, or individuals with a qualifying holding in the licensee have been convicted of a felony criminal offense or any crime involving a financial transaction”; and “the licensee has failed to submit their official record books in a timely manner.”

789. In addition to the regular reporting required under the AML/CFT RR, Section 2.4.2. of the MSP Regulation requires MSPs to submit a monthly report on the number and aggregate volume of transmissions with a breakdown per inbound and outbound transfers, domestic and cross-border, and currency of the amounts transmitted. MSPs are also required to submit exact and unaltered signed duplicate copies of each month’s transactions as provided in the MSP book issued by DAB and bearing a license number. No other means of duplication is allowed. In the case of EMIs, they must to submit a monthly report on liquid assets, e-money float, and outstanding e-money, as well as quarterly reports on the number and volume of MVT transactions, with a breakdown by number and volume as well as by types of payments (i.e. for goods , services or salaries).

790. Part F of the MSP Regulation (2009) includes provisions relating to fines, fees, and penalties for operating money service business without a license. While these clearly apply to MSPs, it is not clear whether they will also apply to EMIs. Section 2.5.13 under Part E (EMI related provisions) refers to “enforcement measures.” However, this provision is “reserved”, and the MSP Regulation will therefore need to be amended to address enforcement actions towards EMIs or EMI-specific activities.

791. The section 2.6.4 of the MSP Regulation sets the fee schedule for non-compliance. For failure to submit the monthly reports on time, letter of warning are issued for the first three offenses. If the violation continues, a fine of Af 500 (US\$10) per day is imposed until the reports are submitted. If the violation lasts for an entire month, a fine of Af 25,000 (US\$500) will be imposed and a written notification of possible suspension or revocation of license will be issued. If the violation continues for three consecutive months, it may result in the suspension or revocation of the license. If an MSP fails to submit the annual license assessment on time, a letter of warning is issued for the first 15 days, a fine of Af 1000 per location (i.e. per branch) after 30 days, and a second fine of Af 5000 after 90 days per location and a written notification of possible suspension or revocation of license.

792. Operating money services without a license will result in a referral to the Attorney General’s office for closure of the business, confiscation of the records and property, and prosecution for non-compliance with the Regulation.

793. The MSP Regulation also provides that fines may be imposed for not correcting the deficiencies found during an inspection at the discretion of the FSD. Fines may also be issued, at the discretion of FinTRACA, for consistent mistakes in reporting.

794. In addition, since MSPs are also subject to the AML LD and the AML/CFT RR, they are subject to the sanctions that are provided for in both texts. The range of administrative and civil sanctions are:

- revocation or suspension of a business license;
- a fine up to Af 3,000 (equivalent to US\$600);
- ordering the reporting entity to conduct an external audit of its affairs, at the expense of the reporting entity, by an auditor acceptable to DAB;
- ordering the reporting entity to do all or any of the following:
 - removing an administrator, officer or employee of the reporting entity from office;
 - ensuring that an administrator, officer or employee of the reporting entity does not take part in the management or conduct of the business of the reporting entity except as permitted by DAB; or
 - appointing a person or persons acceptable to DAB as administrator of the reporting entity for such term as the order specifies.

795. Criminal sanction is also available. Criminal liability is established under Article 39 (5) of the AML LD which provides that "[a]ny person who willfully or intentionally obstructs or hinders or fails to cooperate with the financial Intelligence Unit in the lawful exercise of the powers is guilty of an offence and shall be punishable by a fine of Af 5,000 (equivalent to US\$100) in the case of an individual or imprisonment of not more than three months, or both; and Af 25,000 (equivalent to US\$500) in the case of a body corporate.

796. In addition, Article 48 of the AML LD establishes a criminal liability under the following circumstances. A person commits an offense when he/she:

- intentionally discloses any information regarding a report to the person;
- destroys or removes registers or records;
- performs or attempts to perform any of the operations under a false identity;
- knowingly discloses to the person about the investigation;
- communicates to the judicial authorities or to the officials competent to investigate criminal offenses records which contain errors or omissions without informing them of that fact;
- communicates or discloses information or records required to be kept confidential; or
- intentionally fails to report a suspicion.

797. A person also commits an offense if he/she contravenes the provisions concerning international transfers of funds and originator information; or contravenes the provisions relating to AML/CFT preventive measures. The penalty for the commission of these offenses are set as follows: in the case of a natural person, imprisonment for not less than six months and not more than one year or a fine of not less than Af 5,000 (equivalent to US\$100) and not more than Af 25,000 (US\$500), or both. With respect to corporate entities, a fine of not less than Af 25,000 (US\$500) and not more than Af 125,000 (US\$2,500).

798. The authorities have a range of sanctions which they can impose in the event of any violation. However, the maximum available monetary penalties are quite low.

Adequacy of Resources—MVT Registration, Licensing and Supervisory Authority (R.30)

799. The licensing department of the FSD has a staff of one. The FTTS currently has three examiners who focus on MSP supervision. The same examiners are responsible for AML/CFT supervision of all the banks and foreign exchange dealers. Given the size of the MSP market in Afghanistan, it is impossible for one person to cover the licensing of all MSPs and foreign exchange dealers, and for a staff of three to cover the supervision of all MSPS. The assessors understand that a request has been made to add 7 examiners in FTTS.

800. In addition, FTTS examiners should receive periodic training in order to enhance their knowledge and skills on AML/CFT supervision (see write-up for Recommendation 23).

Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):

801. According to the authorities, the DAB has been making efforts to apply the elements specified in the FATF best practices paper. For example, as stated previously, they have undertaken extensive awareness raising efforts starting in Kabul and gradually reaching other provinces. As part of the licensing requirements, the MSP Regulation requires an MSP to have an established address and establishing a bank account.

Analysis of effectiveness

802. FTSS and FinTRACA conducted a survey of MSPs and foreign exchange dealers in four zones: Kabul, Herat, Mazar-e-Sharif and Qunduz. Thereafter, all MSPs and foreign exchange dealers in the following five zones have been inspected to check whether they have a valid license from DAB: Kabul, Herat, Mazar-e-Sharif, Kunduz and Jalalabad. Only the MSPs in the Kabul province have been subject to an AML/CFT compliance examination and all 156 MSPs which were licensed at the time in Kabul were examined in summer 2010. The examiners wrote a report on each individual MSP as well as an overall report to summarize the general findings.

803. As of January 2011, the Licensing Section of FDS has issued 320 licenses to MSPs. These 320 MSPs have 313 branch offices in total. In addition, one MSP which is waiting for an EMI license has 460 agent locations across Afghanistan. The 320 MSP license are spread out in six zones (out of seven zones in total): 219 licenses have been issued in Kabul mostly concentrating in the Shahzada market, 9 license in the rest of the Kabul, 43 in Jalalabad, 158 in Hirat, 37 in Gardez, 44 in Kandahar, 50 in Kunduz, and 72 in Mazar (cf. the Market Entry section).

804. According to the authorities, the MSP licensing process is almost fully achieved in Kabul and progress has been made in 26 out of 34 provinces. The licensing regime is still not rolled out in 8 provinces including Herat, Helmand and Kandahar.

805. The licensing section of FSD maintains the list of MSPs branches and agents. Although the security situation and limited resources make the licensing effort extremely challenging, DAB FSD and FinTRACA have made encouraging progress to date and this effort needs to be continued.

806. The examiners found that many employees of MSPs are illiterate, and were not even aware of the AML LD and MSP Regulation. Due to this lack of knowledge, the level of compliance with the regulatory requirements is very weak. About 80-90% of MSPs were not submitting the MSP ledger to DAB properly. Usually, MSPs maintain two ledgers, one for their own purpose, and another for DAB since DAB requires the use of specific MSP ledger and its duplicate copy to be submitted to DAB.

807. FPD revoked three MSPs' licenses in September 2010 because the licensees were not complying with the reporting requirement (i.e. the submission of the MSP ledger). In addition, more than 100 MSPs across the various zones were temporarily closed because of they were operating without possessing the necessary license. The examiners mentioned that they usually found 10-15 MSPs, per visit, who were operating without a license. In the case of Jalalabad, they recall have temporarily closed 35 MSPs. These are temporary closure of about 2-3 days until these MSPs obtain a license from the licensing division of the FPD. Further, monetary fines were imposed on somewhere 80-100 MSPs in the cumulative total of more than Af 1million based on the account of violation of reporting requirement (both failure to report and reporting after the set deadline). Some MSPs were fined multiple times. The examiners were not able to provide the assessors with the exact number of cases of violation by MSPs and the exact figure of the total monetary penalties imposed on MSPs.

808. Despite the good progress made, there is much need to improve supervision of MSPs. The weakness in the supervision identified in the section on supervision also applies here.

809. As described above, the authorities have a range of sanctions which they can impose in the event of any violation. However, the maximum for monetary penalties is low (for example, a fine up to Af 3,000 (equivalent to US\$600) provided for in the AML LD and a fine of Af 500 (US\$10) per day or Af 25,000 (US\$500) per month provided for in the MSP Regulation).

810. This low threshold may be adequate for MSPs that only deal with low amounts. However, some MSPs that the assessment team met handle more than US\$1 million (or its equivalent in Af) a day, and, in these cases, the threshold is far from dissuasive, proportionate and effective.

811. FinTRACA and FSD have provided several training sessions to MSPs, especially focusing on how to use the MSP book and file STRs. However, more and continuous training is necessary, especially to MSPs outside Kabul.

812. Pursuant to Section 2.4.2 of the MSP Regulation, MSPs must use the official ledger issued by DAB to record all their transactions and, in doing so, provide the required information on the sender (the customer) and the beneficiary of the funds. As stated above, the mandatory use of the MSP ledger goes beyond the standards. While it is commendable to have introduced this requirement in the environment where it was probably one of the most difficult places to do so, the effectiveness of the

use of this ledger for fighting money laundering and terrorist financing remains to be seen. It is not clear how the information has been used and analyzed and whether money laundering and terrorist financing cases have been identified. On the one hand, FIU receives information on every single transaction because each single transaction needs to be recorded in the ledger. However, it is the practice of MSPs to keep two ledgers, one given by the DAB and another for themselves although DAB examiners check during the on-site visit whether transactions on their business ledger mirror the records in the MSP ledger submitted to the DAB.

813. MSPs have requested DAB to change the MSP ledger claiming that it is extremely difficult to fill in all the required information in the MSP ledger. In order to fill in all the information, MSPs have to obtain the ID and additional information about the beneficiary and ask for sensitive information from their customers such as monthly income. MSPs usually ask for Tazkira (National ID Card) or passport for verification of the customer. If it is a business customer, they ask for a business license. MSPs are required to make a photocopy of the identification document. According to the MPSs, it is not feasible to require a photocopy of the identification document because many MSPs do not have a photocopier.

814. Given the challenge of implementing the current CDD requirements through the MSP ledger, it would be useful to consider introducing a risk-based approach that would distinguish regular from occasional customers, and small value transfers from large ones.

3.11.2. Recommendations and Comments

815. In order to comply fully with Special Recommendation VI, the authorities are recommended to:

- Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis;
- Expand the implementation of the licensing regime for MSPs in the remaining provinces and ensure oversight of MSPs throughout the territory;
- Strengthen the sanction regime to provide for dissuasive, effective and proportionate sanctions for larger MSPs;
- Clarify what provisions of the MPS regulation apply to EMIs as opposed to MSPs, including applicable sanctions;
- Increase the number of staff responsible for licensing and supervision of MSPs;
- Provide guidance and training for MSPs to comply with AML/CFT requirements;

Although not required under the standard, in order to enhance effectiveness:

- Consider adopting a risk-based approach to on-site examination of MSPs.

- Consider Introducing a risk-based approach to CDD. Different CDD requirements can be placed on small value transactions v.s. larger values and some of the customer information (such as monthly salary, source of income) does not need to be repeatedly obtained each time the repeat customer visit the MSP.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Licensing regime not imposed in 8 out of 34 provinces due to security problems although money laundering and terrorist financing risks may be higher. • The deficiencies identified with respect to R.4-11; 13-15; 21-23 equally apply to SR.VI. • Monetary sanction regime not proportionate, dissuasive and effective. • Limited compliance with AML/CFT preventive measures. • Insufficient monitoring of MSPs.

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1. Customer Due Diligence and Record keeping (R.12)

4.1.1. Description and Analysis

Legal Framework

816. The AML LD sets out the preventive measures that should be applied by Designated Non Financial Businesses and Professions (DNFBPs). Article 4 of the AML LD applies to the following:

- (i) lawyers, transaction guides (rahnamai mamelaat) or other independent legal professional, and accountants when carrying out the following transactions on behalf of their clients:
 - Buying and selling immovable assets;
 - Managing client money, securities or other assets;
 - Opening or managing bank savings accounts or a securities service provider account;
 - Securing capital necessary for the creation, operation or management of companies;
 - Creating, operating or managing a legal person or business organization and buying and selling of business entities.
- (ii) Dealers in bullion, precious metals and precious stones, to the extent that they are engaging in a cash transaction equal to or exceeding Af 1,000,000 (around US\$20,000);
- (iii) Real estate agent to the extent that such agent is engaging in transactions concerning the buying and selling of real estate.

817. Casinos are outlawed in Afghanistan pursuant to Article 5, paragraph 1 of the Private Investment Law and Article 353 of the Penal Code, and are therefore not subject to the provisions of the AML LD.

818. The LD is silent with respect to notaries; according to the Afghanistan Independent Bar Association, however, notary services are rendered by designated courts, which deal exclusively with the validation and certification of documents. There are therefore no notaries in the sense of the Methodology in Afghanistan.

819. Furthermore, Article 4 of the LD does not explicitly list trusts or company service providers (TCSP) among the entities to which the provisions of the decree apply. While trusts and other legal arrangements are not prevalent in Afghanistan (see Recommendation 34 for more details), legal entities are and company service providers are not prohibited in Afghanistan.

820. The AML LD is confusing when it refers to the lawyers, transaction guides, other legal professionals and accountants' obligations when opening or managing accounts, in the sense that it lists, in addition to securities accounts, "bank savings accounts" when both bank accounts *and* savings accounts should be covered by the decree. According to the authorities, transaction guides are part of the legal profession, but no information was provided on the type of activities that they conduct and how they differ from lawyers.

821. No regulation has been issued to DNFBPs with respect to their responsibilities under the AML LD.

CDD Measures for DNFBPs in Set Circumstances (Applying R. 5, 6, and 8-11 to DNFBP; c. 12.1)

822. The provisions on CDD are set out in Articles 9-14 of the AML LD. They apply equally to DNFBPs as they do to financial institutions and are discussed comprehensively in Section 3 of this report. The AML LD notably sets out some basic CDD measures: DNFBPs are, for example, required to identify their customers in instances when:

- Transactions equal to or exceeding Af 1,000,000,000 (approximately US\$23,000) are being carried out;
- There is a suspicion of money laundering or terrorist financing;
- The reporting entity has doubts about the veracity or adequacy of previously obtained customer identification data; and when
- Establishing a business relationship with any person.

823. However, as stated in Section 3 of this report, the current CDD framework suffers from a large number of shortcomings, either because its requirements are incomplete (for example with respect to the identification of the beneficial owner), not in line with the standard (the Af 1,000,000 threshold for CDD is too high as it corresponds to approximately US\$23,000 and therefore exceeds the US\$15,000 limit mentioned in the standard), or because it fails altogether to address the measures

called for under the standard (there is for example no requirement to conduct ongoing due diligence and scrutiny of transactions of the business relationship).

CDD Measures for DNFBPs in Set Circumstances (Applying R.6 & 8-11 to DNFBPs) (c. 12.2):

824. The discussion of Recommendation 6 found in Section 3 of the report also applies to DNFBPs: Pursuant to Article 13 of the AML LD, DNFBPs (and other reporting entities) should have measures in place in addition to their normal CDD practices to determine whether or not a customer is a PEP. There is however no similar requirement with respect to potential customers and beneficial owners. The definition of PEP provided by Article 2 of the AML LD goes beyond the FATF standards by including domestic PEPs. However, the LD does not require reporting institutions to perform additional CDD when it comes to potential customers or customers whose beneficial owner is a PEP.

825. The AML LD does not provide for any specific requirements for having policies in place by DNFBPs to prevent the misuse of new technology for money laundering and/or terrorist financing. There are also no specific requirements in the AML LD requiring DNFBPs to have policies in place to address the risks associated with non-face to face business relationships or transactions. The DNFBPs which the assessment team met with did not indicate that the use of technology was a common in the provision of their services to clients.

826. As noted in Section 3, there are no elements in the AML LD that pertain to intermediaries or other third parties. According to the Central Bank, these activities are not prohibited, per se. The SROs which the assessment team met did not indicate that this was a practice they were aware of in their sector.

827. The AML LD addresses record keeping requirements and the level of attention to be given to complex, unusual large transactions in Articles 14 and 12, respectively. The discussion of these provisions in Section 3 of this report is also applicable to DNFBPs. DNFBPs are required to maintain records specified in Article 9 of the LD for at least a five year period. However, this requirement does not extend to the records accumulated over the course of the business relationship.

828. While records are available to the FIU and supervisory authorities upon request, the LD sets a high threshold for judicial authorities who may wish to obtain records by stipulating that a court order must first be obtained and strong grounds for suspicion established.

829. Article 12 of the AML LD deals with the monitoring of transactions, which it states must be done in the case of complex, large transactions, and all unusual patterns of transactions which do not have an apparent economic or lawful purpose.

830. In the course of the assessment, it was not apparent that any of the DNFBPs followed the requirements on record keeping or paid special attention to complex, unusual transactions, or set forth their findings in writing.

831. No information was provided that would indicate that DNFBPs active in Afghanistan rely on intermediaries or other third parties to perform elements of the CDD process or to introduce business.

Analysis of effectiveness

832. Authorities arranged for the assessment team to meet with representatives of the legal profession and dealers in precious metals and stones only. Due to this limited introduction to Afghanistan's DNFBP sector, the assessment team is unable to draw a conclusion about the implementation of the law across the sector based on evidence collected during official meetings. However, according both to the limited sample of DNFBPs that the assessment team met with, as well as the authorities themselves, the provisions of the AML LD is not being implemented in the DNFBPs sector.

833. AIBA is the SRO governing the activities of lawyers in Afghanistan. The Code of Conduct and By-Laws both include provisions governing the relationship between the client and the attorney, but no provisions require lawyers to verify the identity of the client. The AIBA By-Laws do require lawyers opening an office to maintain a filing system, but the provision does not address all the requirements outlined in Recommendation 5.

834. Dealers in precious metals, stone and bullion in Kabul are required to register with the local Jewelers Association, which is registered with the Ministry of Justice. Additionally, dealers in precious metals and stones are required to obtain a license from the municipality. The head of the Jewelers Association told the assessment team that no CDD and record-keeping requirements are incumbent upon the members of his association and that the members deal primarily in local currency and accept only cash, without identifying their customers.

835. While in accordance with the AML LD, it is incumbent on real estate agents to perform CDD, maintain records and report suspicious transactions, the sector is currently unregulated.

836. In sum, none of the provisions identified in the discussion above are implemented in the DNFBPs sector. Notably, authorities have not taken any of the steps necessary to begin enforcing the relevant provisions of the AML LD due to a lack of government capacity. In this respect, a number of nascent SROs could potentially facilitate an outreach campaign to assist authorities in the implementation of the LD and begin to clarify the responsibilities of DNFBPs under the AML LD.

4.1.2. Recommendations and Comments

837. In order to comply fully with Recommendation 12, the authorities are recommended to:

- Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis;
- Impose CDD and record keeping requirements on all DNFBPs active in Afghanistan (including company service providers when they engage in activities covered by the standard (see Criterion 12.1 e of the Methodology) in line with Recommendation 12, taking care, in particular, to: lower the threshold for CDD by dealers in precious metals and stones to meet the international standard; and ensure that the activities of DNFBPs that are subject to the AML LD are comprehensively listed within the LD, to include the opening or management of a bank, savings or securities account on behalf of a client by lawyers, any other independent legal professionals and accountants.

Although not specifically called for under the standard, in order to increase the effectiveness of CDD and record keeping requirements:

- Conduct an outreach and awareness raising campaign to DNFBPs to facilitate compliance with the applicable AML/CFT provisions;
- Issue sector specific regulations clarifying the CDD and record-keeping requirements for DNFBPs.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Required threshold for dealers in precious metals and stones to comply with CDD and record-keeping requirements under the law is above the US\$/EUR 15,000 prescribed by the methodology. • CSP are not subject to CDD and record-keeping requirements. • Elementary weaknesses in business registration and in natural persons' identification systems prevent the consistent implementation of CDD measures. • Absence of effective implementation of the existing measures in cases where information is available and verifiable. • Inadequate exceptions in the identification and verification of occasional customers that are legal persons. • Limitations to the AML LD requirement to verify the identity of natural persons for financial institutions subject to the AML/CFT RR. • No requirement to verify the identity of legal persons in primary or secondary legislation. • No requirement in primary or secondary legislation to verify that a person purporting to act on behalf of a natural person is so authorized. • No requirement to verify the legal status of a legal person or legal arrangement. • No requirement in primary or secondary legislation to determine whether a customer is acting on behalf of another person. • No requirement to understand the ownership and control structure of the corporate customer. • No requirement to determine who the persons exercising ultimate effective control over a legal person or arrangement are. • No requirement to obtain information on the purpose and intended nature of the business relationship for natural persons. • No requirement to obtain information on the purpose and intended nature of the business relationship for legal person.

		<ul style="list-style-type: none"> • No requirement in primary or secondary legislation to conduct ongoing due diligence of the business relationship. • No requirement on update of CDD data and information. • No obligation to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • No requirement to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. • No requirement to take measures in case of failure to satisfactorily complete the verification of identity. • No requirement to terminate the business relationship and consider making a STR where the DNFBP has already commenced the business relationship and is unable to comply with CDD obligations. • No requirement to perform CDD measures on holders of existing anonymous accounts. • No requirement to determine whether a potential customer or a beneficial owner is a PEP. • No requirement to obtain senior management approval to continue the business relationship, where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP. • No requirement to take reasonable measures to establish the source or wealth and the source of funds of beneficial owners identified as PEPs. • No requirements, other than normal CDD, to gather information about a respondent institution to understand the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision. • No requirement for financial institutions to have policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • No requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. • Absence of possibility for a competent authority to request that records are maintained for more than five years, in specific cases and upon proper authority. • No requirement to keep records of business correspondence. • Access to identification data and transactions records by judicial authorities is subject to restrictive conditions which hamper access to relevant information in practice. • Obligation to report STRs on all transactions subject to special attention appears counter-productive, as it discourages to better understand these
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		<p>transactions.</p> <ul style="list-style-type: none"> • Lack of effectiveness: CDD and record keeping obligations are not implemented by DNFBPs.
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4.2. Suspicious Transaction Reporting (R.16)

4.2.1. Description and Analysis

Legal Framework

838. The reporting requirements are set out in Articles 12 and 16 of the AML LD. With the exception of company service providers, DNFBPs active in Afghanistan (namely lawyers, transaction guides, other independent legal professions, accountants, real estate agents and dealers in precious metals, stones and bullions) are subject to the same reporting requirements as are entities in the financial sector.

839. Where authorities have issued guidance through regulations on the responsibilities of financial institutions and money service providers, no such official guidance has been issued for the DNFBP sector.

Requirements to Make STRs on ML and TF to the FIU (c. 13.1 -13.4 & IV.1):

840. As noted above, DNFBPs are subject to the same direct requirement to report STRs as are institutions in the financial sector. Article 16 of the AML LD requires DNFBPs to file a report in the event that they suspect that (a) any transaction or attempted transaction may be related to or derived from the commission of an offense and/or (b) suspects that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations. The suspicious transaction report must be filed with the FIU “as soon as practicable.”

841. The LD also states that the DAB will determine in regulation the precise period within which an STR must be filed by a reporting entity and the format for reporting, such as a form or alternate means of rapid communication. No such regulation clarifying the format and timing for suspicious transaction reporting by DNFBPs has been issued.

842. Not all FATF-designated categories of offenses have been criminalized in Afghanistan, and this limits the reporting requirements.

843. Under Article 12 of the AML LD, all reporting entities are also required to submit to the FIU STRs in the event of a complex, unusually large transaction and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

STR Related to Terrorism and its Financing (applying 13.2 to DNFBPs):

844. As mentioned above, DNFBPs are required to report transactions or attempted transactions when they suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations in line with Article 16 para. 1 (b) of the AML LD. The scope of reporting is however limited by deficiencies in terrorist financing offense, as described under Special

recommendation II: this notably entails that there is no obligation to report suspicions of collection of funds for terrorist acts, terrorist individuals or terrorist organizations.

No Reporting Threshold for STRs (applying c. 13.3 & IV.2 to DNFBPs):

845. Article 14 of the AML LD does not refer to a threshold that would limit the reporting requirement; all suspicious transactions, including attempted transactions, should therefore be reported if they may be related to or derived from the commission of an offense, regardless of the amount of the transaction. However, dealers in precious metals, stones and bullions are only subject to the AML LD when they conduct a transaction above Af 1,000,000; their reporting obligation is therefore limited to transactions above that threshold and is therefore not in line with the standard.

Making ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying 13.4 and c. IV.2 to DNFBPs):

846. There is no stipulation in the LD that would prevent the report of a suspicious transaction in the event that it might involve a tax matter.

Additional Elements – Reporting of All Criminal Acts (c. 13.5):

847. Article 16 of the AML LD requires all reporting entities, including DNFBPs, to report transactions or attempted transactions that may be related to or derived from the commission of an offense.

Protection for Making STRs, Prohibition Against Tipping Off and Confidentiality of Reporting Staff (applying c. 14.1, c. 14.2 and 14.3 to DNFBPs):

848. Article 42 of the AML LD stipulates that no proceedings for breach of banking or professional secrecy shall be instituted and no civil, administrative or criminal action may be brought or any professional sanction taken against any person who in good faith transmits information or submits reports in accordance with the provision of the LD. Furthermore, no civil, administrative or criminal action may be brought against any reporting entity or its directors or employees by reason of any material loss resulting from the freezing of a transaction by the FIU as provided for in Article 30 of the LD.

849. Pursuant to Article 48.1 of the AML LD, a natural or legal person who intentionally discloses “any information regarding a report required to be filed” under the AML LD to the person or persons to whom the report relates or to any other person not entitled to such information can be punished with the sanctions available for money laundering under Articles 46 and 47 of the LD. Article 46 and 47 apply to the punishments of persons and corporate entities who commit the money laundering offense. However, the disclosure of additional information related to the STR (i.e. information received by the FIU following additional requests of information) is not criminalized. Article 48 therefore does not meet the standard in its entirety.

850. The AML LD, under Article 38, ensures that the names and personal details of the staff of the DNFBP that reports the STR is kept in confidence by the FIU, except in cases where there are reasons to suspect that the organization or its employees committed the offense of money laundering or if the

information is necessary in order to establish facts during criminal proceedings and if the submission of this information is required in writing by the prosecutor or the competent court.

Internal policies and controls/screening, training audit (applying c. 15.1 – c. 15.5):

851. Article 18 of the AML LD requires reporting entities to develop programs for the prevention of money laundering. These programs should notably include internal policies, procedures, controls and appropriate compliance management arrangements (see Section 3.8 for more details). No additional guidance is provided on what information should be covered by the required policies, procedures and controls.

852. The AML LD does not address the need for AML/CFT compliance officers or other appropriate staff to have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

853. Similarly, it does not stipulate that the internal audit arrangement should be independent and adequately resourced by the DNFBP that has retained the service.

854. Article 18.1.d of the AML LD requires ongoing training for officials or employees, but there is no additional indication about what this training should cover. While additional language outlining the contents of the training is contained within the AML Regulation for financial institution, no such official document exists with respect to DNFBPs.

855. Article 18.1.c requires reporting entities, including DNFBPs to create adequate screening procedures to ensure high standards when hiring employees.

856. The AML LD does not stipulate that AML/CFT compliance officers must be able to act independently and to report to senior management or the board of directors. In the Afghan context, this is particularly troubling given the limited rule of law in the country and the fact that some people, as a consequence, feel that they can act in all impunity.

Special Attention to Transactions from Some Countries (applying c. 21.1 – 21.3):

857. Article 12.3 of the AML LD instructs reporting entities, including DNFBPs, to pay special attention to business relationships and transactions with persons from countries which do not apply AML/CFT standards commensurate with those outlined in the LD. In addition, Article 12.4 requires reporting entities to report the transaction and its findings with such a jurisdiction to the FIU. This article of the LD does not meet the requirement outlined in the criteria as it guides reporting entities to monitor for those jurisdictions that do not meet the Afghan AML LD requirements as opposed to the more stringent standard imposed by the FATF recommendations.

858. There is no clear language in the legal framework that provides for the possibility of applying countermeasures in the event that a jurisdiction continues to insufficiently apply the FATF standard.

Analysis of effectiveness

859. The assessment team determined, based on comments from the limited sample of DNFBPs met during the onsite visit, as well as from comments made by the authorities responsible for

implementation, that the relevant entities are unaware of their obligations. No guidance is provided by the Central Bank, the FIU or the relevant SROs on the DNFBPs reporting of suspicious transactions obligations, or on the need to exercise vigilance with respect to transactions from certain jurisdictions that demonstrate weaknesses in their AML/CFT regimes, as stipulated under the AML LD.

860. DNFBPs have not submitted any STRs (or LCTRs) to the FIU. Since Afghanistan has not conducted a formal, sector-by-sector study of the level of risk of money laundering and terrorist financing amongst DNFBPs, it is difficult to project a plausible STR filling rate, commensurate with the risk in this jurisdiction. Nonetheless, the absence of any reporting is most certainly not commensurate to the risk of money laundering and terrorist financing which is very high in Afghanistan. The absence of STR forms for DNFBPs further diminishes the likelihood of receiving reports from the sector.

861. Article 13 of the 2007 Advocates' Law sets out the lawyers' duty to maintain client confidentiality. Article 11, chapter 2 of the Code of Conduct of AIBA indicates that "an advocate shall be duty bound to preserve confidentiality and to observe professional ethical standards in the performance of his/her duties." No exception is to be provided, for example to comply with the reporting requirements under the AML LD. In a meeting with the assessment team, representatives from AIBA confirmed that strict confidentiality rules would prevent lawyers from reporting suspicious activities of their clients.

4.2.2. Recommendations and Comments

862. Authorities are recommended to:

- Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis;
- Issue a regulation clarifying the STR requirements for DNFBPs and putting in place mechanisms to facilitate reporting of suspicious transactions to the FIU;
- Ensure that lawyers' duty to maintain client confidentiality is not an obstacle to reporting suspicious transactions in the circumstances described in the methodology;
- Amend the threshold for STR reporting by dealers in precious metals and stones to meet the international standard;
- Make sure that the DNFBPs and circumstances under which the law applies to the institutions are accurately described within the law;
- Require in primary or secondary legislation company service providers to report suspicious transactions to the FIU.

Although this is not required by the standard, in order to enhance the effectiveness of the reporting framework:

- Conduct an outreach and awareness campaign and provide feedback to DNFBPs to facilitate compliance with the applicable provisions of the law;
- Consider developing a reporting form for DNFBPs.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Scope of the reporting obligation is too narrow because several of the FATF designated categories of offenses that should constitute predicates to money laundering have not been criminalized in Afghanistan. • Deficiencies in the terrorist financing offense limit the reporting requirement. • Strict confidentiality requirements for lawyers constitute an obstacle to reporting. • Reporting by dealers in precious metals, stones and bullions only required above a Af 1,000,000 threshold. • Absence of guidance to DNFBPs clarifying their obligation to report. • Lack of guidance on what should be covered under the internal control requirements. • Lack of requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • No internal audits conducted. • Insufficient training by all the reporting entities. • No mechanism in place to enable STR reporting from the relevant entities. • Absence of effectiveness in the implementation of protection for STR reporting and tipping off due to the lack of governance and transparency. • Lack of effectiveness: DNFBPs have not filed STRs; authorities have not enforced reporting requirements; DNFBPs have no internal policies and controls.

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Legal Framework

863. Article 40 of the AML LD provides the DAB and “any supervisory agency” with the powers to enforce the requirements set out in the decree. There is, however, no mechanism to supervise or monitor DNFBPs; no authority has been designated and the only SRO, the AIBA for lawyers, has no AML/CFT monitoring or supervisory functions. The assessment team was informed that the Ministry of Justice is at an early stage of introducing a department that will be responsible for registering and overseeing real estate agents.

864. Additionally, no guidelines on applying AML and CFT measures have been issued for DNFBPs either by the government of Afghanistan or by the relevant SROs.

865. As mentioned above, casinos are outlawed in Afghanistan according to Article 5, paragraph 1 of the Private Investment Law and Article 353 of the Penal Code and are therefore not subject to the provisions of the AML LD.

Adequacy of Resources—Supervisory Authorities for DNFBPs (R.30)

866. As mentioned above, no supervisory authority has been designated for DNFBPs.

867. The assessment team has not identified any provisions in the law and regulations governing the lawyer’s SRO which would preclude this body from issuing guidelines and enforcing compliance of DNFBPs with the provisions of the AML LD. AIBA has a disciplinary board, which has the power to sanction the members of the association. The board has not taken disciplinary action to date and the guidelines regulating the activities of the board do not stipulate responsibilities or authority with respect to enforcement of the AML and CFT LDs. However, Article 8, chapter 2, Article 8 of the By-Laws indicates that the General Assembly of the SRO could vote to change policy, amend the By-Laws and “take other decisions as necessary.”

868. According to the authorities, regulations on AML/CFT compliance of DNFBPs could also be issued and enforced by the Ministry of Justice, the government body responsible for licensing and overseeing the activities of associations, but no such action has been taken to date.

4.3.2. Recommendations and Comments

869. Authorities are recommended to:

- Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis;
- Identify competent bodies or develop mechanisms for the implementation of effective systems for monitoring the compliance of DNFBPs with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering and terrorist financing in that sector, i.e. if there is a proven low risk then the extent of the required measures may be less;
- Issue guidelines to DNFBPs to assist with implementation and compliance of institutions with AML/CFT requirements;

- Establish mechanisms to enable general and case-by-case feedback from DNFBPs on their responsibilities under existing AML/CFT laws.

4.3.3. Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> • No mechanisms for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements are in place. • No authority/authorities has/have been explicitly tasked with the responsibility for the supervision on the sector.
R.25	NC	<ul style="list-style-type: none"> • No guidelines have been issued to DNFBPs either by the government or SROs clarifying their responsibilities with respect to AML/CFT laws. • No mechanisms are in place to enforce compliance of DNFBPs with CDD and record-keeping requirements under the decree. • The FIU does not provide feedback to DNFBPs and no mechanism is in place for reporting institutions.

4.4. Other Non-Financial Businesses and Professions—Modern, Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Legal Framework

Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 & 21 c.20.1):

870. Article 4 of the AML LD grants DAB the authority to subject other “entities and activities” to the provisions of the law. However, authorities have not conducted an assessment of the vulnerability of other non-financial businesses and professions to terrorist financing and money laundering, and the provisions of the AML LD do not extend beyond DNFBPs. While the assessment team did not ascertain whether or not the fact that certain other NFBPs pose a heightened risk in the course of the assessment mission, it is nonetheless worth noting the potential for abuse among car dealers and within the hospitality industry.

Modernization of Conduct of Financial Transactions (c.20.2):

871. The DAB, among other authorities such as the MOF and ANP, has taken steps to promote the development and use of modern and secure technologies for conducting financial transactions. For instance, the government is currently disbursing the salaries of four thousand employees including police officers electronically and there are plans to expand the technology to enable wider use of the system. Furthermore, the DAB and MOF, in coordination with several private formal financial institutions, has established the National Payment Committee. This body is discussing the implementation of a uniform intra-bank payment system, currently dubbed the RTGS. Efforts are also underway to facilitate universal access to ATM machines. Not with standing efforts by the

government to introduce technology that would reduce the use of cash, Afghanistan remains a cash-based society, with less than 5% of the population using the formal financial sector.

872. The highest note in circulation in Afghanistan is an Af 1,000 bill, which is equivalent to approximately US\$22.

4.4.2. Recommendations and Comments

873. In order to comply fully with Recommendation 20, it is recommended that the authorities:

- Conduct an assessment to determine whether or not businesses other than designated non-financial businesses and professions, such as car dealers and the hospitality industry, that pose a money laundering or terrorist financing risk;
- Conduct a risk assessment in order to ascertain whether or not other businesses and professions should be subjected to the provisions of the AML and CFT laws;
- Encourage the development and use of modern and secure technologies, such as the electronic salary payment delivery system, for conducting financial transactions, which by their nature minimize cash in circulation and are therefore less vulnerable to money laundering and terrorist financing.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	<ul style="list-style-type: none"> • Authorities have not considered applying AML/CFT measures to businesses and professions other than DNFBPs, which pose money laundering or terrorist financing risks. • Authorities should work to introduce modern and secure technologies into a largely cash-based economy.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

874. The types of legal persons that may be established under Afghan law are corporations, limited liability companies, and partnerships. A description of the types of legal persons that may be created in Afghanistan is contained in Section 1 of this report.

Legal Framework

875. All legal persons are regulated by the 2007 Commercial Law.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

876. Under the Commercial Law of Afghanistan (2007), individuals and businesses who want to establish legal entities must register as corporations, limited liability companies or partnerships. Beneficial ownership information is not required as part of this registration process or to be held by the company to be made available to the authorities.

877. ACBR which was established in the Ministry of Commerce and Industry (MoCI) is responsible for the registration of all companies in Afghanistan. The ACBR offices are located in Kabul and 3 provinces across Afghanistan and they provide services, guidance to legal entities and ensure that their directors comply with the statutory requirements. ACBR keeps a manual register for all the documents submitted by the legal persons for registration.

878. At the time of registration of companies at ACBR, the applicants are required to present the following documentation: (i) an official letter from the relevant licensing office that will later be responsible for issuing a license to the new business ; (ii) copy of Tazkira⁷² or Passport of the president and vice president of the business; (iii) two sets of color passport photographs of the president and vice president of the business; (iv) Article of agreement that is drafted by a corporation or partnership. It must list the names of shareholders (for companies) or partners (in the case of partnerships), and include other agreement clauses. These documents are submitted only once to ACBR; and (v) a copy of the business license once issued by the relevant license department. No information is requested on the real beneficial owners of legal entities. This information is kept in hardcopy form.

879. Any change in the existing shareholding, shareholders or directors is required to be notified by the company through annual return. Every company is required to notify the address of registered office or any change therein to the registrar. Beside these changes, other information is not updated regularly.

880. For corporations and limited liability companies, only the president and vice-president are identified at the stage of registration by the provision of a copy of their Tazkira; the name of shareholders must be provided but no check is conducted. For partnerships, the founding partners are identified, but neither not subsequent partners nor the beneficial owners.

881. In addition to ACBAR, the Afghanistan Investment Support Agency (AISA) plays a major role in the registration of legal persons: it was established under the law on Private Investment which was issued by the President in 2005 in order to promote investment in Afghanistan. AISA's mission is to facilitate the delivery of permits, licenses and clearances on behalf of the investors. It may assist investors operating in various sectors, except in the import and export business, where investors must deal directly with ACBR. Companies may therefore request AISA's help in the registration process.

⁷² For more information, on the tazkira (I.D) please refer to the information under Section 2.

882. Limited information on the name, type of business, license number, expiration date and address of the companies is publicly available on the AISA online directory.⁷³ Other information is kept electronically and centrally in the AISA premises.

883. Competent authorities may request information on legal entities either from ACBAR or AISA. However, as mentioned above, the information maintained does not include information on the beneficial ownership or control of legal persons. In practice, the competent authorities send all of their requests for information to AISA, rather than ACBAR, because, considering that it holds the information electronically, AISA can respond quicker than ACBAR.

884. Finally it is worth noting that, according to an AISA bulletin:⁷⁴ “most of the investment in Afghanistan flows through informal non banking channels and, therefore, does not capture the overall picture of investment. It may also be noted that consequent to simplification of licensing procedures, AISA does not seek any proof of the amount of capital declared by the investor at the time of filing registration. Likewise, some investor may be under registering their initial capital just to avoid the delay in procuring license as company with more than US\$3 million investment has to get the prior approval of the High Commission on Investment before getting a license. A number of the companies are reinvesting their profits but do not report to AISA even though as per the Investment Law each company is required to inform AISA on a quarterly basis regarding any change in capital investment. Not with standing these drawbacks the investment figures provided by AISA are the best available information that reflects current investment condition in Afghanistan.” Accordingly, the information about legal persons is most of the time inaccurate and does not reflect the real size of the company and the beneficial owners and those who control it.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

885. Competent authorities in Afghanistan are not able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. Beneficial ownership information is not provided as part of the registration process or held by the company to be made available to the authorities. Most of law enforcement agencies (ANP, MCTF, SIU and others) and FinTRACA have mentioned that they request information about the ownership and control of legal persons from AISA. However, and due to the reasons mentioned above, the information held by both AISA and ACBR is neither adequate nor current nor accurate.

886. FinTRACA staff mentioned that when they need such kind of information, they usually conduct analysis of legal persons’ accounts and monitoring the incoming and outgoing transfers in an attempt to identifying the beneficial owners of the company.

Prevention of Misuse of Bearer Shares (c. 33.3):

887. According to article 21 of the Commercial Law, the shares of established companies must be nominative. There are therefore no bearer shares under Afghan law.

⁷³ <http://www.directory.aisa.org.af/>

⁷⁴ <http://www.aisa.org.af/english/bulletin.html>

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):

888. The AISA directory used by financial institutions provides very few details for certain types of companies about the registered official, license number and expiration date. The website does not provide information on beneficial ownership and control, so as to allow them to more easily verify the customer identification data.

Analysis of effectiveness

889. ACBR and AISA do not ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons. The LEAs and FinTRACA send requests to AISA for information on the ownership and control of legal persons, however, the latter do not hold such information and therefore, this information cannot be obtained or accessed in a timely fashion by competent authorities.

5.1.2. Recommendations and Comments

890. The authorities are recommended to:

- Review the Commercial Law to ensure adequate transparency concerning the beneficial ownership and control of legal persons;
- Ensure that adequate, accurate and current information on the beneficial ownership and control of legal persons is available (for example through ACBAR or AISA) to competent authorities in a timely fashion.

5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> • No information concerning beneficial ownership and control. • Inadequate access in a timely manner to information on legal persons.

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

Description and Analysis

Legal Framework

891. The Afghan legislation does not provide for the creation of trusts or other similar legal arrangements. At the time of the assessment, there was no information available that would indicate that (i) the private sector holds funds or manages assets under foreign trusts and/or provides other trust services, or (ii) foreign trusts can be recognized in civil matters in Afghanistan.

5.2.1. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NA	<ul style="list-style-type: none"> There are no legal arrangements such as trusts in Afghanistan.

5.3. Non-Profit Organisations (SR.VIII)

Description and Analysis

Legal Framework

892. The work of the non-profit sector in Afghanistan is governed by the “Law on Non-Governmental Organizations” of 2005, which is in fact a legislative decree (hereafter referred to as NGO Decree) CFT LD (Articles 25-28), and the Law on Social Organizations of 2003. It is unclear however whether either of the two texts that are specifically applicable to NPO are approved by the Parliament: The Law on Social Organizations was issued before Afghanistan’s parliament was established, and, according to the authorities, the NGO Decree was transmitted to Parliament but then withdrawn before Parliament could vote on the text.

893. Other laws and regulations may apply to the supervision of NPOs, including charities, but the assessment team was not provided with any conclusive information on this point.

Review of the Adequacy of the Laws & Regulations of NPOs (c. VIII.1):

894. The Ministry of Economy (MOE), Ministry of Justice (MOJ) and the Ministry of Awkaf (MOA) are responsible for the implementation of the legal framework with respect to foreign and domestic NPOs operating in Afghanistan.

895. Authorities did not indicate that a review was conducted to establish the adequacy of domestic laws and regulations that related to non-profit organizations. However, the legal framework currently on the books has been amended to reflect the change of the governmental regime in Afghanistan after the rule of the Taliban: the NGO Decree repealed the regulation on the Activities of Domestic and Foreign Non-Governmental Organizations that was issued in 2000.

896. The NGO Department of the MOE does, per the NGO Decree, collect general information on the structure, scope of activity and finances of NPOs. The MOE nevertheless falls short in its efforts to obtain information for the purposes of assessing terrorist financing risk in a timely manner. The MOE’s ability to obtain timely information on the activities, size, and scope of the work of the non-profit sector in Afghanistan for the purpose of assessing the risk that certain features of an organization or types of organizations could be misused for terrorist financing by virtue of their activities or characteristics is limited due to constraints attributable to the ministry’s low technical capacity, context of limited technological resources and difficult security situation.

897. The MOE does not conduct reassessments of the NPO sector in order to determine new or previously undetected vulnerabilities to terrorist financing. In fact, authorities from the MOE did not assess whether the NPO sector in Afghanistan is at risk of being misused for terrorist financing

purposes. The MOE primarily focuses on the collection of information on the general operating activities of the NGOs, as well as the organizations' financial statements and audits of its financial activity, which are to be submitted on an annual basis.

898. In accordance with the Law on Social Organizations, the MOJ is responsible for registering and licensing social organizations. The assessment team did not receive any information indicating that, in addition to registering social organizations, the relevant department in the MOJ has undertaken a review of the adequacy of the laws or has collected information to determine the features and types of social organizations that might be at greater risk for terrorist financing due to the nature of their activities.

899. The Law on Social Organizations is vague in its description of the types of financial records that social organizations are required to maintain, the reporting requirements incumbent upon them, if any, and the functions and responsibility of the MOJ department designated with oversight of the registered organizations.

900. No information was provided on the type of activities that the MOA conducts with respect to the non-profit sector.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

901. The authorities do not conduct outreach to the NPO sector in order to raise awareness of the risk of terrorist financing posed to the sector in Afghanistan. The reporting requirements in place for Afghan NPOs through the NGO Decree are arguably one element of promoting transparency and accountability. According to authorities, members of the NPO department at the MOE conduct on-site visits and regional information sessions to inform NPOs of these requirements. The MOE reported that it has representatives in all 34 provinces of the country who organize workshops on NPO registration and reporting responsibilities under the decree, which include submitting annual financial statements and semi-annual activities reports. The MOE also liaises with three NPOs, which appear to act as organizing and lobbying bodies on behalf of the domestic and foreign NPOs community, to disseminate information on the sector's registration and reporting responsibilities. However, the MOE does not conduct these activities specifically with an eye towards protecting the sector from terrorist financing abuse, something the authorities explicitly stated they do not believe is a significant risk for the sector in Afghanistan.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

902. According to the authorities, there are 1739 NGOs registered in Afghanistan, of which 306 are foreign organizations. These organizations are registered with the MOE. The authorities did not indicate that additional organizations might be registered with the other two ministries that bare oversight responsibility. Out of a total of 30 staff in the NGO Department of the MOE, 11 of the staff are dedicated to the direct supervision of the sector and conducting quarterly assessments, as stipulated in the NGO Decree. Similarly, no information was provided on the size and scope of the departments responsible for NPO registration and oversight at the MOJ and MOA.

903. The authorities were not able to comment on the distribution of financial resources within the sector among foreign and domestic NPOs. Furthermore, the MOE did not indicate that its supervisory activities are targeted toward identifying and monitoring those NPOs which control the significant portion of financial resources in the sector.

904. According to the authorities and given the nature of the NPO sector in Afghanistan, the assessment team surmises that it is highly unlikely that Afghan NPOs (organizations based and founded in Afghanistan) administer programs and engage in activities outside Afghanistan. The NPO sector is focused on a broad array of development and relief efforts domestically. Given the prevalence of foreign NPOs, which have access to considerable financing from foreign governments and donors, it is highly likely that these foreign organizations control the more significant portion of the sector's financial resources. Funds appear to flow from foreign sources to foreign NPOs with a presence in Afghanistan, which often distribute those funds to local partners for the purpose of project implementation.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

905. Article 13 of the NGO Decree requires organizations to provide identifying information at the time of registration, including the names of founders, the organizations' planned activities and funding sources. Article 25 of the CFT LD also stipulates that NPOs must be registered in the country, in accordance with the law of the country. Authorities did not indicate that multiple NPO registries exist, thus the assessment team surmises that Article 25 of the CFT LD refers to the registry maintained by the MOE, per the NGO Decree. The NGO Decree, under Article 14, stipulates the information that should be included in the statute of the organization and requires the NPO to report any changes to the MOE in writing within 30 days of the amendment. The decree does not, however, require the NPO to register the identities of the members of its board or management. The MOE appears to be particularly concerned with making sure that each NPO is registered under a unique name and that no duplicates occur in the lists maintained by other responsible ministries. To that end, the supervision department of the MOE works with the Ministry of Justice and AISA to make sure no other company or organization is registered under the same name.

906. The MOE and the unofficial NPO coordinating organizations do not publish information on the operating activities and management of NPOs in Afghanistan. According to one director of a significant NPO, this information is not available publicly for security reasons.

907. Pursuant to Article 46 of the NGO Decree, law enforcement agencies "can acquire information concerning the activities of organizations only through the Ministry of Economy." The assessment team heard concerns from an organization about the fact that law enforcement agencies were circumventing the official channels for accessing information and were instead approaching NPOs directly with requests for information on the organizations' activities. The interlocutor suggested to the assessors that this type of direct involvement from law enforcement results in the intimidation of the sector.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

908. Articles 35 and 47 of the NGO Decree provide for administrative sanctions against NGOs that fail to comply with guidelines stipulated in the decree. Under Article 35, the dissolution on an

NGO can occur in a number of cases, including (i) in the event of an organization's failure to provide the MOE with an annual report within a year of the end of the fiscal year; (ii) and in the case where the "High Evaluation Commission establishes that activities of the organization are contrary to the public interest, provisions of this law and other valid laws." Under Article 47, an organization can be fined from Af 1000 to Af 500,000 (around US\$20 to US\$11,500) in the event that it submits an inaccurate report, fails to submit an annual report within three months of the end of the fiscal year, or does not cooperate with the MOE on-site inspection team.

909. According to the authorities, to date, the MOE has dissolved close to 1700 NGOs in Afghanistan. Approximately 1500 were dissolved for failure to register under the NGO Decree; another 172 were dissolved for failure to comply with semi-annual and annual reporting requirements over a two year period. A Dispute Resolution Commission has been established, allowing dissolved NGOs to appeal their case. No appeals have been filed to date.

910. The MOE has never fined an organization under the conditions stipulated in Article 47 of the decree. According to Article 47, the High Evaluation Commission, which is an interagency body with responsibility for reviewing registration applications of NPOs, has the authority to determine whether or not an organization has violated the law and is liable for its actions. The Commission consists of members from the MOJ, MFA, MOF and the Ministry of Labor and Social Affairs. Representatives of the MOE told the assessment team that sanctions under Article 47 have never been levied due to a failure among the Commission members to agree on who holds the responsibility for carrying out the sanctions. The authorities stated that they intend to amend the NGO Decree to clarify this point.

911. Articles 27 and 28 of the CFT LD outline a set of sanctions which could be used against NPOs: Pursuant to Article 27 any NPO that, with full knowledge of the facts, encourages, promotes, organizes, or commits a terrorist financing offense may face a temporary ban. An NPO can be dissolved by a "competent court, based on the request of the government prosecutor." Article 28 further stipulates that any violations of the provisions outlined in Chapter V of the CFT LD with respect to NPOs (namely the procedures for registrations of NPOs and of donations and gifts to NPOs) are punishable by "a fine not less than Af 5,000 or more than Af 50,000 (around US\$100 to US\$1,200); a temporary ban on the activities of the organization of no more than six months; and/or the dissolution of the organization." None of the sanctions outlined in the CFT LD have been implemented with respect to NPOs.

912. The sanctions outlined above do not preclude the pursuit of civil, administrative, or criminal proceedings with respect to NPOs or persons acting on their behalf.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

913. The NGO Decree establishes the MOE as the "registration, supervision, and coordination body" for NGOs in Afghanistan. The registration form filled out by NPOs is reviewed first by the Technical Commission with the NPO supervision department of the MOE and subsequently by an interagency High Evaluation Commission, which decides to approve or deny an application with a 15 day period. The identifying information obtained on the organization is provided to the Ministry of Interior and is available to other line ministries upon request.

914. According to the MOE, the registration and reporting responsibilities of foreign and domestic NPOs operating in Afghanistan are published on its website in Dari, Pashto and English. However, this information was not available on the website at the time of the on-site assessment team's visit; the website only included a notice to all NPOs that their annual financial reports were due to the ministry.

915. All documents on foreign organizations are sent to the Ministry of Foreign Affairs (MOFA), which is required to confirm the registration of the foreign organization within its home jurisdiction.

Maintenance of records by NPOs and availability to appropriate authorities (c. VIII. 3.4):

916. The NGO Decree does not prescribe a period of time during which NPOs should retain records of their activities. The authorities purportedly maintain a paper archive on registered NPOs in Afghanistan for a period of 2 years. According to the MOE and an NPO representative who met with the assessors, many larger NPOs maintain records for a period of 5 years or longer, but the MOE does not verify that this is the case, nor does it recommend this approach for the sector at large. Article 33 of the NPO Decree stipulates that organizations must make available records of their financial activities and project implementation to the MOE on-site inspection teams.

917. Article 26 of the CFT LD requires NPOs to maintain records of donations and gifts in an amount equal to or above an amount prescribed by the DAB for a period of 5 years and to submit this record to the "authority responsible for the oversight of non-profit organizations or to any public prosecutor, at their request." The representatives of the MOE were unaware of these record-keeping requirements. No information was provided on whether the DAB has established the prescribed threshold for NPOs to maintain a record of donations, and whether records have been requested and submitted to the prosecutor's office.

Measures to ensure effective investigation and gathering of information (c. VIII.4.1 and VIII.4.2):

918. The MOE is the competent body within the Government of Afghanistan responsible for maintaining records on registered NPOs in Afghanistan. The MOI receives identifying information on each registered NPO from the MOE and is able to submit formal requests for additional information, such as management and financial statements, to the MOE on any particular NGO, should an investigation require it. The efficacy of the cooperation and information sharing mechanism in place between the competent authorities could not be established in practice. Comments made by one significant NPO which the assessment team met, lead the team to conclude that law enforcement, while ostensibly having been granted access to information through the MOE, engage in their own information gathering practices as they deem necessary, without consulting with the MOE.

Sharing of information, preventative actions, and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):

919. The MOE is able to relay information to law enforcement on any NPO suspected of involvement in illicit activity. The investigative powers of law enforcement agencies are described under Recommendations 26 and 28 above.

920. To date, the authorities have not implemented preventive measures or conducted assessments that accounted for the risk of terrorist financing in the sector. In fact, representatives from the MOE stated that they do not perceive terrorist financing as a significant risk for the non-profit sector in Afghanistan.

Responding to international requests regarding NPOs—points of contact and procedures (c. VIII.5):

921. The MOFA is the primary point of contact for international requests regarding NPOs. It then disseminates the requests via an official letter to the relevant competent authorities, which should include the MOJ and the MOE; however, no such requests have been made to date according to the MOE.

Analysis of effectiveness

922. The challenge of overseeing the non-profit sector in Afghanistan is complicated by a slate of factors, including the presence of a large foreign donor community, the precarious security situation in the country and the limited capacity of the relevant authorities in the government to carry out their regulatory and supervisory responsibilities. While the Afghan authorities have taken preliminary steps in implementing the requirements of SRVIII, significant shortcomings remain and must be addressed in order to achieve an effective legal framework and its implementation to protect the sector from abuse for terrorist financing.

923. Of particular concern is the authorities' failure to undertake an assessment of the vulnerabilities and risks of terrorist financing within the non-profit sector in Afghanistan. The primary designated oversight body, the MOE, listed crimes such as theft and security concerns among the major risks to the sector, but did not acknowledge the risk that the sector could be abused for the purposes of financing terrorist activity. Afghan law enforcement authorities relayed a different perspective, emphasizing the fact that their assessment is that the sector is in fact subject to significant abuse for terrorist financing purposes. One law enforcement agency shared with the assessment team a scenario illustrating this type of misuse whereby funds intended for illicit activity are brought into the country through porous borders without the knowledge of the proper authorities and given directly to both registered and unregistered NPOs.

924. Furthermore, given the size and scope of the sector, as well as the heightened risk of terrorist financing in Afghanistan due to the presence of active terrorists and porous borders with states that allegedly provide safe haven to terrorist groups, the MOE appears to have limited capacity for effective oversight. With over 1600 registered NPOs with offices in major cities and operations across the country, the MOE has dedicated only 11 staff to conducting on-site assessments of the organization's activities. The challenging security environment in Afghanistan is also a constraint on the ability of the MOE supervision teams to move around and access the branch offices of the NPOs. These factors suggest the likelihood that a significant portion of the sector is either unregistered or unsupervised.

925. Additionally, it does not appear that the regulatory bodies, including the MOE and MOJ, have the power to impose effective, proportionate and dissuasive sanctions. According to the authorities,

one of the proposed amendments to the NGO Decree is a clarification of responsibility for the implementation of sanctions.

5.3.1. Recommendations and Comments

926. Taking into account the context in which NPOs operate, Afghan authorities should take the following steps in order to continue the process towards compliance with the international standards on oversight of the sector:

- Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis;
- Ensure that, as the security situation in the country improves, the AML/CFT framework is progressively implemented throughout the country;
- Undertake a comprehensive risk assessment of the sector, to include the identification of the categories of NPOs which might be more at risk of being misused for terrorist financing by virtue of their activities and characteristics;
- Expand outreach efforts to the sector. This should include timely updates to the MOE website, with information on NPO registration and reporting obligations as well as information on (i) the risks of abuse for terrorist financing purposes and the implementation of preventive measures; (ii) transparency, accountability, integrity, and public confidence in the administration and management of all NPOs;
- Require NPOs to maintain records of domestic and international transactions for a period of at least 5 years and to make them available to appropriate authorities. Records should be sufficiently detailed to verify that funds have been spent in a manner consistent with the purposes and objectives of the organization;
- Strengthen the legal requirement for NPOs to provide information not only on the founders of the organizations, but also the identity of the person(s) who own, control or direct the activities of the entity, including senior officers, board members and trustees. This information should be made available either directly through the NPO or through the relevant regulating ministry;
- Strengthen sanctions available and clarify the government body responsible for their implementation;
- Focus supervision efforts on those NPOs which account for the most significant portion of the financial resources in the sector;
- Ensure that law enforcement agencies coordinate with the MOE when they need information on NPOs of potential terrorist financing concern;

- Ensure that the MOE has the investigative capacity to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations. Measures should also be in place to ensure prompt investigative or preventative action;
- Consider the implementation on an electronic record keeping system and a database of registered NPOs, which could be accessed by other competent government agencies.

5.3.2. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> • The CFT LD and of the NPO Decree and the Law on Social Organization lack Parliamentary approval. • Lack of effectiveness due to the fact that the rule of law is not upheld on the entirety of Afghan territory. • Authorities have not undertaken a review of the adequacy of current laws and decrees for CFT purposes. • Authorities have not undertaken a risk assessment of the sector. • Authorities do not conduct outreach to the sector to raise awareness of the risk of terrorist financing. • The monitoring and supervision of the sector does not focus on the NPOs which account for the significant portion of the financial resources of the sector. • Limited sanctions available and lack of clarity with respect to which agency is responsible for sanctioning NPOs. • Record keeping requirement apply only with respect to donations and gifts of a level prescribed by the DAB, not the entirety of the organization's activities. • Information on the activities and identities of the persons who own, control or direct the activities of the organization is not publicly available through the appropriate authorities. • It is unclear that the appropriate authorities have been able to register and monitor the activities of a significant portion of the sector. • Lack of sufficient and adequate investigative expertise and capacity at the MOE for the investigation and examination of NPOs that are either suspected or are being exploited by terrorist financiers.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31 & R. 32)

6.1.1. Description and Analysis

Legal Framework

927. AML LD does talk about coordination of various agencies; it is silent on the types of coordination mechanisms among the concerned agencies.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

928. An informal AML/CFT Committee was formed in 2009 to (i) participate in meetings and conferences at the local, regional and international level, and organized training programs for relevant national institutions; and (ii) prepare the questionnaire and the on-site mission for the assessment. The members of this committee are MCTF, SIU, NDS, ANP (CID), MoF, FinTRACA, supervision department at the DAB. Some of the meetings were also attend by someone from the AGO. In total, the members had 4 meetings in 2009 and 2010 to draft the DAQ and prepare for the on-site assessment mission.

929. The ad-hoc AML/CFT Committee, however, has not developed effective mechanisms to enable the policy makers, law enforcement and supervisors and other competent authorities to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

Coordination between LEAs

930. Several agencies have the power to investigate money laundering and terrorist financing. The assessment team met with more than 7 LEAs. Some of them were newly established. However, there is no mechanism to coordinate various agencies to ensure effective implementation of AML/CFT measures to counter the very serious money laundering and terrorist financing threats in Afghanistan. This impedes the development and implementation of coordinated policies to systematically prevent, investigate and prosecute money laundering and terrorist financing as well as freeze and seize launderers and terrorist assets, combat cash couriers, protect alternative remittance systems from abuse and to ensure that NPOs are not abused for TF. Coordination and cooperation between law enforcement agencies is undertaken for some high-profile cases. However where the predicate offenses span the mandate of more than one agency, it is unclear how issues of overlapping jurisdictions will be resolved for day to day operations. (Please refer to section 2.6 for more details).

Coordination MoF and DAB

931. According to the AML Decree the Police officer, Customs officials and employee of the FIU are all authorized officers responsible for the implementation of the currency reporting at the borders. To coordinate the cooperation between the agencies, a bilateral Memorandum of Understandings (MOUs) was signed between the Ministry of Finance and DAB in 2009. It relates to the Customs Authorities working to control the import/export of currency and bearer negotiable instruments at the

borders of Afghanistan. Due to the complexity, fragmentation and confusion of powers between the authorized officers, the MoF abrogated the MOU in March 2010 and the customs were instructed not to accept the cash declarations from the travelers and not allow individuals to export over the threshold specified by Article 6 of the AML Decree (around US\$20.000). A new MOU was signed after several months; however the implementation of the requirements of SRIX is still creating confusion between the agencies. (For more details, please refer to the section 2.7.).

Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):

932. No mechanisms have been put in place to ensure adequate consultation of the financial and non-financial sectors that are subject to the AML/CFT measures.

Statistics (applying R.32)

933. No steps have been taken to review the effectiveness of AML/CFT systems.

Analysis of Effectiveness

934. Afghanistan's system of general and specialist investigation agencies and courts results in significant fragmentation and complexity. Based on interviews with representatives from various law enforcement agencies, supervisors, and policy making bodies, the evaluation team concluded that operational-level co-operation and co-ordination to address the threat of illegal alternative remittance systems, NPOs, cash couriers and money laundering and terrorist financing in general is wholly lacking.

935. There is an absence of a defined a clear strategy to prioritize the implementation of the AML/CFT regime. The overall fragmentation of the institutional framework has so far made it difficult to achieve measurable results in that respect.

936. The assessors were not informed of a clear mechanism to coordinate and cooperate to develop and implement an effective policy to combat money laundering and terrorist financing. According to the authorities, a national coordination committee will be set up in the near future comprised of the relevant law enforcement agencies, the AGO and the Supreme Court and FinTRACA.

6.1.2. Recommendations and Comments

- A National AML/CFT Committee should be established to put in place effective mechanisms which enable the authorities concerned to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing;
- There is a pressing need for close cooperation and coordination of effort to overcome fragmentation and ensure effective implementation of AML/CFT measures across the whole of Afghanistan. Individual agencies should commit to support coordinated approaches to implement targeted AML/CFT policies across Afghanistan.

6.1.3. Compliance with Recommendation 31 & 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	NC	<ul style="list-style-type: none"> • Absence of effective mechanisms in place which enable the concerned authorities to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. • No mechanism has been established to support AML/CFT coordination at operational levels. • There are gaps in operational level coordination in relation to AML/CFT implementation, in particular Law enforcement and supervisory agencies.
R. 32	NC	<ul style="list-style-type: none"> • No steps have been taken to review the effectiveness of AML/CFT systems.

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)**6.2.1. Description and Analysis****Legal Framework****Ratification of AML-Related UN Conventions (c. 35.1):**

937. Afghanistan signed and ratified the UN Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (the Vienna Convention) respectively on December 20, 1988 and February 14, 1992, as well as the UN Convention against Transnational Organized Crime (Palermo Convention) respectively on December 14, 2000 and September 24, 2003.

938. As indicated under Recommendations 1 and 2 above, Afghanistan has criminalized money laundering in a way which partially follows the requirements of the Vienna and Palermo Conventions, but did not include the full list of predicate offenses as called for under Recommendation 1 and, overall, has not implemented the offense in an effective way. Furthermore, the fact that the AML LD still hasn't been transmitted for Parliamentary review, despite the clear wording of Article 79 of the Constitution, raises serious concerns about whether it is a valid decree; indeed, should Parliament reject the decree, the entire AML framework will become void.

939. Implementation of the provisions of the Vienna and Palermo Conventions, as well as of those of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) dealing with the criminalization of money laundering and terrorist financing, and with provisional and confiscation measures is particularly weak. No information was provided with respect to Afghanistan's implementation of other relevant provisions of the Conventions (i.e. Articles 3-11, 15, 17 and 19 of the Vienna Convention, 5-7, 10-16, 18-20, 24-27, 29-31 and 34 of the Palermo Convention, and 2-18 of the ICSFT).

Ratification of CFT-Related UN Conventions (c. I.1):

940. Afghanistan acceded to the ICSFT on September 24, 2003.

941. While Afghanistan has taken some limited measures to enable the freeze of terrorist funds and other assets, it has not fully implemented the UNSCR 1267 and 1373 (see under Special recommendation III above). Furthermore, it was established that at least in one case, the Afghan authorities froze, and then released funds that were subject to a mandatory freeze under UNSCR 1267.

Additional Element—Ratification or Implementation of other relevant international conventions (c. 35.2):

942. No information was provided with respect to other international instruments that Afghanistan may have signed, such as those concluded within the South Asian Association for Regional Cooperation (SAARC), of which Afghanistan is a member.

6.2.2. Recommendations and Comments

943. In order to comply fully with the Recommendation 35, the authorities are recommended to:

- Implement fully the Vienna and Palermo Conventions, and the ICSFT, in particular in light of the recommendations made under Recommendations 1, 2, 3, and Special recommendations II and III;
- Implement fully the UNSCR 1267 and 1373, in particular in light of the recommendations made under SR III.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"> • Vienna, Palermo Conventions, ICSFT and UNSCR 1267 and 1373 not fully implemented.
SR.I	PC	<ul style="list-style-type: none"> • ICSFT and UNSCR 1267 and 1373 not fully implemented.

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

Legal Framework

944. Afghanistan's engagement to abide by the UN Charter, international treaties and international conventions it has signed is seated in Article 7 of the Constitution.

945. The AML LD provides a framework specifically designed for the purposes of international cooperation in the fight against money laundering and to some extent, terrorist financing. It addresses

the assistance that Afghanistan may render. For the reasons mentioned under Recommendation 1 above, there are serious doubts as to whether the AML LD as well as the CFT LD - and by extension the MLA framework that they establish - is in line with constitutional requirements for the issuance of legislative decrees. This constitutes a major shortcoming of the current AML/CFT regime.

946. The authorities did not provide any other texts would regulate mutual legal assistance.

Widest Possible Range of Mutual Assistance (c. 36.1) and Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1):

947. The AML LD allows for a range of measures to be taken on behalf of a foreign State; More specifically, Article 51 provides that mutual assistance in the fight against money laundering and terrorist financing may include in particular:

- gathering evidence or taking statements;
- providing assistance to make detained persons or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- servicing of judicial documents;
- carrying out searches and seizures;
- examining objects and sites;
- providing information and evidential items;
- providing original or certified copies of relevant documents and records, including bank statements, accounting documents, and records showing the operations of a company or its business activity (Article 51).

948. These measures cover all the assistance required under Criterion 36. 1 except the identification, freezing, seizing and confiscation of property, which are provided for under Articles 54 and 55 of the AML LD.

949. Requests for investigatory measures are transmitted to the competent law enforcement agency, which, according to the authorities, may use all the powers it is granted under Afghan law in the context of domestic investigations. The AML LD seems to go further by allowing the authorities to make use of investigative measures that are not provided for under Afghan legislation, as long as these measures are requested by the foreign States and are compatible with the Afghan legal framework (Article 53). No information was provided as to whether this provision of the law has been used in practice and it is unclear whether, and to what extent, it would be sufficient to supplement the deficiencies noted in the domestic investigative framework.

950. The law provides that requests are to be addressed to the Ministry of Foreign Affairs, which will then forward them to the competent authority: law enforcement for investigative measures; attorney general and courts for provisional and confiscation measures (Articles 54 and 55).

951. The law does not set a timeframe or encourage the authorities to respond to a request for assistance in a timely fashion. It does provide that when a request is denied, the government “shall inform promptly” the foreign state of its refusal.

952. No information was provided on the number and type of requests received by the Afghan authorities, nor on the responses given.

953. While the wording of the international cooperation provision in the AML LD is relatively broad and consequently offers for a number of ways to assist foreign authorities, the deficiencies in the AML/CFT regime noted in previous sections of this report, in particular those that relate to the money laundering offense, the confiscation framework for all types of offense and the law enforcement powers, directly impact the type of assistance that Afghanistan may provide. The limitations in the scope of the money laundering offense due to the lack of criminalization of some of the predicate offenses, for example, entail that there are a number of instances in which Afghanistan will not be in a position to implement Article 51 and answer a request for assistance favorably.

954. In addition, the framework described above pertains to assistance in the fight against money laundering and terrorist financing only, and no explanation was provided as to the type and extent of assistance that Afghanistan may offer in the context of the predicates.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

955. The AML LD sets out a number of reasons for which a request for mutual legal assistance can be refused, none of which appear to be unreasonable, disproportionate or unduly restrictive. More specifically, a request for mutual assistance may be denied only if:

- it was not made by a competent authority or it was not transmitted in the proper manner;
- its execution is likely to prejudice the law and order, sovereignty, security or fundamental principles of the laws of Afghanistan; the offense to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of Afghanistan; the measures requested are not permitted by, or not applicable to the offense referred to in the request under the legislation of Afghanistan;
- the decision whose execution is being requested is not enforceable under Afghan legislation;
- there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status; or
- the request relates to an offense of a political nature or is motivated by political considerations (Article 52 of the AML LD).

Efficiency of Processes (c. 36.3):

956. Requests for mutual assistance are to be addressed to the Afghan authorities through the diplomatic channels, except in urgent cases, where they may be sent through the Interpol directly to the competent judicial authority (Article 65 of the AML LD). They must specify the requesting and

requested authorities, the purpose (and context) of the request, the supporting facts, any known detail that may facilitate the identification of the persons concerned; any information necessary for identifying and tracing the persons, instrumentalities, proceeds or funds and property in question; and the text of the statutory provisions establishing the offense or, where applicable a statement of the law applicable to the offense and an indication of the penalty than can be imposed (Article 66 of the AML LD).

957. As mentioned above, no information was provided on past or current requests that would enable an assessment of the efficiency of the Afghan mutual legal assistance framework.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

958. A potential involvement of fiscal matters is not one of the grounds for refusal listed in the law and, according to the authorities; there are no other provisions that would not be problematic in practice.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

959. The law clarifies that banking secrecy may not be invoked as a ground to refuse a request for mutual legal assistance (Article 52 para. 2). The confidentiality requirements for lawyers are particularly stringent in Afghanistan and could constitute an obstacle to international cooperation. It is unclear whether other confidentiality requirements apply and, if so, whether they would impede international cooperation.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

960. According to the authorities, the powers granted to the various law enforcement, prosecutorial and judicial authorities are available for the purpose of international cooperation to the same extent as in domestic investigations, prosecutions and trials.

Avoiding Conflicts of Jurisdiction (c. 36.7):

961. No mechanism has been devised to establish the best venue for prosecution of defendants subject to the jurisdiction of both Afghan and foreign authorities.

Additional Element—Availability of Powers of Competent Authorities Required under R28 (c. 36.8):

962. According to the authorities, requests from foreign law enforcement or judicial authorities are often made directly to their Afghan counterparts. There seems to be no obstacle to the Afghan authorities using their investigative and law enforcement powers for the benefit of the requesting State.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):

963. Article 18 of the CFT LD lays down the Afghan Government's intention to cooperate as much as possible with the authorities of other States for the purposes of information exchange, investigation, and proceedings, provisional measures and confiscations of instruments and proceeds

associated with financing of terrorism, as well as for the purposes of extradition and mutual legal assistance.

964. For the most part, the provision of assistance to foreign States in response to requests for mutual legal assistance related to a terrorist financing offense is regulated in the same way as in cases of request related to a money laundering offense; Article 51 of the AML LD specifically addresses international cooperation in both contexts, and Article 21 of the CFT LD defines the scope of the assistance that may be rendered in the same terms as Article 51 of the AML LD. The measures described above are therefore available to the same extent in the fight against the financing of terrorism. The CFT LD only provides additional measures with respect to a foreign defendant's right to be informed of the measures being requested against him, and the notification of the detention of a foreign defendant to his home country (Article 19 and 20).

965. In practice, however, it was not established that the authorities have made use of these tools upon request from another country.

Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):

966. There is no mechanism to establish the best venue in case several countries have jurisdictions over a specific case.

967. The powers granted to the authorities in charge of fight terrorist financing seem to be available for the purpose of international cooperation.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2) and SR V (applying c. 37.1-37.2 in R. 37, c. V.2):

968. Dual criminality is only a condition for extradition – it is not an explicit requirement for the provision of less intrusive measures, be it in the context of the fight against money laundering or terrorist financing.

Requests for Provisional Measures including Confiscation (c. 38.1):

969. Provisional measures and confiscation may be carried out at the request of the foreign State on the basis of Articles 54 and 55 of the AML LD. As mentioned above, if a specific provisional measure is not provided for under Afghan legislation, the competent court may replace it by a measure known under Afghan law and whose effects correspond most closely to the measures sought (Article 54). Provisional measures may, however, only be taken with respect to money laundering, not its predicate offenses. Requests for confiscation must be referred to the attorney general's office which will then request the appropriate court order (Article 55).

970. The confiscation order applies to all funds and property located in Afghanistan and representing the proceeds or instrumentalities of "an offense under this law" (namely money laundering) or the "funds and property used or intended to be used to commit a terrorist financing offense, or that represent the proceeds of" the terrorist financing offense. Confiscation may not be ordered for the instrumentalities of the predicate offenses to money laundering.

971. It is unclear whether the authorities have been requested to freeze, seize and/or confiscation assets in Afghanistan on behalf of another jurisdiction as the authorities' responses on this issue were contradictory.

Property of Corresponding Value (c. 38.2):

972. Confiscation of assets of corresponding value is possible, but this only applies to funds, not other types of property of corresponding value (Article 55 of the AML LD). The decree does not specifically address whether the provisional measures mentioned may also be taken to secure funds of corresponding value in view of their confiscation.

Coordination of Seizure and Confiscation Actions (c. 38.3):

973. No arrangements have been concluded with other countries for the coordination of seizing and confiscation actions.

International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):

974. The CFT LD provides that Afghan courts may, upon request from another State related to a terrorist financing offense, order provisional measures in accordance with Afghan law, and that they may take measures that correspond most closely to those sought when the latter are not reflected in an identical way in Afghan law (Article 24). It does not provide any details with respect to the type of measures that may be taken, but, according to the authorities, these would include all measures related to the identification, freezing or seizure of property as these are covered by the AML LD. The CFT LD is similarly silent with respect to the object of the provisional measures. It is therefore unclear whether all types of property (including proceeds from the terrorist financing offense and instrumentalities) may be subject to provisional measures at the request of a foreign State.

975. Confiscation of "funds and property used or intended to be used to commit the terrorist financing offence [...] or that constitute the proceeds of such an offence" may be ordered pursuant to Article 55 of the AML LD. This covers all the types of property listed in the standard.

976. No information was provided as to whether any provisional measures or confiscation have been requested in practice.

Asset Forfeiture Fund (c. 38.4):

977. According to the authorities, Afghanistan may allocate confiscated funds and property to a fund to be used for combating organized crime (but the confiscated assets that are in the fund nevertheless remain encumbered, up to their value, by any rights *in rem* lawfully established in favor of third parties). It was not established that such a fund has been established in practice.

Sharing of Confiscated Assets (c. 38.5):

978. Pursuant to Article 56 of the AML LD, Afghanistan retains the power to dispose of funds and property that it has confiscated on its territory at the request of a foreign State, but it may also reach agreements with foreign authorities providing for the sharing, systematically or on a case-by-case basis, of these funds and property.

Additional Element (R 38)—Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):

979. There are no provisions that enable foreign non-criminal confiscation orders, or other types of orders referred to under criterion 3.7 to be recognized and enforced in Afghanistan.

Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):

980. Article 55 of the AML LD addresses confiscation in the context of both anti-money laundering and combating the financing of terrorism. The disposition and sharing of funds (Article 56) described above therefore also apply to funds and property confiscated in the context of the fight against terrorist financing.

Statistics (applying R.32)

981. No statistics have been provided.

Analysis of effectiveness

982. The AML and CFT LDs provide a framework that allows for a range of measures to be taken upon request of a foreign State, but, as mentioned above, the entire AML/CFT framework could be deprived of a legal basis if Parliament were to reject the decrees. Dual criminality does not constitute an unreasonable obstacle for taking measure in the fight against money laundering and terrorist financing considering that it is only required in the context of extradition. There are nevertheless concerns that the authorities may refuse to assist foreign states in gathering information held by lawyers in application of too stringent confidentiality requirements.

983. Considering the paucity of information provided on international cooperation, both in the context of money laundering and terrorist financing, the effectiveness of this framework could not be established. According to representatives from the Ministry of Foreign Affairs, most of the requests for assistance are made directly by the foreign authorities to their Afghan counterparts, rather than through the formal mutual legal assistance channels (see write-up under Recommendation 40 for more details). Requests have nevertheless been made for cooperation in the context of investigations into drug-related offenses, organized crime, and terrorist financing, but no precise figures or details of these cases were provided.

6.3.2. Recommendations and Comments

984. In order to comply fully with Recommendation 36, the authorities are recommended to:

- Address the deficiencies noted under Recommendations 1, 2 and Special Recommendation II above so that they do not limit the scope of mutual legal assistance that Afghanistan may offer;
- Address the deficiencies noted under Recommendation 3;
- Address the deficiencies noted under Recommendations 27 and 28;

- Ensure that mutual legal assistance requests are executed in a timely way without undue delay;
- Ensure that confidentiality requirements cannot be raised without reasonable justification as obstacles to mutual legal assistance;
- Considering devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

985. In order to comply fully with Recommendation 38 the authorities should:

- Allow for the execution of foreign requests for seizure, freezing and confiscation of the proceeds of, as well as the instrumentalities used or to be used in the commission of all predicate offenses to money laundering;
- Allow for the conclusion of arrangements for coordination of seizure and confiscation actions with other countries.

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	NC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • The deficiencies noted in the money laundering offense (Rec. 1 and 2), provisional measures and confiscation framework (Rec. 3), and under the powers granted to relevant authorities (Rec. 27 and 28) narrow the scope of the mutual legal assistance framework. • No possibility to give effect to request for seizure, freezing and confiscation of instrumentalities used or to be used in the commission of the predicate offenses to money laundering. • Stringent confidentiality requirements for lawyers may constitute an obstacle to international cooperation. • Lack of clarity as to whether confidentiality requirements (other than banking secrecy) may constitute an unreasonable obstacle to mutual legal assistance. • Effectiveness of the mutual legal assistance framework is not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
R.37	LC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Effectiveness of the mutual legal assistance framework is not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
R.38	NC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval.

		<ul style="list-style-type: none"> • The deficiencies noted in the money laundering offense (Rec. 1 and 2), provisional measures and confiscation framework (Rec. 3), and under the powers granted to relevant authorities (Rec. 27 and 28) narrow the scope of the mutual legal assistance framework. • No arrangements for coordination of seizure and confiscation with other countries. • Effectiveness of the confiscation framework is not established due to the paucity of information provided and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
SR.V	NC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • The deficiencies noted under SR II and SR III narrow the scope of the mutual legal assistance that may be rendered in the fight against terrorist financing. • Lack of clarity as to whether confidentiality requirements (other than banking secrecy) would constitute an obstacle to mutual legal assistance. • Effectiveness of the mutual legal assistance framework is not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework

986. The extradition of persons convicted either of money laundering or terrorist financing is regulated by the AML LD. A draft Extradition Law has been prepared and is pending in Parliament. According to the authorities, bilateral agreements were concluded with Iran, Tajikistan, Saudi Arabia, Russia and the United Arab emirates.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

987. Dual criminality is a pre-condition to the extradition of persons who have committed offenses under the AML LD and the CFT LD (Article 59 AML LD). While this requirement is not problematic as such, it raises concerns in the case of Afghanistan in the sense that the scope of the money laundering offense is too narrow; a request for extradition based, for example, on a conviction for laundering the proceeds of environment crimes would not be executed, and would not give raise to a criminal procedure in Afghanistan because environmental crimes are not predicates to the money laundering offense.

Money Laundering as Extraditable Offense (c. 39.1):

988. With the limitations mentioned above, money laundering is an extraditable offense (so are the other offenses listed in the AML LD, such as violations of the AML/CFT preventive measures).

989. Requests for extradition are to be addressed to the Ministry of Foreign Affairs, which then forwards them to the competent authorities, namely the AGO and the courts (it isn't clear however whether the courts are informed of the requests by the Ministry or the AGO). The court in its discretion, or upon request from the AGO, may place the subject of the extradition request under judicial control or in detention if the circumstances of the case warrant such precautionary measures (Article 58 of the AML LD).

990. The grounds upon which an extradition request must be denied are explicitly mentioned in the decree. The AML LD distinguishes between mandatory and optional grounds for refusal to execute the request for extradition.

991. Pursuant to Art. 60, extradition cannot be granted:

- a) if there are substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons;
- b) if a final judgment has been rendered in Afghanistan in respect of the offense for which extradition is requested;
- c) if the person whose extradition is requested has, under the legislation of either country, become immune from prosecution or punishment for any reason, including lapse of time or amnesty;
- d) if the person whose extradition is requested has been or would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment or if that person has not received or would not receive the minimum guarantees in criminal proceedings, as contained in article 14 of the International Covenant on Civil and Political Rights;
- e) if the judgment of the requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defense and has not had or will not have the opportunity to have the case retried in his or her presence.

992. Extradition may also be refused:

- a) if after a case has been referred to the competent authorities of Afghanistan, such authorities have decided either not to institute or to terminate proceedings against the person concerned in respect of the offense for which extradition is requested;
- b) if a prosecution in respect of the offense for which extradition is requested is pending in Afghanistan against the person whose extradition is requested;
- c) if the offense for which extradition is requested has been committed outside the territory of either country and the legislation of Afghanistan does not provide for jurisdiction over offenses committed outside its territory in comparable circumstances;

- d) if the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting State by an extraordinary or ad hoc court or tribunal;
- e) if Afghanistan, while also taking into account the nature of the offense and the interests of the requesting State, considers that, in the circumstances of the case, the extradition of the person in question would be incompatible with humanitarian considerations in view of the age, health or other personal circumstances of that person;
- f) if the offense for which extradition is requested is regarded under the legislation of Afghanistan as having been committed in whole or in part within its territory;
- g) if the person whose extradition is requested is liable to the death penalty in respect of the offense of which that person is accused in the requesting country, unless that country gives sufficient assurances that the penalty will not be carried out;
- h) if the person whose extradition is requested is a national of Afghanistan.

Extradition of Nationals (c. 39.2):

993. Under the 2004 Constitution, Afghan nationals may not be extradited, unless extradition is provided for in a mutual legal agreement or a Convention to which Afghanistan is party. Afghanistan has signed and ratified both the Vienna and Palermo Conventions, which both provide for extradition. The AML LD implements this aspect of the Conventions in Article 61 where it provides for the possibility to extradite Afghan nationals. The fact that the person whose extradition is sought is of Afghan nationality constitutes an optional (as opposed to mandatory) ground for refusal; it is unclear however what would dictate the authorities' determination in such a case.

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

994. If Afghanistan refuses (on whatever grounds) the request for extradition, it must refer the case to the competent domestic authorities in order for proceedings to be initiated against the person whose extradition was sought (Article 62 of the AML LD).

995. No information was provided to the assessors on the timing of these proceedings, nor on the level of cooperation that takes place between Afghanistan and the requesting state prior to the extradition.

Efficiency of Extradition Process (c. 39.4):

996. No information was provided relevant to how extradition requests whether for Afghan or foreign nationals would be, or have been, handled without delay. An assessment of the efficiency of the extradition process is therefore not possible.

Additional Element (R.39 and V.8)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

997. There are no procedures in place that would simplify the extradition process.

Statistics (R.32)

998. No statistics were provided. According to the representatives from the Ministry of Foreign Affairs, requests for extradition in general are very rare, but they were not in a position to establish whether any requests had been made under the AML LD.

Assessment of effectiveness

999. The fact that the AML LD is still pending final Parliamentary approval five years after having been transmitted to the National Assembly raises serious concerns about Afghanistan's commitment to AML/CFT. This means that the entire AML framework could be deprived of a legal basis if Parliament were to reject the decree. In the eventuality that the current decree is nevertheless valid and enforceable despite the absence of parliamentary approval, the extradition framework that it creates should have enabled the authorities to cooperate with foreign States by extraditing individuals convicted for either money laundering or terrorist financing. The current framework should nevertheless be complemented with bilateral agreements that would set out the details of the extradition procedures, such as the circumstances under which a request for the extradition of an Afghan national is to be refused. As mentioned above, no statistics were provided. It is therefore unclear whether any requests have been made under the AML LD and to assess whether the extradition framework is adequate and has been used in an effective way.

6.4.2. Recommendations and Comments

1000. In order to comply fully with Recommendation 39 and Special Recommendation V, the authorities are recommended to:

- Address the deficiencies noted under Recommendations 1, 2;
- Seek to conclude bilateral or multilateral agreements to carry out or to enhance the effectiveness of extradition (in line with Art. 6 para. 12 of Vienna Convention; 16 para. 17 UNTOC);
- Ensure that requests for extradition are handled without undue delay.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • The deficiencies noted in the money laundering offense (Rec. 1 and 2), narrow the scope of the extradition framework. • The effectiveness of the extradition framework was not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
R.37	LC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Effectiveness of the extradition framework is not established due to the

		paucity of information provided on extradition and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
SR.V	NC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • The deficiencies noted in the terrorist financing offense (SR II) narrow the scope of the extradition framework. • The effectiveness of the extradition framework was not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Legal Framework

Widest Range of International Cooperation (c. 40.1)

FinTRACA

1001. According to Article 27 of the AML LD, “The Financial Intelligence Unit may, spontaneously or on request, provide, receive or exchange information with foreign financial intelligence units and foreign counterparts performing similar functions with respect to reports of suspicious transactions, provided that this is done on a reciprocal basis, and that such counterparts are subject to similar requirements of confidentiality. It may, for that purpose, conclude cooperation or other agreements with such units. (1) Upon receipt of a request for information or transmission from a foreign financial intelligence unit regarding a report of a suspicious transaction, the Financial Intelligence Unit shall respond to that request in an expeditious manner within the scope of the powers conferred by this law. (2) Prior to forwarding personal data to foreign authorities the Financial Intelligence Unit shall obtain assurances that such information will be protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the foreign financial intelligence unit and that the foreign authority shall use the data solely for the purposes stipulated in the Law.

1002. FinTRACA has not received or requested information from foreign counterparts until it joined the Egmont group in June 2010. Since then, it has received 62 requests and made 12 requests as follows:

From	Number	To	Number
UK	40	United Kingdom	2
USA	19	Russia	2
Moldova	1	United Arab Emirates	2
Kyrgyz Republic	2	Switzerland	2
		Belarus	2
		France	2

1003. FinTRACA's representatives mentioned that it usually takes them one week at the most to answer foreign requests. The assessment team was not able to verify this since no information or statistics on the number of replies were provided June 2.

Law Enforcement Agencies

1004. According to the representatives of law enforcement authorities in Afghanistan, they are able to provide international cooperation to their foreign counterparts through Interpol. The representative from Interpol did not provide the assessment team with statistics showing the number of incoming and outgoing requests related to money laundering or terrorist financing.

1005. Most of LEAs mentioned that they exchange information with counterparts in US and UK regularly. However, there are no effective gateways that facilitate and allow for prompt and constructive exchange of information with foreign counterparts. Most of the foreign LEAs rely on informal exchange with LEAs to gather information from Afghanistan.

1006. Also, law enforcement agencies are not proactive enough in requesting information on money laundering, terrorist financing and underlying predicate offenses from their counterparts. Furthermore, the LEAs are not authorized to conduct investigations on behalf of foreign counterparts.

1007. Finally, although there are provisions in the police Law that prevents the officials from disseminating the information, the assessment team's view is that there is some uncertainty surrounding the applicability of the provisions that could not be considered as adequate controls and safeguards to ensure that information received is used only in authorized manner.

Financial Supervisory Authority

DAB

1008. Article 84 (Cooperation with foreign banks supervisors) of the DAB Law permits DAB to closely cooperate with any foreign banking supervisory authority, however, such cooperation is provided on the basis of reciprocity with respect to the supervision of banks that operate in both of the respective jurisdictions and such cooperation may be formalized in an agreement between DAB and the foreign banking supervisory authority. Further, Article 11 (Cooperation with foreign bank regulator) of the Banking Law specifies that "[b]anking licenses for domestic subsidiaries of non-resident banks or nonresident bank holding companies and permits for domestic branch offices and domestic representative offices of non-resident banks may be issued only if [an agreement of] cooperation has been concluded between Da Afghanistan Bank and the competent foreign supervising authorities, specifying the allocation of powers and responsibilities and the rules and procedures governing exchanges of information between Da Afghanistan Bank and the foreign authorities on the administration, operation and financial condition of the non-resident bank or bank holding company and the subsidiary, branch office or representative office."

1009. Accordingly, DAB has informed the assessors that MOU is necessary in order to exchange information with foreign bank supervisors and MOU can be signed only with countries whose banks operate in Afghanistan or with countries where Afghan banks established branches or representative offices.

1010. Article 84 (Cooperation with foreign banks supervisors) of the DAB Law further states that “[s]uch cooperation may include exchange with such foreign banking supervisory authority of information concerning any bank that operates in both their respective jurisdictions, provided that the principle of confidentiality is complied with. It is not clear what is meant by the “principle of confidentiality” is since the DAB Law does not further elaborate on this.

1011. DAB is yet to sign a MOU with any foreign bank supervisor. The negotiation has been in place with India, Pakistan and UK since banks from these countries operate in Afghanistan. DAB is also trying to sign a MOU with UAE given that many MSPs have offices registered in UAE. However, DAB has not succeeded in concluding a MOU with neither of these countries.

1012. The draft MOU provides exchange of information on licensing, on-site examination, and any signification information which might be relevant to supervisors. It also states that the banking supervision authorities of the host country shall not prevent the banking supervision authorities of the home country from carrying out on-site inspections. With regards to confidential information, both parties are expected to ensure the confidentiality of supervisory information and documents received from the other party.

1013. To date, Afghanistan has not exchanged any supervisory information due to lack of MOUs. Afghanistan is not a member of any international regulatory organizations. DAB officials informed the assessors that no request has received from foreign bank supervisors so far. On the other hand, DAB officials tried to contact SBP of Pakistan when one of the Pakistani Bank wanted to open a foreign branch in Afghanistan. No response was received from SBP at the time.

AIA

1014. There is no provision which allows AIA to exchange information with foreign insurance supervisors.

6.5.2. Recommendations and Comments

- FinTRACA should develop comprehensive statistics about the number of requests receives, made and the necessary time to reply;
- Law enforcement agencies should be more proactive in requesting information on money laundering and terrorist financing from their counterparts;
- Law enforcement agencies should develop clear and effective gateways or channels that will allow for prompt and constructive exchanges of information directly between counterparts;
- DAB and AIA should develop effective mechanisms to exchange information with foreign counterparts;
- Authorities should maintain statistics on the number of requests for assistance made or received by law enforcement authorities, including whether the request was granted or refused.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R.40	NC	<ul style="list-style-type: none"> • Lack of international engagement in active exchange of information on money laundering and terrorist financing. • Absence of clear and effective gateways to facilitate the constructive and prompt exchange of information. • DAB and AIA are not able to exchange information with any foreign financial supervisory authorities. • Lack of overall effectiveness.
SR.V	NC	<ul style="list-style-type: none"> • Lack of sufficient international engagement in active exchange of FT information. • DAB and AIA are not able to exchange information with any foreign financial supervisory authorities. • Lack of overall effectiveness of the exchange of information relating to the financing of terrorism.

7. OTHER ISSUES

7.1. Resources and Statistics

The authorities are recommended to:

- Allocate more resources to the competent authorities;
- Provide specialized training to the staff of competent authorities and develop professional standards, including confidentiality standards to control and safeguard the information;
- Develop comprehensive statistics in all relevant areas of the fight against money laundering and terrorist financing (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied);
- Regularly review the effectiveness of the AML/CFT system.

7.1.1. Compliance with Recommendation 30 and 32

	Rating	Summary of factors underlying rating
R.30	NC	<ul style="list-style-type: none"> • Overall, the allocation of resources is uneven and relies extensively on external donors funding. • Overall, professional standards, including confidentiality standards are

		<p>not fully developed.</p> <ul style="list-style-type: none"> • Lack of specialist skills training for competent authorities involved in combating money laundering and terrorist financing including prosecution and law enforcement agencies, FIU, supervisors.
R.32	NC	<ul style="list-style-type: none"> • Competent authorities have yet to develop comprehensive statistics in all relevant areas of the fight against money laundering and terrorist financing (including statistics on domestic investigations, prosecutions, convictions, and on international cooperation). • Lack of regular effective review of the AML/CFT regime.

7.1.2. Other relevant AML/CFT Measures or Issues

1015. N/A.

7.1.3. General Framework for AML/CFT System (see also section 1.1)

1016. N/A.

Table1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating⁷⁵
Legal systems		
1. ML offense	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval; • Scope of the money laundering offense is too narrow because a large number of the FATF designated categories of offenses that should constitute predicates to money laundering are not criminalized. • Lack of clarity as to whether prior conviction for the predicate offense is required to prove that property is the proceeds of crime. Ancillary offenses are only partially covered (association and conspiracy are not criminalized). • Lack of effectiveness due to: failures in the criminal justice system ;the fact that in most cases only the predicate is investigated, prosecuted and sanctioned; and to the fact that the rule of law is not upheld on the entirety of the Afghan territory.
2. ML offense—mental element and corporate liability	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Lack of clarity as to whether parallel sanctions are available and if so possible. • Financial penalties for money laundering are not dissuasive. • No corporate criminal liability of legal entities partly owned by the Government. • Lack of effectiveness of sanctions due to failures in the criminal justice system and to the fact that in most cases only the predicate is investigated, prosecuted and sanctioned, and to the fact that the rule of law is not enforced in the entirety of the Afghan territory.
3. Confiscation and provisional measures	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • No provisional measures and confiscation

⁷⁵ These factors are only required to be set out when the rating is less than Compliant.

		<p>possible for the proceeds of predicates.</p> <ul style="list-style-type: none"> • Confiscation measures do not extend to instrumentalities used or to be used on the commission of all the predicates to money laundering and terrorist financing. • Rights of <i>bona fide</i> third parties only ensured in case of confiscation. • Lack of clarity as to whether confiscation applies to income and other benefits that derives indirectly from the proceeds of money laundering. • Provisional measures not possible for predicate offenses other than drug trafficking. • Provisional measures and confiscation not possible for instrumentalities used or intended to be used in the commission of the predicate offenses (other than drug trafficking) and terrorist financing. • Lack of effectiveness: no funds or assets have been confiscated in application of the AML LD or CFT LD; and the rule of law is not upheld on the entirety of the Afghan territory.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Sharing of information between financial institutions in cases where it is required in the FATF standards is not possible. • Disclosure of information covered by secrecy or confidentiality requirements is subject to restrictive conditions which hamper access to relevant information in practice.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Elementary weaknesses in business registration and in natural persons' identification systems prevent the consistent implementation of CDD measures. • Absence of effective implementation of the existing measures in cases where information is available and verifiable.

		<ul style="list-style-type: none"> • Threshold to undertake CDD for occasional customers is too high (US\$23,000). • Inadequate exceptions in the identification and verification of occasional customers that are legal persons. • Limitations to the AML LD requirement to verify the identity of natural persons for financial institutions subject to the AML/CFT RR. • No requirement to verify the identity of legal persons in primary or secondary legislation. • No requirement in primary or secondary legislation to verify that a person purporting to act on behalf of a natural person is so authorized. • No requirement that financial institutions not supervised by DAB verify the legal status of a legal person or legal arrangement. • No requirement in primary or secondary legislation that financial institutions determine whether a customer is acting on behalf of another person. • No requirement to understand the ownership and control structure of the corporate customer. • No requirement to determine who are the persons who exercise ultimate effective control over a legal person or arrangement. • No requirement to obtain information on the purpose and intended nature of the business relationship for natural persons. • No requirement of financial institutions not supervised by the DAB to obtain information on the purpose and intended nature of the business relationship for legal person. • No requirement in primary or secondary legislation to conduct ongoing due diligence of the business relationship. • Regulations on ongoing due diligence are not enforceable for financial institutions subject to the AML/CFT RR, non-existent for the other financial institutions.
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		<ul style="list-style-type: none"> • Regulations on update of CDD data and information are limitative for financial institutions subject to the AML/CFT RR, non-existent for the other financial institutions. • No obligation to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • No requirement to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. • No requirement to take measures in case of failure to satisfactorily complete the verification of identity. • No requirement to terminate the business relationship and consider making a STR where the financial institution has already commenced the business relationship and is unable to comply with CDD obligations. • No requirement to perform CDD measures on holders of existing anonymous accounts.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Absence of requirement to determine whether a potential customer or a beneficial owner is a PEP. • No requirement to obtain senior management approval to continue the business relationship, where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP. • No requirement to take reasonable measures to establish the source or wealth and the source of funds of beneficial owners identified as PEPs.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • No requirements, other than normal CDD, to gather information about a respondent institution to understand the nature of the

		<p>respondent's business and to determine the reputation of the institution and the quality of supervision.</p> <ul style="list-style-type: none"> • Absence of requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. • Senior management's approval not needed before establishing new correspondent relationships • Absence of documentation obligation on the respective AML/CFT responsibilities of each institution. • Absence of measures to address risks related to the maintenance of "payable –through accounts."
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • No requirement for financial institutions to have policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • No requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> • No rules governing reliance on intermediaries or other third parties to perform elements of the CDD process or to introduce business.
10. Record-keeping	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Absence of possibility for a competent authority to request that records are maintained for more than five years, in specific cases and upon proper authority. • No requirement to keep records of business correspondence. • Access to identification data and transactions records by judicial authorities is subject to restrictive conditions which hamper access to relevant information in practice.
11. Unusual transactions	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval.

		<ul style="list-style-type: none"> • Obligation to report STRs on all transactions subject to special attention appears counter-productive, as it discourages to better understand these transactions. • Financial institutions met by the assessors did not appear to pay special attention to complex and unusual transactions.
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Required threshold for dealers in precious metals and stones to comply with CDD and record-keeping requirements under the law is above the US\$/EUR 15,000 prescribed by the methodology. • CSP are not subject to CDD and record-keeping requirements. • Elementary weaknesses in business registration and in natural persons' identification systems prevent the consistent implementation of CDD measures. • Absence of effective implementation of the existing measures in cases where information is available and verifiable. • Inadequate exceptions in the identification and verification of occasional customers that are legal persons. • Limitations to the AML LD requirement to verify the identity of natural persons for financial institutions subject to the AML/CFT RR. • No requirement to verify the identity of legal persons in primary or secondary legislation. • No requirement in primary or secondary legislation to verify that a person purporting to act on behalf of a natural person is so authorized. • No requirement to verify the legal status of a legal person or legal arrangement. • No requirement in primary or secondary legislation to determine whether a customer is acting on behalf of another person. • No requirement to understand the ownership and control structure of the corporate

		<p>customer.</p> <ul style="list-style-type: none"> • No requirements to determine who are the persons who exercise ultimate effective control over a legal person or arrangement are. • No requirement to obtain information on the purpose and intended nature of the business relationship for natural persons. • No requirement to obtain information on the purpose and intended nature of the business relationship for legal person. • No requirement in primary or secondary legislation to conduct ongoing due diligence of the business relationship. • No requirement on update of CDD data and information. • No obligation to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • No requirement to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. • No requirement to take measures in case of failure to satisfactorily complete the verification of identity. • No requirement to terminate the business relationship and consider making a STR where the DNFBP has already commenced the business relationship and is unable to comply with CDD obligations. • No requirement to perform CDD measures on holders of existing anonymous accounts. • No requirement to determine whether a potential customer or a beneficial owner is a PEP. • No requirement to obtain senior management approval to continue the business relationship, where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or
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		<p>subsequently becomes a PEP.</p> <ul style="list-style-type: none"> • No requirement to take reasonable measures to establish the source or wealth and the source of funds of beneficial owners identified as PEPs. • No requirements, other than normal CDD, to gather information about a respondent institution to understand the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision. • No requirement for financial institutions to have policies in place or take measures to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • No requirement for financial institutions to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. • Absence of possibility for a competent authority to request that records are maintained for more than five years, in specific cases and upon proper authority. • No requirement to keep records of business correspondence. • Access to identification data and transactions records by judicial authorities is subject to restrictive conditions which hamper access to relevant information in practice. • Obligation to report STRs on all transactions subject to special attention appears counter-productive, as it discourages to better understand these transactions. • Lack of effectiveness: CDD and record keeping obligations are not implemented by DNFBPs.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • The scope of the reporting requirement is too narrow because several of the FATF designated categories of offenses that should constitute predicates to money laundering

		<ul style="list-style-type: none"> have not been criminalized in Afghanistan. Effectiveness was not established: Low level of reporting with respect to money laundering and none of the STR were related to FT cases; only banks have filed STRs; and AML LD is not enforced on the whole territory.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> The AML LD lacks Parliamentary approval. AML LD not enforced on the whole territory. Absence of effectiveness in the implementation of protection for STR reporting and tipping off due to the lack of governance and transparency.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> The AML LD lacks Parliamentary approval. Lack of guidance on what should be covered under the internal control requirements. Lack of requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. Lack of internal control policies and procedures with MSPs and foreign exchange dealers, having regards to the size of business and risk to money laundering and terrorist financing. Effectiveness of internal audits was not established. Insufficient training by all the reporting entities.
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> The AML LD lacks Parliamentary approval. Scope of the reporting obligation is too narrow because several of the FATF designated categories of offenses that should constitute predicates to money laundering have not been criminalized in Afghanistan. Deficiencies in the terrorist financing offense limit the reporting requirement. Strict confidentiality requirements for

		<p>lawyers constitute an obstacle to reporting.</p> <ul style="list-style-type: none"> • Reporting by dealers in precious metals, stones and bullions only required above Af 1,000,000 threshold. • Absence of guidance to DNFBPs clarifying their obligation to report. • Lack of guidance on what should be covered under the internal control requirements. • Lack of requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • No internal audits conducted. • Insufficient training by all the reporting entities. • No mechanism in place to enable STR reporting from the relevant entities. • Absence of effectiveness in the implementation of protection for STR reporting and tipping off due to the lack of governance and transparency. • Lack of effectiveness: DNFBPs have not filed STRs; authorities have not enforced reporting requirements; DNFBPs have no internal policies and controls.
17. Sanctions	NC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Uncertainty as to whether all the provisions in the AML/CFT RR can be enforced. • Monetary penalties are not effective, dissuasive and proportionate. • Overall insufficient application of sanctions for non-compliance with requirements other than those dealing with reporting and licensing.
18. Shell banks	PC	<ul style="list-style-type: none"> • Financial institutions are not required to refuse to enter into or continue correspondent banking relationships with shell banks.

		<ul style="list-style-type: none"> There is no explicit requirement for financial institutions to satisfy that respondent financial institutions do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	<ul style="list-style-type: none"> This Recommendation is fully met.
20. Other NFBP & secure transaction techniques	PC	<ul style="list-style-type: none"> Authorities have not considered applying AML/CFT measures to businesses and professions other than DNFBPs, which pose money laundering or terrorist financing risks. Authorities should work to introduce modern and secure technologies into a largely cash-based economy.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> The AML LD lacks Parliamentary approval. Requirement to give special attention to business relationships and transactions with persons from some countries is vague and should be enlarged to countries which do not or insufficiently apply the FATF recommendations. Obligation to report STRs on transactions from some countries appears counter-productive, as it discourages to better understand these transactions. Absence of possibility to require domestic financial institutions to apply counter-measures in cases where a country continues not to apply or insufficiently applies the FATF Recommendations. Absence of effectiveness of the measures in place, notably because of authorities' lack of action in relation to neighboring countries monitored by the FATF.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> No requirement for foreign branches and subsidiaries of Afghan financial institutions to follow the laws and regulations of Afghanistan to the extent the host country's laws and regulations permit in particular in countries which do not or insufficiently apply the FATF Recommendations. No requirement for foreign branches and subsidiaries to apply the higher standard, to

		<p>the extent that host country's laws and regulations permit, when laws and regulations differ between host country and Afghanistan.</p> <ul style="list-style-type: none"> • No requirement for foreign branches and subsidiaries to inform DAB supervision department when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because of the prohibition by host country's laws, regulations or other measures.
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • The AML and CFT LD lack Parliamentary approval. • No requirement to obtain information and to ensure the fit and properness of the beneficial owners of financial institutions. • No criminal background check of administrators, sponsors, and investors of DMFIs to prevent criminals or their associates from owning or controlling financial institutions. • No AML/CFT supervision on regulated entities other than banks and MSPs, and on non prudentially regulated entities. • Lack of implementation of licensing regime for MSPs and foreign exchange dealers in 8 of the 34 provinces. • Supervision of banking sector is not effective.
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • No mechanisms for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements are in place. • No authority/authorities has/have been explicitly tasked with the responsibility for the supervision on the sector.
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> • Guidelines are only predominately orientated towards the banking sector; no account is taken of other reporting entities. • There is no effective feedback being offered via the FinTRACA or other competent body. • Insufficient guidance provided by the financial sector supervisors.

		<ul style="list-style-type: none"> • No guidelines have been issued to DNFBPs either by the government or SROs clarifying their responsibilities with respect to AML/CFT laws. • No mechanisms are in place to enforce compliance of DNFBPs with CDD and record-keeping requirements under the decree. • The FIU does not provide feedback to DNFBPs and no mechanism is in place for reporting institutions.
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> • The AML framework, including the reporting requirements, is not enforceable on the whole territory. • Absence of guidance regarding the manner of reporting to money exchange dealers, and DNFBPs. • Absence of a legal basis to disseminate financial information reported by non-banks FI and DNFBPs to AGO for investigation or action when there are grounds to suspect terrorist financing. • Limited direct or indirect access to administrative and law enforcement information. • Weak quality of tactical and operational analysis and absence of strategic analysis of STRs and other information. • Lack of adequate staffing. • Uncertainty about FinTRACA's operational independence due mainly to the reliance on external donors financing for a significant part of its budget. • No publication of periodic reports that include statistics, typologies and trends as well as information regarding FinTRACA activities.
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> • Lack of effectiveness due to the limited use of investigative powers in money laundering and terrorist financing cases and to the fact that the rule of law is not upheld on the

		<p>entirety of the Afghan territory.</p> <ul style="list-style-type: none"> • Whilst there are legal provisions to wave or postpone seizure of funds, little evidence was produced to show this was actually done in practice. • There is no evidence of standalone investigations into money laundering or terrorist financing. Those investigations that have taken place are generally associated with overt proceeds from the principal involved in the predicate crime. • Law Enforcement action against money laundering and terrorist financing is not effective. A general misunderstanding of investigative powers across all investigative agencies and the MOI contribute to the lack of investigations into money laundering and terrorist financing, and a lack of coordination between different competent law enforcement agencies.
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> • Lack of effectiveness due to the limited use of investigative powers in money laundering and terrorist financing cases and to the fact that the rule of law is not upheld on the entirety of the Afghan territory. • Access to financial information by LEAs is limited and is not timely. • Lack of complete statistics has prevented assessors from fully evaluating the effectiveness of this recommendation.
29. Supervisors	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • No AML/CFT supervision on regulated entities other than banks and to some extent MSPs. • Lack of supervision on foreign exchange dealers, microfinance institutions, DMFIs, financial leasing companies and mortgage finance companies. • Deficiencies in the sanction regime also apply here. • Overall supervisory regime is not effective.
30. Resources, integrity, and	NC	<ul style="list-style-type: none"> • Overall, the allocation of resources is uneven

training		<p>and relies extensively on external donors funding.</p> <ul style="list-style-type: none"> • Overall, professional standards, including confidentiality standards are not fully developed. • Lack of specialist skills training for competent authorities involved in combating money laundering and terrorist financing including prosecution and law enforcement agencies, FIU, supervisors.
31. National co-operation	NC	<ul style="list-style-type: none"> • Absence of effective mechanisms in place which enable the concerned authorities to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. • No mechanism has been established to support AML/CFT coordination at operational levels. • There are gaps in operational level coordination in relation to AML/CFT implementation, in particular Law enforcement and supervisory agencies.
32. Statistics	NC	<ul style="list-style-type: none"> • Competent authorities have yet to develop comprehensive statistics in all relevant areas of the fight against money laundering and terrorist financing (including statistics on domestic investigations, prosecutions, convictions, and on international cooperation). • No steps have been taken to review the effectiveness of AML/CFT system.
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> • No information concerning beneficial ownership and control. • Inadequate access in a timely manner to information on legal persons.
34. Legal arrangements – beneficial owners	NA	<ul style="list-style-type: none"> • There are no legal arrangements such as trusts in Afghanistan.
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> • Vienna, Palermo Conventions, ICSFT and

		UNSCR 1267 and 1373 not fully implemented.
36. Mutual legal assistance (MLA)	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • The deficiencies noted in the money laundering offense (Rec. 1 and 2), provisional measures and confiscation framework (Rec. 3), and under the powers granted to relevant authorities (Rec. 27 and 28) narrow the scope of the mutual legal assistance framework. • No possibility to give effect to request for seizure, freezing and confiscation of instrumentalities used or to be used in the commission of the predicate offenses to money laundering. • Stringent confidentiality requirements for lawyers may constitute an obstacle to international cooperation. • lack of clarity as to whether confidentiality requirements (other than banking secrecy) may constitute an unreasonable obstacle to mutual legal assistance. • Effectiveness of the mutual legal assistance framework is not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
37. Dual criminality	LC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • Effectiveness of the mutual legal assistance framework is not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • The deficiencies noted in the money laundering offense (Rec. 1 and 2), provisional measures and confiscation framework (Rec. 3), and under the powers granted to relevant authorities (Rec. 27 and 28) narrow the scope of the mutual legal

		<p>assistance framework.</p> <ul style="list-style-type: none"> • No arrangements for coordination of seizure and confiscation with other countries. • Effectiveness of the confiscation framework is not established due to the paucity of information provided and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
39. Extradition	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • The deficiencies noted in the money laundering offense (Rec. 1 and 2), narrow the scope of the extradition framework. • The effectiveness of the extradition framework was not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory.
40. Other forms of co-operation	NC	<ul style="list-style-type: none"> • Lack of international engagement in active exchange of information on money laundering and terrorist financing. • Absence of clear and effective gateways to facilitate the constructive and prompt exchange of information. • DAB and AIA are not able to exchange information with any foreign financial supervisory authorities. • Lack of overall effectiveness.
Nine Special Recommendations		
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> • ICSFT and UNSCR 1267 and 1373 not fully implemented.
SR.II Criminalize terrorist financing	PC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • The collection of funds for and their provision to terrorist organizations and terrorist individuals is not criminalized. • Funding of terrorist acts is limited to acts defined in the treaties to which Afghanistan is party. • The organization, direction, motivation of individual terrorist and the contribution to the commission of the terrorist financing offense by an individual are not

		<p>criminalized.</p> <ul style="list-style-type: none"> • The source of funds is not addressed and it has not been established that the offense extends to funds of both legitimate and illegitimate sources. • No corporate criminal liability of legal entities only partly owned by the State is contemplated. • Funds must be linked to a specific terrorist act in order to prosecute. • Lack of clarity as to whether parallel sanctions are available and possible. • Lack of clarity as to whether intention would effectively be inferred from objective factual circumstances. • Lack of effectiveness due to the fact that terrorist financing is not investigated, prosecuted and sanctioned despite the high risk environment, and to the fact that the rule of law is not upheld on the entirety of the Afghan territory.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • Insufficient mechanism to implement UNSCR 1267 freezing obligations. • UNSCR 1267 consolidated list and updates thereto forwarded to the banking sector only, and without a request to freeze the funds in case of a positive match. • No legal basis and no mechanism to implement freezing measures in the context of UNSCR 1373. • Lack of clarity in the definition of funds and property subject to freezing orders. • No guidance to financial institutions on the implementation of their freezing obligations. • No publicly known procedures for delisting and unfreezing. • No procedure to ensure access to frozen funds and assets in the context of UNSCR 1452. • No procedure to allow for the unfreezing of funds or other assets of persons or entities

		<p>inadvertently affected by a freezing order.</p> <ul style="list-style-type: none"> • Restricted scope of freezing, seizing and confiscation measures in other circumstances. • No mechanism to enforce freezing obligations. • Afghanistan released funds that were subject to mandatory freeze under UNSCR 1267. • Lack of effectiveness: with the exception of the one limited case mentioned above, no funds or assets have been frozen; and the rule of law is not upheld on the entirety of the Afghan territory.
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • The AML and CFT LDs are not enforced on the whole territory. • Deficiencies in the terrorist financing offense limit the reporting requirement. • No reports have been received from any institution regarding terrorist financing.
SR.V International cooperation	NC	<ul style="list-style-type: none"> • The CFT LD lacks Parliamentary approval. • The deficiencies noted under SR II and SR III narrows the scope of the mutual legal assistance that may be rendered in the fight against terrorist financing. • Lack of clarity as to whether confidentiality requirements (other than banking secrecy) would constitute an obstacle to mutual legal assistance. • Effectiveness of the mutual legal assistance framework is not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld on the entirety of the Afghan territory. • The deficiencies noted in the terrorist financing offense (SR II) narrow the scope of the extradition framework. • The effectiveness of the extradition framework was not established due to the paucity of information provided on MLA and the fact that the rule of law is not upheld

		<p>on the entirety of the Afghan territory.</p> <ul style="list-style-type: none"> • Lack of sufficient international engagement in active exchange of FT information. • DAB and AIA are not able to exchange information with any foreign financial supervisory authorities. • Lack of overall effectiveness of the exchange of information relating to the financing of terrorism.
SR.VI AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • The AML LD lacks Parliamentary approval. • Licensing regime not imposed in 8 out of 34 provinces due to security problems although money laundering and terrorist financing risks may be higher. • The deficiencies identified with respect to R.4-11; 13-15; 21-23 equally apply to SR.VI. • Monetary sanction regime not proportionate, dissuasive and effective. • Limited compliance with AML/CFT preventive measures. • Insufficient monitoring of MSPs.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • The AML and CFT LDs lack Parliamentary approval. • No requirement to verify originator information for transactions above US\$/EUR 1,000 and below Af 1 million (about US\$22,000). • Lack of clarity on the domestic wire transfer rules with regard to the condition under which only an account number or a unique identifier can be sent. • No requirement to adopt risk-based procedures for transfers which are not accompanied by full originator information. • Lack of clarity on the enforceability of some elements of the wire transfer rules. • Effective implementation by banks throughout the sector has not been established. • inadequate implementation by MSPs.

SR.VIII Nonprofit organizations	NC	<ul style="list-style-type: none"> • The CFT LD and of the NPO Decree and the Law on Social Organization lack Parliamentary approval. • Lack of effectiveness due to the fact that the rule of law is not upheld on the entirety of Afghan territory. • Authorities have not undertaken a review of the adequacy of current laws and decrees for CFT purposes. • Authorities have not undertaken a risk assessment of the sector. • Authorities do not conduct outreach to the sector to raise awareness of the risk of terrorist financing. • The monitoring and supervision of the sector does not focus on the NPOs which account for the significant portion of the financial resources of the sector. • Limited sanctions available and lack of clarity with respect to which agency is responsible for sanctioning NPOs. • Record keeping requirement apply only with respect to donations and gifts of a level prescribed by the DAB, not the entirety of the organization's activities. • Information on the activities and identities of the persons who own, control or direct the activities of the organization is not publicly available through the appropriate authorities. • It is unclear that the appropriate authorities have been able to register and monitor the activities of a significant portion of the sector. • Lack of sufficient and adequate investigative expertise and capacity at the MOE for the investigation and examination of NPOs that are either suspected or are being exploited by terrorist financiers.
SR.IX Cross-Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • No cross-border currency declaration for inbound passengers. • Limited implementation of the cross-border currency declaration regime for outbound

		<p>passengers (only implemented at KIA and excluding the VIP section).</p> <ul style="list-style-type: none"> • Customs do not, in practice, require the declaration of bearer negotiable instruments. • The currency declaration threshold prescribed by the AML LD exceeds the US\$/EUR 15,000 threshold. • No legal stipulation for monitoring or sanctioning false cross-border currency declarations. • In practice, Customs authorities are arresting individual carrying undeclared currency, a power not delegated to Customs and not explicitly prescribed for in the decree. • The effective implementation of the existing legal framework is hampered by the fact that the AML LD does not delineate clear lines of responsibility among the three authorized implementing agencies. • Customs does not have the professional capacity to adequately address the scope of the problem. • Customs does not maintain comprehensive records or statistics of currency declarations and seizures. • Absence of reporting of unusual movements of precious metals and stones to the country of origin. • Lack of cooperation with neighboring countries. • Absence of adequate and uniform sanctions.
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Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	<p><u>Recommendation 1</u></p> <ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that, as security improves, the AML legal framework is progressively implemented in the whole country; • Criminalize participation in an organized criminal group and racketeering; trafficking in human beings and migrant smuggling; environmental crime, kidnapping, illegal restraint and hostage-taking so that they may constitute predicate offenses to money laundering; • Ensure that prior conviction for the predicate is not considered as a condition to proving that property is the proceeds of crime; • Criminalize association with and conspiracy to commit or attempt to commit the money laundering offense; • Make use of the money laundering offense. <p><u>Recommendation 2</u></p> <ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Establish dissuasive monetary sanctions; • Ensure that criminal sanction do not preclude the possibility of parallel civil or administrative proceedings if such proceedings are available; • Extend criminal liability for money laundering to corporate entities that are partially owned by the Afghan government; • Although the law meets the standard in this respect, ensure that, in practice too, intention can effectively be inferred from objective factual circumstances.
2.2 Criminalization of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • Ensure that the legal basis of the CFT framework is sound; • Ensure that, as security increases, the CFT framework is

	<p>implemented throughout the Afghan territory;</p> <ul style="list-style-type: none"> • Criminalize the collection of funds for and their provision to terrorist organizations and terrorist individuals; • Criminalize the organization, direction, motivation of individual terrorist and the contribution to the commission of a terrorist financing offense by an individual; • Criminalize the funding of any of the terrorist offenses defined in the treaties listed in annex to the ICSFT; • Ensure that the terrorist financing offense extends to any funds, whether from a legitimate or illegitimate source; • Ensure that, for successful prosecution, it is not required that the funds and property be linked to a specific terrorist act; • Extend criminal liability for TF to corporate entities that are partially owned by the Afghan government; • Ensure that intention can effectively be inferred from objective factual circumstances; • Ensure that criminal sanctions do not preclude the possibility of parallel civil or administrative proceedings if such proceedings are available; • Vigorously pursue TF investigations and prosecutions.
<p>2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)</p>	<ul style="list-style-type: none"> • Amend the CFT LD where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that, as security improves, the AML framework is progressively implemented in the whole country; • Enable the confiscation of the proceeds of all predicate offenses; • Ensure that confiscation would apply to income and other benefits that derives directly as well as indirectly from the proceeds of crime; • Enable the confiscation of instrumentalities used or to be used in the commission of all predicate offenses and terrorist financing; • Ensure that provisional measures (including seizing and freezing) may be taken in respect to all predicate offenses to money laundering; • Ensure that <i>bona fide</i> third parties can defend their rights at all stages (i.e. not only after a confiscation order has been issued); • Ensure that steps may be taken to prevent or void actions (whether contractual or otherwise) that would prejudice

	the authorities ability to recover all property subject to confiscation.
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis to ensure that the AML framework, and in particular the provisional and confiscation measures for money laundering, terrorist financing and all predicate offenses, has a sound legal basis; • Ensure that, as security improves, the AML framework is progressively implemented in the whole country; • Clarify the freezing mechanism under UNSCR 1267 or clarify its meaning so it can be used effectively to freeze without delay; • Establish a clear legal basis to implement the freezing obligations under UNSCR 1373 and clear procedures to meet the obligations; • Establish clear procedures to consider and implement as necessary to give suit to other countries' designations and requests for freezing of terrorist assets; • Ensure that funds and property subject to freezing orders extend to all funds and other assets listed under Criterion III.4; • Establish clear procedures to allow for domestic freezing of terrorist assets; • Establish clear procedures for delisting; • Ensure that freezing, seizing and confiscation measures in other circumstances are not unduly restrictive; • Establish appropriate procedures to allow for the unfreezing of funds or other assets of persons or entities inadvertently affected by a freezing order; • Ensure there are measures to allow access to frozen funds or other property to cover expenses as set out in UNSCR 1452; • Establish clear obligations for the private sector to implement freezing orders; • Provide clear guidance to the private sector in respect of their freezing obligations; • Ensure effective monitoring of compliance with all freezing obligations under SR III.
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis to ensure

	<p>that the establishment and functions of FinTRACA are grounded on a sound legal basis;</p> <ul style="list-style-type: none"> • Provide FinTRACA with the power/authority to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect terrorist financing reported by non-banks FI and DNFBPs; • Ensure that FinTRACA raises awareness on the reporting requirement among all reporting entities and in particular provides money exchange dealers, micro finance institutions and DNFBPs with guidance regarding the manner of reporting, including the procedures to be followed when reporting; • Ensure that FinTRACA asks non-bank financial institutions and DNFBPs for additional information; • Ensure that FinTRACA (i) enhances the depth and quality of its STRs analysis, in particular by granting it access to the necessary financial, administrative and law enforcement information and enabling it to request on regular basis additional information from reporting entities; (ii) undertakes more in-depth tactical, operational and strategic analysis; • Ensure that FinTRACA establishes mechanisms for cooperation with regulators, supervisors, reporting entities and law enforcement authorities to optimize its analysis and establishes an information flow that remains confidential while enhancing FinTRACA's analysis capacity; • Enhance the coordination between FinTRACA and LEAs to whom it disseminates its reports so they can investigate and send the evidence to the AGO; • Enhance FinTRACA's independence by securing its independent budget that takes into account its increasing financial needs. Also, provide FinTRACA with adequate funding and staff to enable it to perform its functions effectively; • Ensure that FinTRACA periodically reviews the effectiveness of the system to combat money laundering and terrorist financing; • Ensure that FinTRACA publishes annual reports, typologies and trends of money laundering and terrorist financing; • Ensure that FinTRACA provides additional specialized
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	<p>and practical in-depth training to its employees. This training should cover, for example, predicate offenses to money laundering, analysis and investigation techniques and familiarization with money laundering and terrorist financing techniques, and other areas relevant to the execution of the FIU 's functions;</p> <ul style="list-style-type: none"> • Due to its limited resources (funding and staff), FinTRACA should allocate most of its budget and staff to the execution of its core functions.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> • Appoint and adequately resource dedicated financial investigators to deal with (i) asset based investigations allied to the predicate crimes within their jurisdiction - including terrorism; (ii) money laundering and or terrorist financing allied to the predicate crime; • Investigate money laundering and or terrorist financing as a standalone crime irrespective of whether the source of information emanates from the FinTRACA or any other source; • Provide AML/CFT training to all investigative agencies at senior level and in particular for all dedicated financial crime investigators; • Improve the LEAs' understanding of ML and TF risks and develop a national strategy addressing such risks and deploy the staff accordingly; • Use more frequently special investigative techniques such as the controlled delivery to detect and investigate predicate crimes; • Although not specifically required under the standard, in order to avoid duplication of efforts by LEAs, enhance dialogue amongst the competent LEAs and increase the effectiveness of investigations into money laundering or terrorist financing cases. In addition, introduce the concept of 'lead-agency' of multi agency working on cross-cutting crimes relating to money laundering and/or terrorist financing issues that could greatly improve the overall effectiveness of the AML/CFT regime.
2.7 Cross-Border Declaration & Disclosure (SR IX)	<ul style="list-style-type: none"> • Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that, as the security across the country improves, the AML/CFT framework with respect to SRIX is implemented; • Implement cross-border currency declarations for inbound and outbound transportation of currency and bearer

	<p>negotiable instruments and extend these requirements to outgoing travelers at the VIP section, incoming travelers, and shipment of currency through containerized cargo and mailing of currency or bearer negotiable instruments by a natural or legal person at all official border crossings in Afghanistan;</p> <ul style="list-style-type: none"> • Clearly define the term “bearer negotiable instruments” to include monetary instruments in bearer form such as: travelers checks; negotiable instruments (including checks, promissory notes and money orders) that are either in bearer form, endorsed without restriction or made out to a fictitious payee, or otherwise in such a form that title can pass upon delivery; and incomplete instruments (including checks, promissory notes and money orders) signed, but with the payee’s name omitted; • Take legislative steps to ensure that Customs has the authority to collect and request further information from the carrier of currency or bearer negotiable instruments on the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of money laundering or terrorist financing; • Provide Customs with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found, where there is a suspicion of money laundering or terrorist financing; or where there is a false declaration; • Establish in law effective, proportionate and dissuasive sanctions for false cross-border currency declarations; • Establish in law effective, proportionate and dissuasive sanctions for the physical transportation of currency or bearer negotiable instruments that are related to money laundering or terrorist financing; • Clarify the responsibility of each agency operating at the border and specifically designate the authority that is responsible for the implementation of SRIX; • Ensure that the prescribed threshold for declaration does not exceed US\$/EUR 15,000; • Ensure that customs seek closer cooperation with other neighboring countries, such as establishing mechanisms for regular information exchange on cash seizures and cross-border transportation reports; • Ensure that customs report unusual movements of precious metals and stones to the countries of origination or
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	<p>destination;</p> <ul style="list-style-type: none"> • Introduce electronic record keeping of CNBIR declarations and implement strict safeguards to ensure proper use of information by the appropriate authorities; • Train more Customs officers.
3. Preventive Measures– Financial Institutions	
3.1 Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> •
3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)	<p><u>Recommendations 5, 6, 7 and 8</u></p> <ul style="list-style-type: none"> • Ensure that the legal basis for the AML framework is sound; • Ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country. <p><u>Recommendation 5</u></p> <ul style="list-style-type: none"> • Require in primary or secondary legislation financial institutions to undertake CDD measures when carrying out transactions above US\$15,000; • Remove from the AML/CFT RR the inadequate exceptions in the identification and verification of occasional customers that are legal persons; • Review the AML/CFT RR to require verification of the identity of natural persons in all cases; • Require in primary or secondary legislation financial institutions to verify the identity of legal persons; • Require in primary or secondary legislation financial institutions to verify that a person purporting to act on behalf of a natural person is so authorized, and identify and verify the identity of that person; • Require financial institutions not supervised by DAB to verify the legal status of the legal person or legal arrangement; • Require in primary or secondary legislation financial institutions to determine whether a customer is acting on behalf of another person; • Require financial institutions to understand the ownership and control structure of corporate customers; • Require in primary or secondary legislation financial institutions to determine who are the persons who exercise

	<p>ultimate effective control over a legal person or arrangement;</p> <ul style="list-style-type: none"> • Require financial institutions to obtain information on the purpose and intended nature of the business relationship for natural persons; • Require financial institutions not supervised by the DAB to obtain information on the purpose and intended nature of the business relationship with legal persons; • Require in primary or secondary legislation financial institutions to conduct ongoing due diligence of the business relationship; • Put in place detailed and enforceable regulations on ongoing due diligence; • Clarify current requirements to update of CDD records and ensure that they apply to all financial institutions; • Require financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions; • Require financial institutions to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers; • Prohibit financial institutions to open an account, commence business relations or perform a transaction in case of failure to satisfactorily complete the verification of identity, and require them to consider making a suspicious transaction report; • Require financial institutions to perform CDD measures on holders of existing anonymous accounts. <p>In addition, in order to improve the implementation of the CDD measures, the authorities should consider:</p> <ul style="list-style-type: none"> • Establishing a proper system of identification of natural persons and a comprehensive register of legal persons requiring information on the ultimate beneficial owner; • Developing and implement a supervision strategy aiming at sanctioning financial institutions failing to implement existing CDD measures in cases where information is available and verifiable. <p><u>Recommendation 6</u></p> <ul style="list-style-type: none"> • Require financial institutions to put in place appropriate
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	<p>risk management systems to determine whether a potential customer or a beneficial owner is a PEP;</p> <ul style="list-style-type: none"> • Require financial institutions to obtain senior management approval to continue the business relationship, where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP; • Require financial institutions to take reasonable measures to establish the source or wealth and the source of funds of beneficial owners identified as PEPs. <p>In addition, in light of the extreme threat of laundering of the proceeds of corruption, the system in place is particularly ineffective and the authorities did not implement simple mechanisms which could have increased the efficiency of preventive measures regarding PEPs. Accordingly, the authorities should consider:</p> <ul style="list-style-type: none"> • Make assets disclosures available online both in Dari and in English to assist financial institutions inside and outside Afghanistan to determine if their customers are PEPs; • Create a list of PEPs to be sent to financial institutions, based on the list of civil service positions that are required to disclose assets according to the constitutions and the anti-corruption law. Such a list could also be used in the analytical work of FINTRACA. <p><u>Recommendation 7</u></p> <ul style="list-style-type: none"> • Gather information about a respondent institution to understand the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision; • Assess their respondent institution's AML/CFT controls, and ascertain that they are adequate and effective; • Ensure that senior management's approval is obtained before establishing new correspondent relationships; • Document the respective AML/CFT responsibilities of each institution; • Take measures to address risks related to the maintenance of "payable –through accounts." <p><u>Recommendation 8</u></p> <ul style="list-style-type: none"> • Require financial institutions to have policies in place or take measures to prevent the misuse of technological
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	<p>developments in money laundering or terrorist financing schemes;</p> <ul style="list-style-type: none"> • Require financial institutions to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • Set out rules governing the reliance on intermediaries or other third parties to perform elements of the CDD process or to introduce business, ensuring notably; that the elements that may be performed by third parties are limited to those listed under criteria 5.3 to 5.6 of the methodology; that the information collected by the third parties may be immediately available to financial institutions; the financial institutions are required to satisfy themselves that the third parties are regulated and supervised; and that the ultimate responsibility for customer identification and verification remains with the financial institutions relying on the third party.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • Ensure that the legal basis for the AML framework is sound and ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country; • Amend the wording of Article 44 of the AML LD in order to lower the current threshold of “strong grounds” that judicial authorities’ face to access information covered by financial secrecy; • Enable the sharing of information between financial institutions in cases where it is required in the FATF standards, in relation to cross border correspondent relationships, intermediaries or third parties, and information on wire transfers.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p><u>Recommendation 10</u></p> <ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country; • Introduce in primary or secondary legislation the possibility for a competent authority to request that records are maintained for more than five years, in specific cases and upon proper authority; • Require in primary or secondary legislation that financial

	<p>institutions keep records of business correspondence;</p> <ul style="list-style-type: none"> • Review the wording of Article 44 of the AML LD in order to lower the current threshold of “strong grounds” that judicial authorities’ face to access identification data and transaction records. <p><u>Special Recommendation VII</u></p> <ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Harmonize the wire transfer rules in the AML LD, CFT LD, and AML/CFT RR; • Require verification of originator information for transactions above US\$/EUR 1,000 or their equivalent in Af; • Clarify the rule on domestic wire transfer requirements in particular with respect to the conditions under which financial institutions can send only an account number or a unique identifier in lieu of full originator information; • Require financial institutions to adopt procedures that establish, on the basis of the risk of money laundering and terrorist financing, how to identify and deal with wires that are not accompanied by full originator information; • Add the maximum time frame of three days within which full originator information should be made available to the beneficiary financial institution and to appropriate authorities upon request; • Ensure that all elements of the wire transfer rules are enforceable (especially relating to the requirements in the AML/CFT RR); • Although this is not specifically required under the standard, to increase effectiveness, consider revising the MSP ledger to make it less onerous for smaller value transactions; • Ensure that wire transfer rules are implemented.
<p>3.6 Monitoring of transactions and relationships (R.11 & 21)</p>	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that, as security improves, the AML/CFT framework is progressively implemented in the whole country; • Remove the obligation to report STRs on all transactions and business relationships subject to special attention as it appears counter-productive, discouraging a financial

	<p>institution to better understand these transactions, the end-results being an STR in all cases;</p> <ul style="list-style-type: none"> • Expand the requirement under Article 12.3 of the AML LD, to jurisdictions which do not or insufficiently apply the FATF recommendations; • Provide for the possibility to apply counter-measures in cases where a country continues not to apply or to apply insufficiently the FATF Recommendations.
<p>3.7 Suspicious transaction reports and other reporting (R.13, 14,19, 25, & SR.IV)</p>	<p><u>Recommendation 13 and 14</u></p> <p>Criminalize participation in an organized criminal group and racketeering; trafficking in human beings and migrant smuggling; environmental crime; kidnapping, illegal restraint and hostage-taking so that they may constitute predicate offenses to money laundering and be subject to reporting;</p> <ul style="list-style-type: none"> • Address the deficiencies noted in the terrorist financing offense so they no longer limit the reporting requirement; • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Issue implementing regulations for financial institutions other than banks and MSPs to clarify the requirements of the AML LD taking into consideration the specificities of the sector; • Ensure that supervisors and FinTRACA draw up an action plan to encourage reporting across all sectors – a prioritized and phased plan based on potential risk posed by the different sectors may be necessary, given overall resources, to effectively bring this about. Training and effective enforcement should be implemented. <p><u>Recommendation 25</u></p> <ul style="list-style-type: none"> • Ensure that competent authorities, and particularly the FinTRACA, provide guidance to assist financial institutions on AML/CFT issues covered under the FATF recommendations, including, at a minimum, a description of money laundering and terrorist financing techniques and methods; and any additional measures that these institutions could take to ensure that their AML/CFT procedures are effective; • Establish a mechanism for providing feedback to reporting institutions including general and specific or case-by-case feedback; • Consider reviewing the guidance provided by the FATF Best Practice Guidelines on Providing Feedback to

	<p>Reporting Financial Institutions and other Persons;</p> <ul style="list-style-type: none"> • Provide specialized training to financial institutions to improve the quality and quantity of STRs; • Strengthen the guidelines and feedback across all sectors to (i) incorporate different examples covering sectors other than banking, and (ii) provide more Afghan examples of money laundering and terrorist financing typologies.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p><u>Recommendation 15</u></p> <ul style="list-style-type: none"> • Specify what should be covered under the internal control requirements; • Require financial institutions to designate an AML/CFT compliance officer at the senior management level; • Require financial institutions to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information; • Guide and assist MSPs and foreign exchange dealers in developing internal control policies and procedures which are proportionate to the size of business and to the risk of money laundering and terrorist financing; • Issue implementing regulations for AML/CFT RR financial institutions which are subject to AML LD and CFT LD but regulated by other competent authorities than DAB (for example, insurance companies); • Ensure that all banks have effective internal audit systems in place, and ensure that they adequately cover all money laundering and terrorist financing risks; • Require all the reporting entities to enhance their AML/CFT training programs to ensure that all relevant staff are aware of money laundering and terrorist financing risks and AML/CFT measures; • For effective internal control, ensure that the compliance officer is independent. <p><u>Recommendation 22</u></p> <ul style="list-style-type: none"> • Require foreign subsidiaries of Afghan MSPs to follow the laws and regulations of Afghanistan to the extent the host country's laws and regulations permit, and consider requiring the same for foreign branches and subsidiaries of Afghan banks. Ensure that this principle is observed in

	<p>particular in countries which do not or insufficiently apply the FATF Recommendations;</p> <ul style="list-style-type: none"> • Require foreign branches and subsidiaries to apply the higher standard, to the extent that host country's laws and regulations permit, when AML/CFT laws and regulations in the host country and Afghanistan differ; Require foreign branches and subsidiaries to inform DAB supervision department when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because of the prohibition by host country's laws, regulations or other measures; • Require foreign branches and subsidiaries to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> • Prohibit explicitly the establishment and operation of shell banks on the territory of Afghanistan, and establish clear sanctions for contravention to this prohibition; • Prohibit explicitly financial institutions from entering into or continuing correspondent banking relationships with shell banks. In addition, DAB should require financial institutions to satisfy that respondent financial institutions do not permit their accounts used by shell banks. Compliance with Recommendation 18.
3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that monetary penalties are proportionate, dissuasive and effective. The maximum amount of monetary penalties for civil (in the case of systematic failure) and criminal penalties should be raised in particular for large financial institutions; • Impose fines which are proportionate, dissuasive and effective; • Consider extending the criminal liability imposed on an individual who obstructs, hinders or fails to cooperate with the FIU to those who obstructs, hinders or fails to cooperate with DAB since DAB is also a supervisory authority; • Ensure that all the provisions in the AML/CFT RR can be enforced; • Ensure that criminal background check is required for administrators, sponsors, and investors of DMFIs during the licensing process; ensure that those with a criminal

	<p>record not qualify as fit-and-proper and that the license is not granted;</p> <ul style="list-style-type: none"> • Require identification of beneficial owners of financial institutions during licensing process and whenever changes of management and shareholders occur; ensure that beneficial owners are subject to fit-and-proper tests; • Develop a strategy for examination and schedule for all supervised entities. After the first round of examinations of MSPs and foreign exchange dealers, consider introducing a risk-based approach to supervision; • Increase the number of AML/CFT inspections of MSPs; • Initiate AML/CFT supervision of foreign exchange dealers, microfinance institutions, DFMIIs, financial leasing companies and mortgage finance companies, applying a risk based approach; • Ensure that other regulated entities outside the scope of DAB's supervisory authority, ensure that either FIU or its designated person undertake the AML/CFT supervision (for example, in the case of insurance companies, brokers and agents); • Develop sector specific guidelines to assist them with the implementation of regulatory requirements within the sector specific contexts; • Although not directly required by the standard, it is recommended that measures are introduced by DAB to mitigate the current concentration of decision making-powers in the hands of the Director General of FSD, when bank examination reports are approved. A committee can be established to share decision-making responsibility. An independent auditor can conduct an ex-post review of decisions made by the committee.
<p>3.11 Money value transfer services (SR.VI)</p>	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Expand the implementation of the licensing regime for MSPs and ensure oversight of MSPs throughout the territory; • Strengthen the sanction regime to provide for dissuasive, effective and proportionate sanctions for larger MSPs; • Clarify what provisions of the MPS regulation apply to EMIs as opposed to MSPs, including applicable sanctions; • Increase the number of staff responsible for licensing and supervision of MSPs;

	<ul style="list-style-type: none"> • Provide guidance and training for MSPs to comply with AML/CFT requirements; Although not required under the standard, in order to enhance effectiveness; • Consider adopting a risk-based approach to on-site examination of MSPs; • Consider Introducing a risk-based approach to CDD. Different CDD requirements can be placed on small value transactions vs. larger values and some of the customer information (such as monthly salary, source of income) does not need to be repeatedly obtained each time the repeat customer visit the MSP.
4. Preventive Measures– Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Impose CDD and record keeping requirements on all DNFBPs active in Afghanistan (including company service providers when they engage in activities covered by the standard (see Criterion 12.1 e of the Methodology) in line with Recommendation 12, taking care, in particular, to: lower the threshold for CDD by dealers in precious metals and stones to meet the international standard; and ensure that the activities of DNFBPs that are subject to the AML LD are comprehensively listed within the LD, to include the opening or management of a bank, savings or securities account on behalf of a client by lawyers, any other independent legal professionals and accountants. <p>Although not specifically called for under the standard, in order to increase the effectiveness of CDD and record keeping requirements:</p> <ul style="list-style-type: none"> • Conduct an outreach and awareness raising campaign to DNFBPs to facilitate compliance with the applicable AML/CFT provisions; • Issue sector specific regulations clarifying the CDD and record-keeping requirements for DNFBPs.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Issue a regulation clarifying the STR requirements for DNFBPs and putting in place mechanisms to facilitate

	<p>reporting of suspicious transactions to the FIU;</p> <ul style="list-style-type: none"> • Ensure that lawyers' duty to maintain client confidentiality is not an obstacle to reporting suspicious transactions in the circumstances described in the methodology; • Amend the threshold for STR reporting by dealers in precious metals and stones to meet the international standard; • Make sure that the DNFBPs and circumstances under which the law applies to the institutions are accurately described within the law; • Require in primary or secondary legislation company service providers to report suspicious transactions to the FIU; <p>Although this is not required by the standard, in order to enhance the effectiveness of the reporting framework:</p> <ul style="list-style-type: none"> • Conduct an outreach and awareness campaign and provide feedback to DNFBPs to facilitate compliance with the applicable provisions of the law; • Consider developing a reporting form for DNFBPs.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • Amend the AML LD where necessary and obtain Parliamentary approval on an expedited basis; • Identify competent bodies or develop mechanisms for the implementation of effective systems for monitoring the compliance of DNFBPs with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering and terrorist financing in that sector, i.e. if there is a proven low risk then the extent of the required measures may be less; • Issue guidelines to DNFBPs to assist with implementation and compliance of institutions with AML/CFT requirements; • Establish mechanisms to enable general and case-by-case feedback from DNFBPs on their responsibilities under existing AML/CFT laws.
4.4 Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Conduct an assessment to determine whether or not businesses other than designated non-financial businesses and professions, such as car dealers and the hospitality industry, pose a money laundering or terrorist financing risk; • Conduct a risk assessment in order to ascertain whether or

	<p>not other businesses and professions should be subjected to the provisions of the AML and CFT laws;</p> <ul style="list-style-type: none"> • Encourage the development and use of modern and secure technologies, such as the electronic salary payment delivery system, for conducting financial transactions, which by their nature minimize cash in circulation and are therefore less vulnerable to money laundering and terrorist financing.
5. Legal Persons and Arrangements & Nonprofit Organizations	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Review the Commercial Law to ensure adequate transparency concerning the beneficial ownership and control of legal persons; • Ensure that adequate, accurate and current information on the beneficial ownership and control of legal persons is available (for example through ACBAR or AISA) to competent authorities in a timely fashion.
5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • <i>NA.</i>
5.3 Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> • Amend the AML and CFT LDs where necessary and obtain Parliamentary approval on an expedited basis; • Ensure that, as the security situation in the country improves, the AML/CFT framework is progressively implemented throughout the country; • Undertake a comprehensive risk assessment of the sector, to include the identification of the categories of NPOs which might be more at risk of being misused for terrorist financing by virtue of their activities and characteristics; • Expand outreach efforts to the sector. This should include timely updates to the MOE website, with information on NPO registration and reporting obligations as well as information on (i) the risks of abuse for terrorist financing purposes and the implementation of preventive measures; (ii) transparency, accountability, integrity, and public confidence in the administration and management of all NPOs; • Require NPOs to maintain records of domestic and international transactions for a period of at least 5 years and to make them available to appropriate authorities. Records should be sufficiently detailed to verify that funds have been spent in a manner consistent with the purposes

	<p>and objectives of the organization;</p> <ul style="list-style-type: none"> • Strengthen the legal requirement for NPOs to provide information not only on the founders of the organizations, but also the identity of the person(s) who own, control or direct the activities of the entity, including senior officers, board members and trustees. This information should be made available either directly through the NPO or through the relevant regulating ministry; • Strengthen sanctions available and clarify the government body responsible for their implementation; • Focus supervision efforts on those NPOs which account for the most significant portion of the financial resources in the sector; • Ensure that law enforcement agencies coordinate with the MOE when they need information on NPOs of potential terrorist financing concern; • Ensure that the MOE has the investigative capacity to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations. Measures should also be in place to ensure prompt investigative or preventative action; <p>Consider the implementation on an electronic record keeping system and a database of registered NPOs, which could be accessed by other competent government agencies.</p>
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	<ul style="list-style-type: none"> • A National AML/CFT Committee should be established to put in place effective mechanisms which enable the authorities concerned to cooperate, and where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing; • There is a pressing need for close cooperation and coordination of effort to overcome fragmentation and ensure effective implementation of AML/CFT measures across the whole of Afghanistan. Individual agencies should commit to support coordinated approaches to implement targeted AML/CFT policies across Afghanistan.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Implement fully the Vienna and Palermo Conventions, and the ICSFT, in particular in light of the recommendations made under Recommendations 1, 2, 3,

	<p>and Special recommendations II and III;</p> <ul style="list-style-type: none"> • Implement fully the UNSCR 1267 and 1373, in particular in light of the recommendations made under SR III.
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	<ul style="list-style-type: none"> • Address the deficiencies noted under Recommendations 1, 2 and Special Recommendation II above so that they do not limit the scope of mutual legal assistance that Afghanistan may offer; • Address the deficiencies noted under Recommendation 3; • Address the deficiencies noted under Recommendations 27 and 28; • Ensure that mutual legal assistance requests are executed in a timely way without undue delay; • Ensure that confidentiality requirements cannot be raised without reasonable justification as obstacles to mutual legal assistance; • Considering devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country; • Allow for the execution of foreign requests for seizure, freezing and confiscation of the proceeds of, as well as the instrumentalities used or to be used in the commission of all predicate offenses to money laundering; • Allow for the conclusion of arrangements for coordination of seizure and confiscation actions with other countries.
6.4 Extradition (R. 39, 37 & SR.V)	<ul style="list-style-type: none"> • Address the deficiencies noted under Recommendations 1, 2; • Seek to conclude bilateral or multilateral agreements to carry out or to enhance the effectiveness of extradition (in line with Art. 6 para. 12 of Vienna Convention; 16 para. 17 UNTOC); • Ensure that requests for extradition are handled without undue delay.
6.5 Other Forms of Cooperation (R. 40 & SR.V)	<ul style="list-style-type: none"> • FinTRACA should develop comprehensive statistics about the number of requests received, made and the necessary time to reply; • Law enforcement agencies should be more proactive in requesting information on money laundering and terrorist financing from their counterparts; • Law enforcement agencies should develop clear and effective gateways or channels that will allow for prompt

	<p>and constructive exchanges of information directly between counterparts;</p> <ul style="list-style-type: none"> • DAB and AIA should develop effective mechanisms to exchange information with foreign counterparts; • Authorities should maintain statistics on the number of requests for assistance made or received by law enforcement authorities, including whether the request was granted or refused.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> • Allocate more resources to the competent authorities; • Provide specialized training to the staff of competent authorities and develop professional standards, including confidentiality standards to control and safeguard the information; • Develop comprehensive statistics in all relevant areas of the fight against money laundering and terrorist financing (including statistics on domestic investigations, prosecutions, property frozen, seized and confiscated, convictions, and on international cooperation, on-site examinations conducted by supervisors, and sanctions applied); • Regularly review the effectiveness of the AML/CFT system.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Annex 1. Details of All Bodies Met During the On-Site Visit

List of ministries, other government authorities or bodies, private sector representatives and others.

Ministries:

- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Finance
- Ministry of Economy
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Law Enforcement Agencies:

- Attorney General's Office
- Sensitive Intelligence Unit (SIU)
- High Office of Oversight (HOO)
- Afghan National Police- Criminal Investigation Department, Interpol, Border Police, Internal Affairs
- Major Crimes Task Force (MCTF)
- National Directorate of Security (NDS)

Other government authorities:

- FinTRACA
- DAB – Governor / Deputy
- DAB – Financial Supervision Dept
- DAB – Legal Counsel
- Afghan Investment Support Agency (AISA)
- Afghan NGO Coordination Bureau (ANCB)
- Agency Coordinating Body for Afghan Relief (ACBAR)
- Supreme Court

Private sector representatives:

- Afghan Bankers Association
- Hawaladars Association
- Commercial Banks
- Money Exchange Dealers
- Microfinance Institutions
- Bar Association & lawyers
- Money service providers
- Leasing companies/ Real estate agents
- Dealers in precious metals & stones

Annex 2. List of All Laws, Regulations, and Other Material Received

- The Constitution of 2004
- AMLLD
- CFTLD
- AML/CFT RR
- Laundering and Terrorist Financing
- Penal Code
- Interim police procedure code of 2004
- Criminal Procedure Law of 1965 amended in 1974
- Customs Act
- High Office of Oversight Law
- Anti-Corruption Act
- Police Law 862 of 2005
- Law of Firearms, Ammunition and Explosives
- Commercial Code
- Law on banking
- Counter Narcotics Law of 2005
- Customs Law
- Foreign Exchange dealers regulation
- Law on prisons and jails
- Law on the prohibition of smuggling of 1969
- Law on the structure and authority of AGO
- Law of DAB
- Money Service Provider Regulation

NGO Laws

- Civil Code 1977
- Law on Social Organisations 2002
- Law on Non Governmental Organisations 2005
- Income Tax Law 2005