January 2013
IMF Country Report No. 13/4

Georgia: 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 Georgia 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 Georgia or the Executive Board of the IMF.

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International Monetary Fund
Washington, D.C.

GEORGIA

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

JULY 3, 2012

INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

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ACRONYMS

AML/CFT Law	Anti-Money Laundering and Combating the Financing of Terrorism Law
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BL	Banking Law
BO	Beneficial Owner
BSRD	Banking Supervision and Regulation Division
CCG	Criminal Code of Georgia
CDD	Customer Due Diligence
CPC	Criminal Procedure Code of Georgia
CPO	Chief Prosecutor's Office
CSP	Company Service Providers
CTC	Counter-Terrorist Centre
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FMS	Financial Monitoring Service of Georgia
FSRB	FATF Style Regional Body
FT	Financing of Terrorism
GEL	Georgian Lari
IBEs	International Business Enterprises
IBUs	International Banking Units
ICCS	International Companies Control Service
IMF	International Monetary Fund
ISS	International State Supervision Service of Georgia
KYC	Know your customer/client
LEAs	Law Enforcement Agencies
LEG	Legal Department of the International Monetary Fund
NBG	National Bank of Georgia
NSC	National Security Council of Georgia
MFA	Ministry of Foreign Affairs
ML	Money Laundering
MLCO	Money Laundering Compliance Officer
MLA	Mutual Legal Assistance
MOF	Ministry of Finance
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe
MSP	Money Service Providers
NAPR	National Agency of Public Registry
NBG	National Bank of Georgia

NPO	Nonprofit organization
OSCE	Organization for Security and Cooperation in Europe
PEP	Politically-Exposed Person
ROSC	Report on Observance of Standards and Codes
SOD	Special Operative Department
SRO	Self-regulatory organization
SRS	State Revenue Service under the Ministry of Finance
SSPLII	Special Service on Prevention of Legalization of Illicit Income
STR	Suspicious Transaction Report
TA	Technical Assistance
TR	Threshold Report
TTF	Topical Trust Fund
UNSCR	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Georgia 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 November 28 to December 13, 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 one expert acting under the supervision of the IMF. The evaluation team consisted of Emmanuel Mathias, Senior Financial Sector Expert (team leader); Kristel Poh, Senior Financial Sector Expert; Chady El-Khoury, Counsel; Marilyne Landry, Financial Sector Expert; Rocío Ortiz-Escario, Financial Sector Expert (all LEG); and Gabriele Dunker (LEG expert). 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 (DNFBPs). 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 Georgia at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Georgia's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was also presented to MONEYVAL and endorsed by this organization during its meeting of July 2012.

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

EXECUTIVE SUMMARY

Key Findings

1. **The Georgian AML/CFT regime has significantly improved since the last assessment in 2007.** The amendments to the legal framework enacted between 2008 and February 2012[1] have improved technical compliance with the FATF recommendations, in particular with respect to the criminalization of ML and FT and the preventive measures for financial institutions. Significant progress has been made since 2007 with regard to the effective use of the ML criminal provisions, provisional and confiscation measures, and international cooperation.

2. **However, weaknesses remain with regard to compliance with key elements of the standard.** A combination of technical deficiencies, poor implementation, and limited resources undermine the effectiveness of the financial intelligence unit (FIU) and AML/CFT supervision. In addition, there are still major loopholes in terms of transparency of legal entities, domestic cooperation, measures to prevent terrorism financing, and preventive measures for designated non-financial businesses and professions (DNFBPs).

3. **These weaknesses should be urgently addressed in light of the significant ML/FT vulnerabilities and threats.** These include: i) customers that are, or are owned by, offshore companies for which the identity of their beneficial owners is unknown or where the identity has not been verified; ii) a rapid and ongoing increase of nonresident deposits; iii) the development of private banking activities, including a clientele of foreign politically-exposed persons (PEPs); iv) the rapid growth of the casino business and rising number of non-face–to-face transactions; v) the existence of large Georgian-led criminal organizations abroad which exposes the risk of proceeds of crime being transferred back to Georgia; and vi) domestic statistics demonstrating the existence of major proceeds-generating crimes, such as corruption, tax evasion, and drug trafficking.

Legal Systems and Related Institutional Measures

4. **Georgia has a comprehensive legal framework in place criminalizing both ML and FT as autonomous offenses.** ML is criminalized through three separate provisions in the Criminal Code. The three provisions comply with all technical aspects and implement all material elements of the offenses set out under the Vienna and Palermo Conventions. In particular, all categories of predicate offenses listed in the international standard are covered, the ML offenses extend to any type of property that represents the proceeds of crime, and all acts constituting an ancillary offense to ML are criminalized.

5. **While no shortcomings have been identified in the legal framework, concerns remain with respect to the implementation of the ML provisions.** Based on statistics provided by the authorities, the ML provisions do not seem to be applied effectively to combat the most prevalent proceeds generating crimes, or to combat transnational organized crime. The modest number of legal

[1] A number of changes to the legal framework were enacted between December 2011and early February 2012, during the eight-week period following the mission. While their technical compliance with the standard was assessed, the assessment of their implementation has not been possible.

persons investigated or prosecuted for ML raises concern since the authorities indicated the widespread use of companies in ML schemes. The statutory sanctions available are proportionate. However, the very liberal and frequent use of plea agreements, including in the majority of aggravated ML cases, undermines the dissuasive effect thereof.

6. **FT is criminalized under Georgian law broadly in line with the FATF standard.** However, some legal shortcomings remain. In particular, the requirement for an act to "infringe upon public safety etc." to qualify as a terrorist act unduly narrows the scope of the terrorism offense. The scope of the definition of the term "terrorist acts" does not fully cover the offenses defined in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation and the International Convention for the Suppression of Terrorist Bombings. The definitions of the terms "terrorist" and "terrorist organization" should be expanded to extend to all "terrorist acts" as defined under the FATF standard. At the time of the on-site mission, prosecutions of three persons for terrorism financing were ongoing. There had been no convictions for terrorism financing.

7. **Provisional and conviction-based confiscation measures are available with respect to all predicate offenses, as well as the ML and FT offenses, and are applicable to proceeds as well as instrumentalities of crime.** Confiscation is a mandatory sanction and may be applied against property equivalent in value to the proceeds of crime. Around US$13 million has been confiscated since 2005 in the context of ML offenses. However, statistics provided by the authorities suggest that the legal provisions could be applied more effectively to confiscate proceeds of other types of crimes. Concerns also remain in relation to the authorities' practice to apply confiscation measures only in cases where property is actually available for confiscation at the time of conviction.

8. **Georgia has established a framework to implement the relevant United Nations Security Council Resolutions (UNSCRs) and amended this framework in December 2011.** The revisions constitute a significant improvement of Georgia's framework to implement its obligations under international law. However, given its very recent enactment, the effectiveness of the new framework could not be established.

9. **The FIU should further strengthen performance of its core functions.** Some sectors are not under a legal obligation to report suspicious transactions (real estate agents, lawyers, trust and company service providers (TCSPs), and electronic money institutions), thus the FIU is not capable of requesting additional information from them. The quality of analysis of suspicious transaction reports (STRs) is poor, mostly due to lack of analytical tools and weak quality of reporting, and limited use of its powers to access law enforcement information on ongoing investigations and prosecutions, or information from financial and nonfinancial institutions other than banks. In recent years, the FIU's increased workload was handled without a corresponding increase in its budget and a significant decrease in human resources.

10. **Although the framework for law enforcement authorities is broadly in place, there is room for improvement in implementation.** Since the decision of the Minister of Justice in 2010 recommending initiating ML investigations when law enforcement agencies (LEAs) suspect the presence of illegal proceeds, the number of ML investigations has increased. LEAs started to make better use of their powers and available investigative techniques. However, LEAs still lack the power to access information held by lawyers when the latter conduct financial activities on behalf of their clients. LEAs also need to increase their reliance on financial analysis and investigation techniques, in

particular in relation to stand-alone money laundering cases, to trace the origin of the illegal funds, detect patterns between suspects and associates, and to identify the ultimate beneficial owners of legal persons, accounts, and transactions, and share this information between the different LEAs.

11. **The measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments are not comprehensive, nor effective.** Customs or other competent authorities do not have the power to stop and investigate the movement of cash and bearer negotiable instruments unless they deem the relevant conduct to be smuggling. Only a small percentage of inbound and outbound movements of currency and bearer negotiable instruments are actually declared.

Preventive Measures–Financial Institutions

12. **The scope of Georgian preventive measures for the financial sector has been recently updated and is relatively comprehensive.** However, it does not cover factoring and credit card services (currently offered only by banks), as well as electronic money and investment funds. Some forms of money value transfer (MVT) operators are not subject to regulation and supervision. They include electronic money institutions, casino accounts operated to move value within Georgia, and self-service terminals accepting cash and providing transfer facilities (known as Pay-boxes).

13. **While most of the customer due diligence (CDD) and record-keeping provisions required under the international standard are in place, their implementation and effectiveness are limited.** There are still some deficiencies in the legal framework, such as the lack of a prohibition on numbered accounts, the existence of a minimum monetary threshold for when standard CDD must be carried out, inconsistencies relating to measures that can be applied on a risk-sensitive basis, and the timing for undertaking CDD. In addition, implementation is generally poor regarding the identification and verification of beneficial owners, documentation of the purpose and nature of the account business, ongoing customer due diligence, and the application of risk-sensitive measures to customers. There are still major legal shortcomings regarding reliance on third parties and introduced business, as well as the monitoring of wire transfers.

14. **The requirement for reporting ML and FT suspicious transactions and other information is largely in line with the standard; however, its implementation should be improved.** The number of STRs submitted to the FIU is relatively high. Most of them are filed by banks. Electronic money institutions are not required to report and other sectors are not filing suspicious reports (i.e., leasing, insurance companies). The number of STRs can be explained by financial institutions' reliance on a system based on fixed indicators triggering automatic reports, and by a tendency of defensive reporting. Overall, the quality of STRs is poor and reporting entities are confused about the distinction between requirements to monitor transactions and those to report suspicious transactions, particularly as there is no appropriate guidance. While there are known FT risks in Georgia, no FT-related STRs have ever been received by the FIU.

15. **Internal control and compliance provisions need to be strengthened, particularly for money remittance operators and currency exchange bureaus.** These professions are not required to ensure that the AML compliance officer and other relevant staff have timely access to customer information, nor are they obliged to screen their employees and provide adequate AML/CFT training. There is also no requirement for nonbank financial institutions to have an adequately resourced and

independent audit function. Internal control requirements pertaining to CFT were added for all financial institutions after the mission and were, therefore, not assessed.

16. **The National Bank of Georgia (NBG) has introduced many notable improvements to its supervisory framework since the onsite visit, but has limited resources for AML/CFT supervision.** The NBG exercises regulatory and supervisory oversight over the financial institutions (around 1,700 institutions) but with only a staff of five for onsite AML/CFT inspection. Electronic money institutions are not yet subject to AML/CFT supervision. Given its limited resources, the supervisory cycle has been quite long for some institutions, such as currency exchange bureaus and money remittance operators. Furthermore, there has been a lack of systematic off-site monitoring and on-site supervisory planning. Pecuniary sanctions available under sectorial regulations are low for several categories of violations (such as CDD requirements) to be considered as dissuasive and effective. Improvements have been introduced but are too recent to be assessed.

17. **Significant reforms have been recently introduced to the market entry framework.** As these took place after the on-site mission, their implementation has not been reviewed. At the time of the onsite visit, there were no fit or proper tests for owners and administrators for a number of categories of financial institutions.

Preventive Measures–Designated Non-Financial Businesses and Professions

18. **The preventive measures for DNFBPs are substantially similar to those applicable to financial institutions; however, their implementation is at its early stages.** Preventive measures only apply to notaries, casinos, dealers in precious metals and stones and, more recently, accountants. Notaries have implemented the majority of CDD requirements but the identification of beneficial owners presents some challenges. Reporting levels for notaries are relatively low for the number of transactions being conducted and implementation of internal control requirements is weak. The same observation can be made in respect of casinos, where there is little to no compliance with requirements other than customer identification. No STRs have been reported by casinos despite the rapid growth of this industry. Obligations for dealers in precious metals and stones have not been implemented and accountants have only been subject to the AML/CFT requirements since January 2012. The absence of requirements for lawyers, real estate, and TCSPs exacerbates the risk in these already vulnerable sectors.

19. **With the exception of notaries, DNFBPs are not supervised.** A number of supervisory authorities have been designated as AML/CFT supervisors in their respective areas of responsibility. However, other than activities undertaken by the Ministry of Justice pertaining to notaries, no AML/CFT examinations have been conducted.

Legal Persons and Arrangements & Non-Profit Organizations

20. **In light of the risk that criminals integrate proceeds generated abroad in Georgia or use Georgian entities to invest abroad, the inability to ensure adequate and accurate information on beneficial ownership of legal entities is a serious weakness.** The recent establishment of the National Agency of Public Registry (NAPR) has enhanced access to information on legal persons. However, at the time of the mission, most of the data included in existing registries had not been migrated nor updated. Bearer shares exist under Georgian law but except for listed companies, there are no appropriate measures to ensure that bearer shares are not misused for money laundering.

21. **The measures in place in Georgia relating to nonprofit organizations (NPOs) are deficient and do not adequately address the risks in Georgia. No formal review of the sector has been carried out, and there is no formal supervision of the sector. The** NAPR provides publicly-available information on NPOs registered since 2010; however, data prior to 2010 is deemed to be unreliable. There is a lack of outreach to the NPO sector. Domestic coordination mechanisms related to NPOs are weak and there is no appropriate point of contact and procedures to respond to international requests related to NPOs.

National and International Cooperation

22. **Georgia does not have a central coordinating body/committee to steer and coordinate the development and implementation of policies and activities to combat ML and TF.** There is no mechanism allowing for cooperation between the supervisory agencies of FIs and DNFBPs, notably the NBG, the Ministry of Justice, and the Ministry of Finance.

23. **Georgia's mutual legal assistance (MLA) framework is solid and allows for the provision of a wide range of assistance to foreign countries in the context of criminal investigations and prosecutions.** Such assistance does not seem to be subject to any unduly restrictive or unreasonable requirements. While some of the grounds for refusal of MLA are drafted in a rather general manner, the low number of rejected requests leads to the conclusion that in practice these provisions are interpreted in a narrow manner. Both ML and FT are extraditable offenses. For those types of assistance that require dual criminality to be met, the shortcomings noted with respect to the FT offense may limit Georgia's ability to provide MLA or extradite a person in certain cases. Georgia's lack of diplomatic relations with Russia constitutes a practical challenge to effectively provide and receive international cooperation in ML and FT cases.

24. **International cooperation mechanisms are in place for the FIU, LEAs, and supervisors.** Information exchanged with foreign FIUs is comprehensive; however, timeliness could be improved and the FIU would benefit from making more proactive use of international collaboration channels. The NBG is responsive to requests from foreign supervisors but could make additional use of cooperation mechanisms to help ascertain if fit-and-proper criteria are met. LEAs exchange information through a variety of channels including Interpol as well as bilateral and multilateral agreements. However, there is a lack of a clear legal basis that allows LEAs to compel production of information detained by lawyers based on international requests.

1. GENERAL

1.1. General Information on Georgia

Overview

25. Georgia is located south of the Caucasus. The population of Georgia is almost 4.44 million as of January 2010. The country is bordered by Russia to the north, Azerbaijan to the east, Armenia and Turkey to the south, and the Black Sea to the west. The capital and seat of government is Tbilisi. According to the Constitution of Georgia, the official language of Georgia is Georgian and in the Abkhazian region of Georgia, the official languages are Georgian and Abkhazian. Its official currency is the Georgian Lari (GEL).[2] Georgia consists of nine regions divided into 65 districts, and includes the autonomous republics of Adjara and Abkhazia.

26. Georgia has a land area of 69,700 square kilometers, including Abkhazia and the Tskhinvali Region/South Ossetia. Its Black Sea coastline is 310 kilometers long.

27. Pursuant to Articles 1 and 2 of the Constitution,[3] the authorities consider that the laws of Georgia apply to the whole Georgian territory, including Abkhazia and the Tskhinvali Region/South Ossetia, which together represent close to 20 percent of the total land mass of the country. As mentioned in paras. 5 and 6 above, Abkhazia and the Tskhinvali Region/South Ossetia have declared their independence from Georgia and have been recognized by a few countries (Russia, Venezuela, Nicaragua, Nauru, and Tuvalu). They are not recognized as independent states by the United Nations, or the IMF.[4]

28. The assumption in the FATF Methodology is that the standards must be implemented on the entire territory of the assessed country, and there is no guidance for assessors on how to address a situation where parts of the territory are not under the control of the central government. In previous

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[2] As of October 2011: 1 US$=GEL 1.69.

[3] According to Article 1 of the Constitution "Georgia shall be an independent, unified and indivisible state, as confirmed by the Referendum of 31 March 1991, held throughout the territory of the country, including the ASSR of Abkhazia and the Tskhinvali Region/South Ossetia and by the Act of Restoration of the State Independence of Georgia of 9 April 1991." According to Article 2 of the Constitution "The territory of the state of Georgia shall be determined as of 21 December 1991. The territorial integrity of Georgia and the inviolability of the state frontiers, being recognized by the world community of nations and international organisations, shall be confirmed by the Constitution and laws of Georgia."

[4] See the recent report on observance of standards and codes – Data Module: http://www.imf.org/external/pubs/ft/scr/2012/cr1258.pdf, "Data do not cover territories of Abkhazian Autonomous Republic and Tskhinvali Region, a part of Georgian territory not controlled by the central authorities".

MONEYVAL mutual evaluation reports, the existence of breakaway territories has generally been mentioned in Section 1 of the reports, but has not been considered for ratings purposes.[5]

29. This report describes the legal framework applicable in Georgia and its implementation. Due to the lack of effective control over Abkhazia and the Tskhinvali Region/South Ossetia, however, the central authorities were not in a position to provide the assessment team with information on the implementation of the AML/CFT framework in those regions. In these circumstances, an assessment of the level of compliance in the entire Georgian territory was not possible, and the report therefore mainly focuses on the areas under the central authorities' control. Nevertheless, this report also acknowledges the authorities' conclusions with respect to the specific risks of ML (notably resulting from smuggling and drug and arms trafficking) and FT that emanate from these regions, as well as the authorities' obligations to take measures to mitigate those risks. When these measures have not been taken, the assessment team has made appropriate recommendations for the authorities' consideration, but has not taken this situation into account in assessing technical compliance.

Recent history, system of government, and political situation

30. The independent Republic of Georgia was established on May 26, 1918 in the wake of the Russian Revolution. Georgia was an independent republic between 1918 and 1921. In 1922, it became part of the Soviet Union, until the Supreme Council of the Republic of Georgia declared independence on April 9, 1991. After a coup in December 1991, the country was in civil war until 1993.

31. A new constitution was approved in August 1995 and has since been amended several times. The latest amendment aimed to change Georgia's system of government from a presidential to a parliamentary system, where the executive power is in the hands of government, which is accountable to the parliament. The role of the President was changed to be primarily a guarantor of the continuity and national independence of the state and of the functioning of the democratic institutions. A constitutional court exists and met for the first time in late 1996.

32. In 2003, the President was deposed by the Rose Revolution, after Georgian opposition and international observers asserted that the parliamentary elections were fraudulent. In its first three years, the new government made progress in fighting endemic corruption and establishing a series of reforms. However, it experienced ongoing difficulties with the breakaway regions of the Tskhinvali Region/South Ossetia and Abkhazia. The situation with these regions was among the reasons for the 2008 conflict.

33. At present, only Russia, Venezuela, Nicaragua, Nauru, and Tuvalu have recognized the Abkhazia and the Tskhinvali Region/South Ossetia and Vanuatu recognizes only the former.

[5] See the 2011 MER for Cyprus where the assessors have indicated, in para. 1, that "For the purpose of this report, the evaluation team has not assessed the situation in the areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control."

Georgian Economy

34. Georgia's economy sustained GDP growth of more than 10 percent in 2006–07, with strong inflows of foreign investment. However, GDP growth slowed in 2008 following the conflict with Russia, turned negative in 2009 as foreign direct investment and workers' remittances declined in the wake of the global financial crisis, but rebounded in 2010.

35. The main economic activities include the cultivation of agricultural products such as grapes, citrus fruits, and hazelnuts; mining of manganese and copper; and the output of a small industrial sector producing alcoholic and nonalcoholic beverages, metals, machinery, aircraft, and chemicals. Areas of recent improvement include growth in the construction, banking services, and mining sectors.

GDP composition by sector[6]	2011
Agriculture	9.3%
Industry	23.5%
Services	67.1%

36. The country imports nearly all its needed supplies of natural gas and oil products. It has sizeable hydropower capacity, a growing component of its energy supplies. The construction on the Baku-T'bilisi-Ceyhan oil pipeline, the Baku-T'bilisi-Erzerum gas pipeline, and the Kars-Akhalkalaki Railroad are part of a strategy to capitalize on Georgia's strategic location between Europe and Asia and to develop its role as a transit point for gas, oil, and other goods.

37. The table below shows some economic indicators provided by the Georgian authorities:

	2008	2009	2010	2011*
Nominal GDP, in million Lari	19,075	17,986	20,743	24,229
Real GDP growth, y-o-y, %	2.3	-3.8	6.3	7.0
GDP per capita, US$	2,937	2,455	2,629	3,215
Unemployment rate (in percent)	16.5	16.9	16.3	--
Inflation rate, y-o-y (end of period)	5.5	3.0	11.2	2.0

Foreign trade and payments

38. The value of foreign trade in goods and services represented approximately 90 percent of GDP in 2010. Georgia's trade balance has been characterized by a structural deficit, a result of the

[6] Figures provided by Georgian authorities.

high prices for imported energy and commodities and the import of capital goods. Due to its geographic location, Georgia is a regional hub for trade. Accordingly, some of the goods imported into Georgia, such as automobiles, are subsequently re-exported to neighboring countries. The growing tourism sector, the transport services (including transit fees generated by the pipelines that traverse Georgian territory), and logistics sector have become significant generators of export revenues, enabling Georgia to become a net services exporter.

39. The table below shows the Georgia exports/imports in 2011.[7]

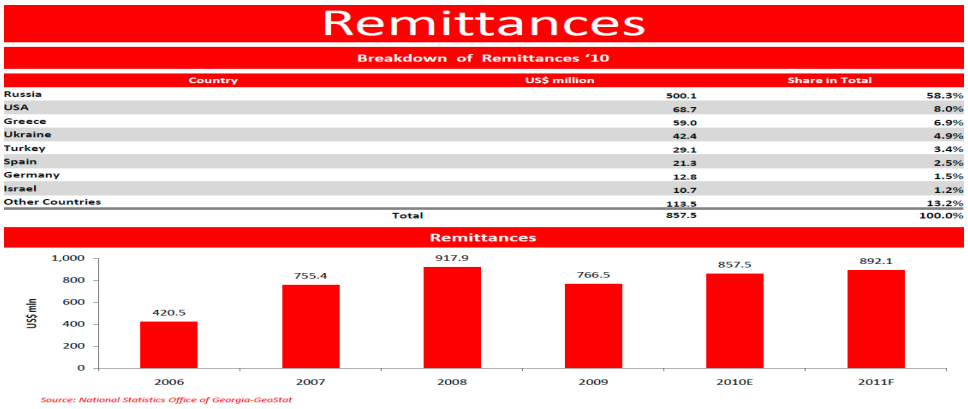
	Exports	Exports - partners:	Imports	Import - partners:
2011	$2.189 billion	Turkey 10.4%, Azerbaijan 19.5%, Armenia 10.2%, Kazakhstan 7.2% USA 6.6%, Canada 5.2%, Ukraine 6.5%	$7.058 billion	Turkey 18%, Ukraine 10%, Azerbaijan 8.7%, Russia 5.5%, Germany 6.8%, China 7.4% Bulgaria 3.6%
Commodities	Vehicles, ferro-alloys, fertilizers, nuts, scrap metal, gold, copper		Fuels, vehicles, machinery and parts, grain and other foods, pharmaceuticals	

40. Net remittance inflows into Georgia have been increasing significantly between 2003 and 2008, primarily due to the improved economic circumstances and increased earning power of Georgians abroad, as well as increased use of the formal banking and money transfer system. In 2007, net remittance inflows represented 7.4 percent of GDP, compared to 2.1 percent in 2003 even though due to the global financial crisis, the growth of inflow of net remittances was interrupted in 2009. By the end of 2010, the amount of net remittances flowing into the country increased again, but did not reach its pre-crisis level.

41. The table below shows the breakdown of remittances in 2010.[8]

[7] Georgian authorities.

[8] http://www.georgia.gov.ge.



42. A 2007 World Bank study[9] provided insight on the remittance channels. The study highlighted that the majority of individuals relied on friends travelling home.

Channels of remitting remittances to Georgia, 2007	
Method	**Users (%)**
Friends travelling home	36.1
Money transfer operators (Western Union, etc.)	21.2
Bank Transfer	17.5
Through individuals and contacts	11.3
Post Office	10.4
Informal transfer offices	1.9
Migrant when travelling home	0.6
Transfer check	0.5
Debit card	0.5

Source: World Bank, 2007.

Structural elements for an effective AML/CFT system

Transparency and governance

43. The Group of States against Corruption (GRECO) has expressed concerns about the laws that govern political party funding. In its 2011 Third Evaluation Report on the Transparency of party funding, GRECO found that, despite having a legislative framework in place, the fundamental weakness related to political party funding was the lack of effective monitoring which undermines the effectiveness in practice of relevant rules.[10] The authorities consider that they have addressed GRECO's recommendations regarding the transparency of party funding.

[9] Quillin, B., C. Segni, S. Sirtaine, and I. Skamnelos (2007) Remittances in the CIS Countries: A Study of Selected Corridors, World Bank, Chief Economist's Working Paper Series, Europe and Central Asia Finance and Private Sector Development Department, Table 8, p. 16, Vol. 2, No. 2, July 2007.

[10] *Third Evaluation Round–Evaluation Report on Georgia on Transparency of party funding,* para. 29, p. 27 (GRECO, 51st Plenary, Strasbourg, May 23–27, 2011).

44. To increase transparency, the government has launched a unified electronic system of state procurement and an online asset declaration system for public officials.

45. In addition, to remove all major bureaucratic barriers in administrative services, the government has introduced a one-stop-shop window for entrepreneurs and companies and unified services of different state agencies.

Culture of AML/CFT compliance

46. A proper culture of AML/CFT compliance is still under development. In the main financial institutions, there is a clear understanding of the risk posed by criminals, which does not appear to be the case for other institutions and most of the DNFBPs. In relation to the latter, this could be the result of the limited coverage in the legal framework and the limited role of industry trade groups and self-regulatory organizations (SROs). Overall, there is a limited understanding by the private sector of the laundering risks presented by white collar criminals (e.g., high-level corruption, tax crimes, and professional money launderers).

Measures to prevent and combat corruption

47. Organized crime, corruption and bribery by public officials, public servants or other government agents, trading in influence and abuse of power by public servants, along with tax evasion have traditionally been identified in Georgia as main sources of illegal income in previous reports such as those produced by MONEYVAL and GRECO. To address these areas of concern, and specifically to fight corruption, Georgia's government has taken a number of steps, including criminalizing corruption and trading in influence, and addressing corruption in the public service. The latter included the creation of an anti-corruption department of the Prosecution service, and the approval of a national anti-corruption strategy and action plan. The Parliament of Georgia ratified the 2003 UN Convention against Corruption on October 10, 2008 under Resolution 337-H.

48. The May 2011 report from GRECO [11] on the criminalization of corruption recognizes the efforts made, over the years, by Georgian authorities to improve the legal framework to fight corruption, in particular by amending the Criminal Code of Georgia (CCG). The GRECO assessors found that provisions on corruption in the Georgian CCG are now almost fully in line with the requirements of the Criminal Law Convention on Corruption (ETS 173) and the Additional Protocol to the Convention (ETS 191).[12] However, the report calls upon Georgia to unambiguously cover bribery of foreign arbitrators[13] and also points out the need to ensure that situations in which a third party benefits from undue advantage are adequately covered in the provisions on private sector bribery and active trading in influence.[14] The GRECO report also recommends reviewing the special

[11] *Third Evaluation Round–Evaluation Report on Georgia on Incriminations* (GRECO, 51st Plenary, Strasbourg, May 23–27, 2011).

[12] *Ibid*, para. 84, p. 28.

[13] *Ibid*, para. 85, iii, p. 28.

[14] *Ibid*, para. 85, i and ii, p. 28.

defense of 'effective regret' to minimize risks of abuse.[15] Georgian authorities have indicated that the anti-corruption legislation has been reformed to be in line with the international standards in November 2011, including the topic of the bribery in favor of a third person and bribery through an intermediary.

Court system efficiency

49. Among the first reforms to follow after the Rose Revolution was the one of the judiciary system in order to guarantee the right to a fair trial and to combat corruption among judges. Salaries were increased to reduce the risk of bribery. Thus, Georgia has become one of the European States which devotes more than 60 percent of the justice budget to the operation of Courts, with salaries representing the main component.[16] By comparison, the average European State allocates less resources to court and prosecution services per inhabitant (less than €10 when the average is €47.1 per capita).

Ethical and professional requirements for police officers, prosecutors, judges etc.

50. The GRECO evaluators mentioned that some of the interlocutors interviewed by the assessment team expressed criticism of the handling of corruption cases. The concern focused mainly on the perceived lack of independence of the judiciary and the right to a fair trial,[17], and took note of allegations of high-level corruption and the perception of impunity of high-level officials.[18] A 2010 OECD monitoring report on anti-corruption in Georgia[19] questions the criminal conviction rate which averages around 96%. The report also quotes the deputy Public Defender, stating in 2009 that the prosecutor's office has become "the executive punitive tool which implements the Government's political decisions and, for its part, completely governs the courts."[20] In July 2008 the Chairman of the Supreme Court of Georgia stated that the judges were not independent due to the lack of principles and tradition of an independent judiciary.

51. In order to increase independence and efficiency of the judiciary, the Law of Georgia on the "Rules of Communication with Judges of Common Courts of Georgia" was adopted by the Parliament on 11 July 2007. It regulates the ex parte communication of a judge and thus aims to

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[15] *Ibid*, para. 85, iv, p. 28.

[16] JAReport 2010. European Judicial Systems. European Commission for the Efficiency of the Justice.

[17] *Evaluation Report on Georgia on Incriminations*, para. 68, footnote 16, p. 20 (GRECO, May 23-27, 2011).

[18] GRECO report, third Evaluation Round (Adopted by GRECO at its 51st Plenary meeting, Strasbourg, 23-27 May 2011).

[19] *Second Round of Monitoring–Georgia–Monitoring Report*, p. 45 (OECD Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, 8th Monitoring Meeting, March 31, 2010).

[20] According to the authorities, the Public Defender reports of 2010 and 2011 do not mention the concern cited from the report of 2009, which means that the said concern has not been an issue since 2009.

guarantee de facto independence and impartiality of the judiciary. Due to recent amendments to the Law, the fine for the violation of the rules of communication by public servant has increased twofold, while for state-political officials increased threefold. In 2010 the Criminal Code of Georgia has been amended, criminalizing all kinds of illegal interference in the work of judiciary in order to influence the legal proceedings from a state-political official. The latest studies related to the public trust in courts show that confidence of society in court has been rising each year.[21]

52. Judges are not permitted to join political parties or become involved in political activities. They are allowed to teach and perform other academic activities, but are not allowed to perform any other paid work. The process of admission for judges is very comprehensive. The law requires a competitive process for selecting judges and sets out professional criteria. Judges must have higher legal education and at least five years of relevant work experience. They must complete 14 months of training at the High School of Justice.[22] New mandatory judicial ethics rules were adopted in 2007. The following year, out of 1,256 complaints filed, 35 cases were brought against judges. Out of the 35 cases, 12 judges were found to have violated the ethics requirements, three judges were dismissed.[23](For more information please refer to Recommendations 27 and 28).

53. The 2010 OECD monitoring report indicates that observers have pointed out that the oral examination process can be influenced by subjective criteria, "suggesting that "reliability" is an important factor for appointment, as are contacts and personal relationships. […] New judges with no judicial experience have been promoted to chief judge over other candidates who have served a respectable amount of time on the bench."[24]

54. Members of the police must undergo training and cannot work for another government agency or in the private sector. They can be dismissed for misconduct such as gross violation of discipline and corruption. Hiring takes place on the basis of professional criteria, using detailed procedures, an open competition, and special training.

55. The Prosecutor's Office must be politically neutral and its members cannot join political parties or engage in political or commercial activities. Prosecutors and investigators must fulfill certain professional requirements to be appointed, complete a six-month internship, and take an examination.

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[21] Namely, the trust of public in court in 2005 was 25%, in 2008 – 55%, in 2009 – 60%, 2010 – 63% and in 2011 - about 70%. These studies have been carried out by international organizations, such as UNDP, ABA and USAID (in partnership with IPM). EBRD Life in transition Survey II 2011aslo shows the rising confidence in court.

[22] *Second Round of Monitoring–Georgia*, p. 44 (OECD Anti-Corruption Network for Eastern Europe and Central Asia, March 31, 2010).

[23] *Ibid*, p. 44.

[24] *Second Round of Monitoring–Georgia*, p. 44 (OECD Anti-Corruption Network for Eastern Europe and Central Asia, March 31, 2010).

Ethical and professional requirements for accountants, auditors, lawyers, etc.

56. Accountants, auditors and lawyers can be disciplined or even disbarred by the Ethics Committee of the Bar Associations for breaches of the Law or the Code of Ethics. The Georgian Federation of Professional Accountants and Auditors does not impose any requirements.

1.2. General Situation of Money Laundering and Financing of Terrorism

57. The assessors have identified a number of major vulnerabilities and threats which contribute to significant risks of ML and FT. They include: i) a relatively large number of customers that are, or are owned by, offshore companies for which the identity of their beneficial owners are not verified; ii) a rapid and ongoing increase of nonresident deposits; iii) the development of private banking activities including a clientele of foreign politically-exposed persons (PEPs); iv) the rapid growth of casino business and of non-face-to-face transactions; v) the existence of large Georgian-led criminal organizations abroad which exposes the risk of proceeds of crime being transferred back to Georgia; and vi) domestic statistics demonstrating the existence of major proceeds generating crimes such as corruption, tax evasion, and drug trafficking.

58. While the first four vulnerabilities are dealt with in other sections of this report as they directly relate to the AML/CFT framework, the last three threats are detailed in this section.

National assessment of threat to Georgia's security

59. Georgia's Threat Assessment Document (TAD) for 2010–2013 was approved on September 2, 2010 (Presidential Order No. 707).

60. Part III of the TAD (Transnational Threats) mentions the threats posed by non-state actors, including international terrorist organizations and transnational criminal entities. The report indicates that "the lawlessness in the occupied territories represents another significant transnational security challenge." "The illegal transit of components of weapons of mass destruction, illegal trade in weapons and narcotics, production and distribution of counterfeit currency, and human trafficking" are identified by the authorities as originating from these territories and posing grave risks. As noted above, this information has not been examined by the assessors.

Predicate Offenses

61. The predicate offenses that have been identified in recent years by the authorities as major sources of illegal proceeds are tax evasion, falsification of documents, fraud, embezzlement and misappropriation, corruption, abuse of power, illegal entrepreneurship, customs fraud, environmental crimes, and theft. At the time of the MONEYVAL third round report, smuggling, drug trafficking, and abuse of power by public servants were also identified by the assessors.

62. Detailed statistics on predicate offenses are provided in Section 2 (Recommendation 1):

Corruption

63. Since 2003, the authorities have stepped up the fight against corruption.

64. The table below indicates a rapid increase in the number of criminal investigations and prosecutions initiated and persons convicted over the period 2008–2010.[25]

	2008	2009	2010
Article 338 CC *(passive bribery)*			
Investigations	47	72	146
Prosecutions	28	64	149
Convictions	38	59	117
Article 339 CC *(active bribery)*			
Investigations	23	64	43
Prosecutions	12	65	87
Convictions	19	58	67
Article 339[1] CC *(trading in influence)*			
Investigations	3	4	7
Prosecutions	3	3	3
Convictions	3	4	3
Article 221 CC *(commercial bribery)*			
Investigations	4	6	32
Prosecutions	3	2	4
Convictions	5	2	7
Article 340 (*acceptance of gifts*)			
Investigations	-	1	1
Prosecutions	-	-	-
Convictions	-	-	-

65. According to 2010 Global Corruption Barometer, only 3 percent of Georgians surveyed had to pay a bribe in the past 12 months, one of the lowest numbers amongst all countries surveyed. A similar index is provided by the second wave of EBRD Life in Transition Survey. In the EBRD's Life in transition Survey, Georgia is ranked second for satisfaction with public service delivery.

66. Georgia ranked 64th out of 182 jurisdictions in Transparency International 2011 Corruption Perceptions Index (66th in 2009 and 68th in 2010). This ranking indicates that corruption is still an important issue in the country and statistics provided by the authorities confirm that corruption at different levels remains a very relevant proceeds-generating crime in Georgia.

Organized Crime

67. The history of organized crime pre-dates the Bolshevik revolution, when Georgia was a trade and transportation hub. The structure of the Georgian organized crime (denominated "thieves in law") is based on clan ties and networks. Organized crime was widespread in Georgia before the Rose Revolution of 2003. The new government then announced a policy of zero tolerance against crime, and a law against "organized crime and racketeering" was adopted in December 2005. Membership in a criminal organization and acknowledgment of being a "thief-in-law" were criminalized (Article 223[1] of the CCG). Subsequent investigations led to convictions and confiscation of assets of

[25] GRECO report Third Evaluation Round (Adopted by GRECO at its 51st Plenary meeting, Strasbourg, May 23–27, 2011).

the criminals. As of today, the authorities consider that organized crime is not an issue anymore and that the criminals that are still active have left the country. Statistics indicate that the level of crime recorded in Georgia is now relatively low compared with the average in European countries.

68. However, Georgian criminal groups are still active in a number of European countries such as Russia, Spain, Austria, Italy, Switzerland, Germany, Belgium, and France, among others. Money laundering,[26] drug trafficking, weapon possession, and extortion are some of the crimes associated with the Georgian mafia network. They still maintain close ties, including financial ties, to their family, homeland, and clan associations. Assessors were also informed that some criminal organizations had tried to influence Georgian political life in recent years. Accordingly, despite the progress on the fight against organized crime in Georgia, the existence of Georgian criminal groups abroad creates a risk that proceeds of their crimes are laundered in Georgia.

Drugs

69. UNODC's 2011 World Drug Report mentions limited cultivation of cannabis and opium poppy in Georgia, mostly for domestic consumption with a lower opiate prevalence than the world average. Nevertheless, as with neighboring countries, Georgia appears to be used a transshipment point for opiates to Western Europe and Russia and one of the land routes for the heroin coming from Pakistan and Afghanistan. The exact drug trafficking routes and sources are difficult to determine due to lack of seizures and investigations. In addition, while the central authorities do not control the regions of Abkhazia and the Tskhinvali Region/South Ossetia, they believe significant drug trafficking is occurring there.

70. A meaningful estimation of the total drug trafficking is difficult, as the seizures of opiates and other drugs are very limited (see table below) making it hard to have a reliable estimate of the total amount of drugs passing through Georgian territory.

Drug-Related Seizures 2006-2009

	2006	2007	2008	2009
Heroin	8.592 k g	16.157 kg	12.12 kg	2.3 kg
Opium	229.1 g	185.89 g	53.6 g	37.2 g
Marijuana	23.958 kg	23.647 kg	28.3 kg	4.7 kg
Tramadol	70.850 g	100.3 g	739.2 g	79.0 g
Subutex	10,958 tablets	16,232 tablets	13,757 tablets	5072 tablets
Cannabis plants	123.336 kg	64.860 kg	41.563 kg	No data available
Methadone	23.057 g	213.9 g	328.27 g	73.8 g
Morphine	3.33 g	4.455 g	38.049 g	3.57 g
Codeine	5.1 g 102 pills	--------	1.675 g	0.535 g
Cannabis resin	8.242 g	--------	88.230 g	9.63 g
Poppy	---------	1388 g	-------	--------
Cocaine	3.224 g	0.558 g	1.375 g	0.78 g
Methamphetamine	2.418 g	0.472 g	2.907 g	0.03 g
Dypheniloxidate	--------	--------	0.7 g	---------

Table 2: Drug-related seizures 2006-2009

Source: Southern Caucasus Anti Drug Program (SCAD)

[26] In March 2010, a major operation code named "Java" arrested at least 100 suspected members of Georgian organized crimes in Austria, France, Italy, Switzerland, and Spain.

71. Regarding internal drug consumption, the 2010 SCAD overview report[27] has expressed concerns about the accuracy of statistics, but notes that as far as injectable drug are concerned, the most frequently encountered ones are smuggled Subutex and heroin. The UNODC report also notes that Georgia has noticed an increase in the use of amphetamine-type stimulants over the past years. Ecstasy consumption has increased in Georgia, though the levels are still lower than in other countries in the region.

Asia: Countries and Areas Reporting Expert Perception in 'ecstasy' use in 2009		
Source: UNODC ARQ		
Decrease	**Stable**	**Increase**
China	Korea (Republic of)	Armenia
Hong Kong, China	Kuwait	Georgia
Macao, China	Malaysia	Israel
Indonesia		Lebanon
Japan		Pakistan
Kazakhstan		Viet Nam
Singapore		
Thailand		

Source: UNODC 2001 World Report

Trafficking in human beings

72. The UNODC's Global Report on Trafficking in Persons[28] identifies Georgia as a country where trafficking is taking place. The report also points out that Georgia showed a moderate increase in prosecutions and convictions of human trafficking cases during the period 2000–2005 followed by a decrease after 2006.

Human Trafficking							
							persons
	2005	**2006**	**2007**	**2008**	**2009**	**2010**	**2011 I-II quarters**
Registered, total	13	33	29	10	12	11	3
of which: detected	7	15	8	2	3	3	0
Source: Ministry of Internal Affairs of Georgia.							

[27] Published with the support from the Foundation "Global Initiative on Psychiatry-Tblisi and in cooperation with SCAD, funded by the European Union.

[28] UNODC Global report on Trafficking in Persons, 2009.

73. The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) has published a report on Georgia in February 2012 which notes that Georgia is primarily a country of origin of trafficked persons, the vast majority of victims of trafficking in human beings identified in 2008-2010 (83 out of 88) being Georgian nationals.[29] The report indicates that to a lesser extent Georgia has also been used as a country of transit of for foreign victims of trafficking in the direction of Turkey and Wetern Europe. The majority of the victims of trafficking identified by the Georgian authorities have been women subject to sexual exploitation. The main destination countries for Georgian victims of trafficking are Turkey, the United Arab Emirates, Egypt, and Greece. Official data show low numbers of victims of national trafficking (i.e. within Georgia), and the number of children identified as victims has also been low.

74. In the report, GRETA notes the progress made by the Georgians authorities in combating trafficking in human beings, including through the adoption of a specific anti-trafficking law, the setting-up of the interagency co-ordination council against trafficking in human beings and a State Fund for the protection and assistance of victims of trafficking, as well as increasing the budgetary allocation for victim support.

Tax crimes

75. The IMF staff report for Georgia's 2011Article IV consultation notes that the tax system in Georgia is quite efficient. Tax collection has been one of the main priorities of the government. Tax authorities indicated concerns related to the use of offshore companies by some taxpayers and difficulties in obtaining relevant information through international cooperation.

Money Laundering

76. The Authorities have identified as the following ML techniques to be the most common: use of fictitious and offshore companies; fictitious directors and representatives; false contracts and documents in order to conceal and disguise illicit origins of proceeds of crime and transfer them through the banks of Georgia inside and outside of the country; intermingling of proceeds of crime with proceeds of legal businesses; providing the responsible AML bodies with false information regarding trade in goods and having businesses abroad in order to justify the movement of illicit money into and out of the country.

77. As shown by the table below, prosecutions and convictions for money laundering have increased in the recent years. Georgian courts have convicted 2 persons in 2007, 5 in 2008, 1 in 2009, 19 in 2010, and 123 in 2011.

[29] See para. 10, http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_24_FGR_GEO_en.pdf.

Year	ML investigation cases	ML prosecutions persons	ML convictions persons	ML convictions cases	Proceeds frozen in EUR	Proceeds seized in EUR	Proceeds confiscated [30] in EUR
2007	9	2	2	1	1.949.000	--	--
2008	9	4	5	4	8.751.609	543.486	2.023.248
2009	9	6	1	1	1.738.200	---	
2010	22	29	19	16	108.726	101.565	700.000
2011	58	143	123	75	2.789.469 plus 13 units of real state.	228.007	2 417 638

Terrorism

78. The Treat Assessment Document deems that the existence of the conflict zones in Georgia's neighboring countries increases the possibility of spillover into Georgia. This may represent a challenge to Georgia's national security because "the transition of the regional conflicts to a more intensive phase and possible resumption of hostilities, along with other challenges, will cause a humanitarian crisis that will produce large refugee flows and will increase the danger that informal armed formations may enter the country along with the refugees." Other harmful consequences of such developments may also include "the increase in contraband and other types of transnational organized criminal activities" and "the deterioration of the regional security environment," all of which "will threaten the transportation and energy projects existing in the Caucasus."[31]

79. Groups related to smuggling of nuclear material are also mentioned in the TAD as possible terrorist threats along with possible links to terrorist organizations from the Tskhinvali Region/South Ossetia and Abkhazia**.**

Financing of Terrorism

80. In September 2011 one FT investigation was launched by the Department of Constitutional Security of the Ministry of Internal Affairs of Georgia. Three persons were been indicted for FT. As only a few cases of FT have been investigated in Georgia, there have not been trend analyses or reports on techniques and methods of FT issued. The authorities consider that a significant source of FT risk is related to the situation in the Tskhinvali Region/South Ossetia and Abkhazia.

[30] Includes estimated value of properties.

[31] TAD 2010–2013.

1.3. Overview of the Financial Sector

81. As of end-September 2011, there were 1,677 local and foreign financial institutions in Georgia (see table below). For the year 2010, financial services accounted for 2.6 percent of Georgia's GDP and 1.2 percent of total employment in the economy. The banking sector's total assets constituted 50 percent of the country's GDP at the end of 2010.

Type of Institution	No. of Licensed/ Registered Institutions as of end Sep. 2011	Size of Financial Line (by assets, premium, turnover) in GEL	Description of Main Activities and Products Offered	No of Overseas Branches/ Subsidiaries
Commercial Banks	19	11, 975,675,466	Receive deposits Provide loans Provide money remittance services Issue payment instruments Issue guarantees Process cash and non-cash settlement operations	2
Microfinance Organizations	59	399,907,519	Provide loans and money remittance services	Nil
Credit Unions	18	3,630,492	Provide loans and receive deposits only from their members	Nil
Insurance Companies	15	Total premiums of 265,821,012	Composite insurers are allowed to provide life and non-life insurance products. Life insurance is represented by term life (mainly credit life) policies.	Nil
Non-State Pension Scheme Founders	7	Total contributions of 1,517,520 Total pension reserves of 9,287,295	7 registered pension schemes are founded by insurers. There are no stand-alone pension funds in the market.	Nil
Insurance Brokers	6	Not available	Insurance brokers perform intermediary activities in direct insurance and reinsurance	Nil
Securities Brokers	11	Not available	Execute transactions and render services related with trading of equity share, shares, bonds, certificates, bills, checks and other securities	1
Securities Registrars	6	Not available	Perform bookkeeping of securities owners, execute	Nil

			transactions and make records of securities transactions	
Stock Exchange	1	Not available	Ensuring a special marketplace for securities trading, where only financial institutions are allowed to trade in securities	Nil
Central Depository	1	Not available	Clearing and settlements of securities trading	Nil
Money Remittance Services	49	Not available	Provide money remittance services as agents or subagents	Nil
Currency Exchange Bureaus	1506	935,511,534	Provide currency exchange services (72.5% of them are sole proprietors/entrepreneurs)	Nil
Leasing	Not available	Not available	Provide financial leasing products	Not available

82. The above categories of financial institutions are subject to the preventive measures of the AML/CFT Law, except for the Stock Exchange and the Central Depository, on the basis that securities transactions are channeled through securities brokers and registrars, which are required to comply with the AML/CFT law and related regulations/decrees. Leasing companies became subject to the AML Law in January 2012. The Georgian authorities indicated that a review did not identify any stand alone factoring companies and only very few credit service companies in Georgia.

83. Georgia has a total of 19 commercial banks with assets of GEL 11,976, 675 million.[32] In addition, there are 59 microfinance organizations and 18 credit unions with assets of GEL 399,907,519 and GEL 3,630,492 , respectively, which operate in Georgia, focusing on small-scale financing including installment credit.

Banking Sector

84. The Georgian financial system is dominated by commercial banks. Total assets of the banking system constituted almost 50 percent of GDP as of end-2010. There are 19 licensed commercial banks operating in Georgia, out of which 17 are foreign controlled. The two remaining banks are branches of foreign banks. Foreign-controlled banks and branches constitute 98.60 percent of total banking assets, and 99.69 percent of equity in the banking system is externally owned.

[32] At the time of the reporting of financial statements, the exchange rate was approximately GEL 1=0.4417 Euros/0.6020 United States dollars.

85. Georgia's two largest banks have significant foreign ownership. The National Bank of Georgia (NBG) is listed on the London Stock Exchange and TBC Bank is owned by various international financial institutions.[33]

86. The Georgian banking sector has been growing at a significant rate from 2005 to 2010. The average growth rate of bank loans in the last five years was 32 percent. In 2009, the volume of loans declined 13 percent due to the global financial crisis and Georgia's political situation with Russia. The volume has since improved and the growth rate of bank loans reached 22 percent in the year 2011. In general, since 2007 the banking sector has seen an increase in activities as reflected in the statistics below:

	2007	2008	2009	2010
Number of Banks	20	20	19	19
Of which foreign controlled	14	17	15	16
Branches	124	124	120	119
Service centers	416	559	513	522

Banking sector—structure of basic assets and liabilities:

	2007	2008	2009	2010
Assets/GDP	42%	46%	48%	51%

Banking Supervision

87. To increase efficiency of macro-prudential measures, the NBG initiated a transition towards risk-based supervision. Initially, supervisory resources were reallocated in line with the risk profile and systemic importance of banks, banking risks were identified and improvements were made to the micro-prudential risk assessment framework. To protect consumers, the NBG adopted special regulations and established a structural unit to monitor protection of consumers' rights in the financial market and to analyze and disseminate relevant statistical data.

Capital Market

88. The securities market is still at an early stage of development and comprises the following licensed participants: 1 stock exchange, 1 central securities depository, 11 securities companies, and 6 registrars. The Georgian Stock Exchange (GSE) was established in 1999 and is governed by a supervisory board with 12 members. Its trading volume has been declining over the past few years and totaled GEL 5.1 million (US$). As of February 1, 2011, 138 companies were traded on the GSE, with total market capitalization of US$1.1 billion and the average daily turnover of US$9,949.

[33] These include the EBRD, the IFC, DEG Bank (which is a member of the KFW Bank Group) and the Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V. Other major foreign investors in the Georgian banking sector include Procredit Group, Société Générale, Liberty Investments Holding, HSBC, VTB Bank, Dhabi Group, PrivatBank, BTA Bank, International Bank of Azerbaijan, Halyk Bank and Ziraat Bank.

GSE Market Statistics

	2006	2007	2008	2009	2010
Number of Trades at GSE	**5,538**	**6,908**	**2,321**	**1,304**	**2,372**
Trading Volume at GSE *(GEL millions)*					
	61.7	**38.4**	**10.6**	**3.1**	**5.1**
Year-on-Year change *(%)*	(1.0)	(37.8)	(72.5)	(70.6)	64.6
GSE Total Market Capitalization *(GEL millions)*	1,145	2,332	546	1,236	1,879
Year-on-Year Change *(%)*	80.1	103.6	(76.6)	126.4	52.1
GSE Total Market Cap/GDP *(%)*	8.3	13.7	2.9	6.9	9.2
Stocks Traded on the GSE	90	57	82	64	53
Year-on-Year Change *(%)*.....	—	(36.7)	43.9	(22.0)	(17.2)
Trading Volume on the OTC Market *(GEL millions)*	**113.4**	**126.8**	**246.0**	**95.3**	**96.1**
Year-on-Year.....change *(%)*	—	11.8	94.0	(61.3)	0.8

Insurance Market

89. As of December 31, 2010, the Georgian insurance market comprised 16 insurance companies. These included two insurance companies registered in 2010. Twelve insurance companies performed both life and nonlife and life insurance. The four remaining companies were involved only in non-life insurance activities.

90. In 2010, the number of policies issued equaled 2.6 million and thus significantly exceeded the 2009 level. There was a notable increase in the number of policies issued to individuals (361,000,000), reflecting the development of the insurance retail market.

91. The gross insurance premium received by insurance companies in 2010 totaled GEL 372.5 million. In terms of gross written premiums, the market share of the five largest insurers declined from 83.6 percent to 77.9 percent in 2010 compared to 2009, indicating an increase in the activity of smaller insurance companies. Health insurance accounted for 66.3 percent of the gross premiums received.

Written Premiums by Years

Million GEL

	2010	2009	2008	2007
Written premiums	372.5	372.4	278.7	118.8

92. In 2010, net earned premiums totaled GEL 297.5 million and net incurred claims amounted to GEL 179.8 million.

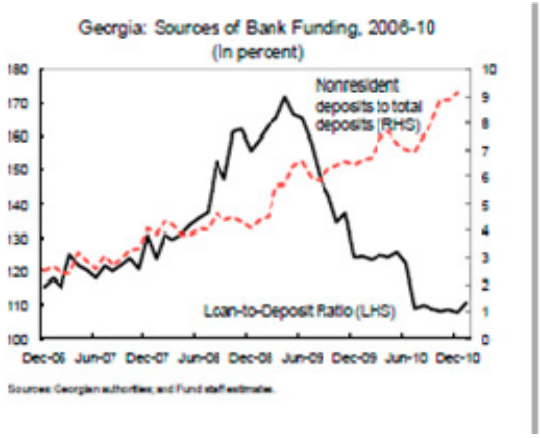
93. The total volume of assets held by insurance companies grew by GEL 116.9 million, amounting to GEL 448.4 million as of December 31, 2010.

94. The total volume of insurers' balance sheet liabilities at the end of 2010 equaled GEL 355.1 million, exceeding the 2009 level by GEL 78.8 million.

95. The total capital of insurance companies stood at GEL 93.3 million at the end of 2010, increased by 69.1 percent compared to 2009. The capital increase was due to growth of net profit as well as the expansion of equity capital. Equity capital increased by GEL 5.1 million because of the establishment of two new companies and extra capitalization of the existing ones.

Information on non-resident customers

96. In general, the only significant product in the banking sector in respect of nonresidents is deposits. Georgian financial institutions have experimented a sizable and continuous increase of nonresident deposits (by 0.9 percent of GDP from mid -2008 to end- 2010). The following chart illustrates that tendency



Source : IMF Georgia Article IV 2011

97. According to the NBG 2011 Annual Report, the share of non-resident deposits in the deposits base, has increased from 10.2% of the total by December 2010 to 11.8% by December 2011, attracted by the favorable financial institutions interest rates, and targeted marketing strategies of Georgian financial institutions towards specific markets, such as Israel.

98. In the securities market, there are 304 nonresident customers. The share of nonresident clients in the insurance market is 0.612 percent.

Information on nonresidents in Insurance Market

Gross Premiums (1/01/10–30/09/11)–(Direct Insurance Business)

GEL

Insurance Field	Total
Life	21,499,618
Share of Nonresident clients	5,974
% Share of Nonresident clients	0.028%
Non-Life	603,101,342
Share of Nonresident clients	3,815,526
% Share of Nonresident client	0.633%
Total	624,600,960
Share of Nonresident client	3,821,500
% Share of Nonresident client	0.612%

99. The types of financial institutions that are authorized to carry out the financial activities listed in the Glossary of the FATF 40+9 Recommendations are summarized in the following table:

TYPES OF FINANCIAL INSTITUTIONS CARRYING OUT FINANCIAL ACTIVITIES IN GEORGIA	
Financial Activity (as defined in Glossary to FATF 40 Recommendations)	***Categories of Financial Institutions performing such activity in Georgia***
1. Acceptance of deposits and other repayable funds from the public	Banks Credit unions (members only)
2. Lending	Banks Microfinance organizations Credit unions (members only)
3. Financial leasing	Banks only operative leasing not financial Leasing (currently not subject to measures)
4. Transfer of money or value	Banks Money remittance service operators Microfinance organizations
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler's cheques, money orders and bankers' drafts, electronic money)	Banks
6. Financial guarantees and commitments	Banks Insurance companies Microfinance organizations Credit unions
7. Trading in: -money market instruments	Banks Securities brokers

- foreign exchange - exchange, interest rate and index instruments - transferable securities - commodity futures trading	
8. Participation in securities issues and the provision of financial services related to such issues	Banks Securities brokers
9. Individual and collective portfolio management	Banks Securities brokers
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks Securities brokers
11. Otherwise investing, administering or managing finds or money on behalf of other persons	Banks Securities brokers
12. Underwriting and placement of life insurance and other investment related insurance	Insurance Companies
13. Money and currency changing	Banks Currency exchange bureaus Microfinance organization

1.4. Overview of the DNFBP Sector

100. All DNFPBs exist and are in operation in Georgia. The AML/CFT legislative framework extends to casinos, gambling and commercial games, notaries, and dealers and precious metals and stones. Recent amendments to the AML Law extend obligations to accountants and auditors. No obligations have been extended to lawyers or real estate agents. The table below outlines the number of entities operating in each sector as well as the AML/CFT supervisor, if any.

DNFPB SECTORS

SECTOR	NUMBER OF ENTITIES	AML/CFT SUPERVISOR
Casinos	15 land casinos (8 of which operate internet casinos)	Ministry of Finance
Gambling Establishments	150	Ministry of Finance
Notaries	210	Ministry of Justice
Accountants/Auditors	5,000[34]	Georgian Federation of Professional Accountants and Auditors

[34] 5,000 reflects the membership of the Georgian Federation of Professional Accountants and Auditors. There are also unaffiliated accountants the number of which cannot be determined.

Lawyers	3,500	No AML/CFT obligations
Dealers in Precious Metals and Stones	100[35]	Ministry of Finance
Real Estate Agents	100-150[36]	No AML/CFT obligations
Trust Company and Service Providers	Unknown	No AML/CFT obligations

Casinos

101. The casino sector has seen a rapid expansion since the last evaluation in 2007. There are now 15 land casinos (compared to 2) and 8 internet casinos (compared to none) operating in Georgia. There are also 150 gaming halls with slot machines. This segment of the sector is decreasing because of increased licensing fees imposed by the Revenue Service. Both casinos and gaming halls must be licensed by the Revenue Service. Internet casinos must be operated by a licensed land casino but no separate license is required to operate an internet casino.

Real Estate Agents

102. The real estate and construction sectors are considered amongst the fastest growing sectors of the Georgian economy. According to the Georgian Department of Statistics, construction and real estate stood at 21 percent of Foreign Direct Investment in 2008.[37] In its 2009 publication "Georgian Real Estate Sector Overview 2009," the Georgian National Investment Agency stated that prices for real estate had increased more than four times since 2003. Authorities and industry representatives met during the mission indicated that the real estate market slowed down following the 2008 conflict and economic crisis but that the market was seeing a slight resurgence in late 2011.

103. Real estate agents operate in Georgia; however, they are currently not regulated at all. Real estate agents play a role not only in the purchase and sale of real estate but also assist clients with the registration of real estate with the National Public Registry. Some real estate agents also serve as authorized agents of the Public Registry registering the transaction directly with the Registry through prescribed software. In this capacity, they are responsible for identifying the client and forwarding all supporting documents to the National Registry. The number of real estate agents is difficult to estimate given that the sector is not regulated. Real estate agents met during the on-site mission estimated the number at 100–150 agents.

Notaries

[35] Estimate based on 2007 DAR, the authorities have not been able to provide updated information.

[36] Estimate by industry representative.

[37] Georgian Real Estate Sector Overview 2009, Georgian National Investment Agency.

104. Notaries perform public duties and their activities are regulated by the Law of Georgia on Notaries, which also provides rules for admission to the profession. Notaries play an important role in certifying financial transactions in the Georgian economy. The notarial sector is involved in a number of activities including: certifying deals; certifying the identity of a citizen; taking money, securities and valuables on deposit; submitting checks for cashing; and certifying checks.

105. The assessment team believes that risks related to the sector pertain to the notaries' role in real estate transactions and the creation of legal entities. The Ministry of Justice of Georgia is the registering authority as well as the regulatory and supervisory body for AML/CFT purposes. There are 210 notaries in Georgia.

Dealers in Precious Metals and Stones

106. Entities engaged in activities related to precious metals, precious stones, and associated derivatives are within the scope of the AML Law. The authorities consider that the awareness of the sector and compliance with the obligations under the law is however low. The Ministry of Finance has been designated as the AML/CFT supervisor, but no supervisory activities have been undertaken. No AML/CFT decree has been issued with respect to this sector. The Financial Monitoring Service (FMS) considers this sector at medium risk for ML given the high value and portability of precious metals and stones. The volume of mining activity regarding precious metals and stones in Georgia is relatively small.[38]

Accountants

107. Recent amendments to the AML Law extend obligations to accountants and auditors. This is currently the only regulation applicable to this sector, although a legislative proposal is being developed that would require the licensing of accountants by the Georgian Federation of Professional Accountants and Auditors. The latter has noted that there are a number of unaccredited accountants that undertake a variety of activities, including bookkeeping, the company services, as well as the management of assets. It is unclear whether these unlicensed accountants will be targeted by the new licensing requirements. Accountants are seen as vulnerable to ML due to their involvement in the creation of legal entities and conducting transactions on behalf of customers.

108. Accountants undertake activities outlined in the standard, namely:

- Buying and selling of real estate;
- Managing of client money, securities, or other assets;[39]
- Management of bank, savings, or securities accounts;
- Organization of contributions for the creation, operation, or management of companies;

[38] The U.S. Geological Survey reports Georgia's gold production in 2009 at 2,000 kilograms compared to South Africa which had an annual production of 294,671 kilograms.

[39] Where the lawyer, notary, other independent legal professional or accountant is conducting financial activity as a business and meets the definition of "financial institution," then that person or firm should comply with the requirements applicable to financial institutions.

- Creation, operation, or management of legal persons or arrangements and buying and selling of business entities.

109. The AML Law identifies the member organization of the International Federation of Accountants as the body responsible for AML/CFT supervision for the accounting sector. The member organization of the International Federation of Accountants is the Georgian Federation of Professional Accountants. The legislative proposal currently in development proposing to license the activities of the accounting sector currently identifies the Federation as the body responsible for licensing accountants.

Lawyers

110. The activities of lawyers are regulated by the Law on Advocates, which also provides rules for admission to the profession. Membership to the Georgian Bar Association is compulsory for practicing lawyers. They can be disciplined or even disbarred by the Ethics Committee of the Bar Associations for breaches of the law or the Code of Ethics. In 2011, the Georgian Bar Association counts 3,500 members. The Bar Association indicated that the vast majority of its members are criminal defense lawyers with up to 30 percent offering corporate law services. Like accountants, there are a number of unregistered lawyers providing legal advice and services including company formation services.

111. Lawyers in Georgia are engaged in all of the activities outlined by the standard.

112. Like other professionals, the risk lies in their participation in the creation of legal activities and conducting transactions on behalf of clients. The risks are exacerbated for the legal profession as it is currently the only professional sector that is not subject to AML/CFT obligations.

Trust and company service providers

113. There was no evidence of trusts having been created or being in operation in Georgia. Company formation services are undertaken by notaries, accountants, and lawyers. Both the Bar Association and the Federation of Professional Accountants and Auditors believed that these services were being provided by unlicensed lawyers and unlicensed accountants.

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

114. Georgian legislation distinguishes between entrepreneurial and non-entrepreneurial activities. Under the Law on Entrepreneurs, entities are defined as entrepreneurial if they repeat activities carried out independently and in an organized way for the purpose of generating profit (Article1 of the Law of Entrepreneurs). On the other hand, the Civil Code (Article 30) defines Unions as the legal form of non-entrepreneurial (non-commercial) entities that are mostly NPOs and NGOs and, therefore, these will be discussed in more detail under SR.VIII.

115. The Law on Entrepreneurs establishes six forms of entrepreneurial entities (Article 2): Individual enterprises; Joint Liability Companies; Limited Partnership, Limited Liability Companies;

Joint Stock Companies, and Cooperatives. The table below shows the relevant statistical data, as of January 4, 2012.[40]

Entities	**Registered with the Revenue Service**	**Article Entrepreneurs Law**	**Definition and main characteristics (Law of Entrepreneurs)**
Limited Liability Companies (LLCs)	106,658 Active: 103,441	Article44	*A company in which its liability to its creditors is limited to its total property while the liability of partner is to the amount of his share in authorized capital. Such company may be founded by one person.*
Joint Liability Companies (JLCs)	2,773 Active: 2,668	Article20	*A company where several persons shall, together, under common firm name, carry out repeated and independent entrepreneurial activities and where the partners shall be responsible to the creditors for the obligations of the company as Joint debtors. The company may be only individuals*
Joint Stock Companies	2,620 Active:2,054	Article51	*A company with authorized capital divisible into stocks. Minimum nominal value of authorized capital shall correspond to the equivalent of 10.000 US dollars national currency, while the nominal value of one stock shall be equivalent of one Us dollar national currency or an amount divisible by it.*
Limited Partnership	158 Active: 152	Article34	*Company where several persons shall together, under common firm name, carry out repeated and independent entrepreneurial activities provided that the responsibility of one or several partners to the creditors of the company shall be limited to the paying of certain guarantee amount (Commandite partners), while the responsibility of other partners shall not be limited (Personally Liable Partners).* *Personally liable partners may be only individuals*
Cooperatives	2,898 Active:2,680	[Article?]	*Company based on labor activities of its member or established for the purpose of development of farming and the increasing of incomes from farming. The purpose of a*

[40] For statistical purposes the branch of foreign entities has been added.

			Cooperative shall be to satisfy the interest of its members. Its activities shall not be channeled to preferential gaining profit.
Branch of foreign entity	652 Active: 524		
Individual Enterprise	361,034 Active: 356,235		*An individual entrepreneur being the owner of an enterprise. Individual entrepreneurs shall directly be responsible to creditors for obligations that arisen as a result of their entrepreneurial activities.*

116. The most frequently registered entity has been the LLC, with the exception of approximately 1,200 state-owned enterprises that were privatized and converted into JLCs between 2004 and 2007.

117. Georgia has improved its registration system for legal entities. Since 2010, Georgian legal entities (commercial and noncommercial) are subject to registration by the National Agency of Public Registry (NAPR). Prior to that date, companies were registered either by the Revenue Service of the Ministry of Finance or at the Registry of Entrepreneurs. The NAPR is trying to merge the two databases into a single database that is accessible online.

Non-Profit Organizations (NPOs)

118. There are 15,045 local NPOs and 129 branches of foreign NPOs. 72 NPOs have obtained charitable status with the Revenue Service. Details of the ten charitable organizations with the highest turnover are found in the table below.

Taxpayer	Purpose	Income for 2010 (GEL)	Expenses for 2010 (GEL)
International Charity Foundation “Kartu”	To assist civil society foundation and development; to assist scientific research; to assist vulnerable population	134,499,001.00	134,499,001.00
Association ATU	To assist vulnerable population, rehabilitation of cultural, educational, health care institutions	92,375,937.00	92,287,421.00
Caritas Georgia–Charity Fund	To provide charitable and development activities according to the principles of Christianity; to provide material, medical, social, rehabilitation, educational assistance to people	6,226,943.00	6,264,365.00

Historical Monuments Protection and Rescue Foundation	Protection, rehabilitation and restoration of Georgian historical monuments in Georgia and in foreign countries	4,336,544.00	4,206,545.00
Children Village Association "SOS" of Georgia	Implementation of family care model for orphans and homeless children	4,295,539.00	4,295,539.00
OXFAM GB IN GEORGIA	To provide assistance to people with poverty and the extremely poor	3,038,925.00	3,038,925.00
Fund Qveli	Care of cultural heritage, support of religion, health care, social insurance, sport, science, culture and public activities	2,786,725.00	3,145,434.00
Charity Foundation of Georgian Jewish "Khesedi Eliahu"	To provide social protection and care to vulnerable people and seniors	2,765,270.00	2,703,432.00

119. Transparency International (TI) Georgia's 2011 NIS indicates that Georgian NPOs "rely almost entirely on foreign donors, lacking financial support from government, local businesses or a membership base." Funding was principally foreign-based, through international organization and foreign government aid programs and there was not yet a culture of charitable giving in Georgia. The TI report also indicated that: "the mechanisms for ensuring accountability of CSOs and their transparent operation are weak and integrity mechanisms (such as sector-wide code of conduct) are virtually non-existent."[41]

120. Identified risks related to the NPO sector primarily concern organizations purporting to be charities, using their status to import goods that are then sold at market value rather than used for charitable purposes. The Terrorism, Transnational Crime and Corruption Centre at George Mason University produced a 2006 study on False Charity Foundations and Corruption that presented a case study of two foundations created for charity purposes that the study determines were created "with the purpose of laundering money and evading taxes." The two charities were found to have obtained charitable status and signed grant agreements where they agreed to distribute food to vulnerable populations, but instead the foundation sold the products at market price. The study found that the absence of monitoring of charities contributed to the fraud being perpetrated. The authorities have also indicated that there is currently a case under investigation where another NPO is suspected of bringing goods into Georgia, selling them at market value, and pocketing the proceeds. Austrian police have also arrested a Georgian criminal group that funds itself through theft, blackmail, and money laundering. Investigators found that the proceeds were forwarded to an NPO organizing protests against the government.

[41] *Georgia – National Integrity System*, Summary, p. 148 (TI Georgia, 2011).

1.6. Overview of Strategy to Prevent Money Laundering and Terrorist Financing

121. At the time of the on-site visit, no AML/CFT coordination committee had been set up in Georgia to develop effective mechanisms to enable policy makers, law enforcement, supervisors, and other competent authorities to cooperate and, where appropriate, to coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering/terrorist financing.

122. After the on-site visit, the AML Law was amended on November 25, 2011 and entered into force on December 8, 2011, whereby a committee has now been set up to coordinate policy and implementation of the relevant UNSCRs. This committee is chaired by the Minister of Justice and comprises senior officials of relevant ministries and agencies. The legal basis for the committee and its task force is laid down in Article 13 of the AML Law.

AML/CFT Strategies and Priorities

123. The authorities indicated the following AML/CFT priorities:

- Further improvement of the legislative framework and harmonization with international norms (improvement of legislation regulating AML/CFT measures, know-your-customer (KYC) measures);
- Preparation of further implementing norms and regulations pursuant to AML/CFT legislation;
- Further evaluation of the AML/CFT risk levels in various parts of the financial sector and DNFBPs;
- Strengthening cooperation between the FMS, financial and nonfinancial institutions, international financial institutions such as the IMF, World Bank, the IFC, and the EBRD and law enforcement agencies;
- Improvement of tools and mechanism of suspicious transaction reporting;
- Further improvement of the system of application of sanctions against money laundering and FT;
- Raising qualification requirements and standards of the employees of different organizations and units involved in the AML/CFT process (e.g., FIU, supervisory bodies, monitoring entities, the special unit of the Prosecutor's Office of Georgia handling money laundering cases, judges).

124. Compliance with the AML/CFT requirements by monitoring entities and effectiveness of the Georgian AML/CFT system is examined by the supervisory bodies during their on-site visits to monitoring entities.

125. The effectiveness of the AML/CFT system, including money laundering methods, trends and techniques is reviewed by Office of the Chief Prosecutor of the Ministry of Justice of Georgia on a regular basis. In particular, every six months and at the end of each year, the AML Unit, the Anticorruption Department of the Office of the Chief Prosecutor, Investigative Service of the Ministry of Finance, and other investigative bodies prepare detailed statistical information on investigations, prosecutions, convictions, search, seizure, confiscation, etc. on money laundering,

financial, corruption-related crimes, and other predicate offenses. This information is then used to assess the need for improvements to the system.

126. The resulting information concerning new trends, techniques, and methods of money laundering, financial crimes, corruption, and other predicate offenses is shared with all investigators and prosecutors in the framework of training seminars. For instance, two training seminars were organized in February and March2011 by the Ministry of Justice of Georgia. In order to further strengthen the country's AML/CFT efforts, on January 4, 2011, one additional investigator of especially important cases was appointed in the AML Unit of the Office of the Chief Prosecutor of Georgia.

127. After the on-site visit, the Georgian authorities enacted a package of significant amendments to its AML/CFT Law and related legislation in November and December 2011.

The institutional framework for combating money laundering and terrorist financing

Ministries

Ministry of Finance

128. Together with the Georgia Revenue Service and the Investigation Service of the Ministry of Finance of Georgia, the Ministry of Finance is responsible for intelligence gathering, preliminary investigation, and research targeted at economic crime prevention; detection, study and analysis of tax and customs violations; as well as development and application of tools required to combat crime in the area of tax and customs.

129. Competent bodies of the Ministry of Finance regarding AML/CFT issues include the Georgia Revenue Service and the Investigation Service.

130. The Revenue Service is responsible for administration of tax and customs control; execution of clearance procedures and clearance controls; issuing, amending, and revoking licenses; as well as detection and subsequent response of tax and customs violations.

131. The Investigation Service carries out preliminary investigation of financial crimes and takes other measures to fight economic crime in general.

132. Notwithstanding the fact that the investigation of money laundering is under the investigative competence of the Prosecution Service of Georgia, the Investigative Service of the Ministry of Finance of Georgia is also entitled to investigate money laundering.[42]

133. Generally, the investigative body which has investigated the predicate offense also investigates the subsequent money laundering as it already has evidences concerning the predicate offense.

[42] Order No. 178 of the Minister of Justice of Georgia of September 29, 2010.

Ministry of Justice, including central authorities for international cooperation

134. The Ministry of Justice is responsible for drafting legislation and for international legal assistance in criminal and civil matters. It also deals with the registration of non-commercial entities. It is the supervisory body for notaries and the Public Registry.

The Chief Prosecutor's Office (CPO)

135. On October 27, 2008, the Prosecution Service became part of the Ministry of Justice. The Prosecution Service of Georgia is a body responsible for criminal prosecution.

136. The CPO also provides procedural guidance over investigation. In cases set out by the CPC of Georgia, the prosecutor's office is responsible for carrying out full-scale investigation of criminal cases. It also represents the State before the courts. More detailed information is provided under Recommendation 27.

137. The GPO's AML Unit was created at the end of 2003 and commenced its work T the beginning of 2004. The AML Unit is primarily responsible within the GPO for investigation and prosecution of money laundering cases and other predicate offenses. The jurisdiction of the AML Unit covers the entire territory of Georgia under government control.

138. Operative-technical assistance to the AML Unit is provided by the Special Operative Department (SOD) of the Ministry of Internal Affairs. The SOD provides all kind of operative and procedural activities contained in the Law of Georgia on Operative Searching Activities and the CPC (please see the full list of activities under criterion 27.1).

139. The Anti-Corruption Department of the Office of the Chief prosecutor of Georgia generally investigates and prosecutes corruption-related crimes committed by public officials and associated money laundering. The jurisdiction of the Anti-Corruption Department covers the entire territory of Georgia under government control.

Ministry of Internal Affairs

140. In February 2005, the Ministry of State Security merged with the Ministry of Internal Affairs. At present, the Ministry of Internal Affairs is responsible for fighting crimes in general. It created a special Counter-Terrorist Center which is responsible for conducting operative activities for the prevention of terrorism and the investigation of terrorism cases.

141. The Special Operative Department (SOD) of the Ministry of Internal Affairs is responsible for fighting organized crime and the trafficking of drugs, arms, and human beings.Since 2004 it provides operative support to the AML Unit for investigation of money laundering cases and, as such, conducts operative-searching activities (covert operations) for evidence gathering, and can investigate the financial background of suspects and defendants.

Ministry of Foreign Affairs

142. The Ministry of Foreign Affairs receives designations under United Nations Security Council Resolution 1267 and forwards them to the Intergovernmental Commission, the Financial Monitoring

Service (FMS), and the Ministry of Internal Affairs. It is also involved in the extradition framework. Finally, the Ministry is also responsible for the law relating to legal persons and arrangements.

The FMS—the Georgian financial intelligence unit (FIU)

143. The FMS is Georgia's FIU. It is an administrative type FIU established at the National Bank of Georgia. The FMS receives, collects, analyzes, and transmits information in accordance with the AML/CFT Law. The FMS Service is an independent organization separate from state governance bodies. The FMS became operational on January 1, 2004 on the basis of the AML/CFT Law (adopted on June 6, 2003) and the ordinance of the President of Georgia No. 354 of July 16, 2003 regarding "Approving the Regulation of the Financial Monitoring Service of Georgia–Legal Entity of Public Law".

Customs service

144. Customs Border Protection Department (CBPD) is responsible for customs and border protection. The Department is also responsible for identification of traffickers of cash smuggling. There are 18 border check point (BCP) posts in Georgia.

National Bank of Georgia (NBG)

145. The NBG is an independent state organ. Its independence is provided for in the Constitution of Georgia, as well as in the Organic Law on the "National Bank of Georgia." NBG is the central bank and supervisor of financial institutions in Georgia. The Anti-money laundering unit in NBG is a separate division which is subordinated directly to the vice-governor of the NBG in charge of supervisory matters.

146. The NBG is responsible for licensing and registration of financial institutions. All financial institutions when applying for a license or registration at NBG have the duty to register with the FMS, subject to sanctions in case of failure to register.

DNFBPs

Casino supervisory body

147. According to the AML/CFT Law of Georgia (Article 4), supervision policy over casinos is carried out by the Ministry of Finance of Georgia. The Law of Georgia on "Gambling and Commercial Games" provides the legal basis for organizing and providing lotteries, gambling, and commercial games and defines the respective authority exercising control over the gambling businesses.

148. The Audit Department of the Revenue Service is responsible for tax control, including gambling machines. The Prevention Department of the Revenue Service controls compliance with permit conditions by permit holders of gambling and commercial games. Audits revealed that the gambling sector has frequently failed its statutory obligations (e.g., incomes not reported fully; incorrect identification information on winners; accounts were provided in violation of the existing

rules and other violations). According to the nature and severity of these violations, an indirect method of defining tax liability has been applied.

1.7. Progress Since the Last Mutual Evaluation

149. Since 2008, the existing ML provisions have been amended and new provisions been introduced to address the shortcomings identified in the last evaluation conducted by MONEYVAL. In particular, the sanctions under Article 194 of the Criminal Code of Georgia (CCG) were increased and the value threshold removed, a new Article 194-1 of the CCG was introduced to criminalize the acquisition, possession, use, or realization of laundered proceeds; tax evasion has become a predicate offense under all ML provisions, and the all-crimes approach under Article 194 of the CCG was changed to allow for an even more liberal application of the provisions to "any undocumented or illegal property." Furthermore, criminal liability for legal persons was introduced, including for ML. The latest set of amendments to the ML provisions came into force in November 2011 and related mostly to terminology and technical details.

150. In 2011 and following the amendment of the AML/CFT Law, leasing companies, accountants, and auditors were included under the list of reporting entities. In January 2010, the Minister of Justice issued recommendations for the CPO raising awareness about Article 194 of the CCG criminalizing ML and requiring all the departments of the office involved in investigating predicate crimes to carry out ML investigations to identify and trace the proceeds of crimes. This decision was also forwarded to the relevant departments at the MIA and MOF. As a result, LEAs began to launch ML investigations in parallel with the predicate crimes investigations which justify the increase of numbers of ML investigations in 2010 and 2011.

151. Since 2008, the existing ML provisions have been amended and new provisions introduced to address the shortcomings identified in the last evaluation conducted by MONEYVAL. In particular, with the new AML/CFT Law (as amended on December 20, 2011) and the subsequent updated regulations for each financial institution, the scope of the CDD requirements has been extended. CDD for legal persons has been reinforced including a more complete definition of beneficial ownership, PEPs, and client. Additionally, new provisions have been included on legal arrangements, ongoing CDD, timing of verification, record keeping, third parties, correspondent relationships, non-face-to-face transactions, and wire transfers. The legal framework has noticeably improved, yet the implementation of the AML/CFT measures implemented by the financial sector institutions remains a challenge.

152. The list of watch zone countries was updated and adopted by an NBG Decree of August 24, 2011. Overall, the legal regulations regarding the reporting of suspicious transactions have improved. The FMS Decrees, as amended in August 2011, extended the requirements of the AML Law to microfinance organizations and money remitters. The definition of suspicion was improved under the amended Law of 2011. Article 9.2 of the AML/CFT Law of December 2011 requires submitting the report on the same day, thus, going forward the reports are expected to be submitted promptly. The FMS has issued Guidance for Commercial Banks on Essential Indicators for Detection of Suspicious or Unusual Transactions on January 27, 2010. Similar guidelines have been issued to insurance companies.

153. Many changes to the AML/CFT framework impacting DNFBPs have been adopted since the last mutual evaluation. The amendment of the AML Law included a number of changes regarding

preventive measures including expanding the requirements regarding ongoing due diligence of business relationships, implementing policies and procedures to mitigate the risk of non-face-to-face transactions; monitoring of risks associated with new technologies; conducting enhanced due diligence of high-risk customers, business relationships and transactions; and not carrying out transactions or ceasing business relationships if the beneficial owner cannot be subjected to identification and verification. New requirements came into force on January 1, 2012. A series of amended decrees were issued for DNFBPs namely Decree No. 93 for Notaries (amended on January 31, 2012) and Decree No. 94 for Casinos (amended on February 6, 2012). A new decree for Accountants (Decree No. 12) was issued on January 31, 2012. These decrees came into force upon promulgation.

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 Analysis

Recommendations 1 and 2 (both rated PC in the third mutual evaluation)

Legal Framework:

154. Georgia criminalizes the legalization of illicit income ("ML") through Articles 186, 194, and 194/1 of the Criminal Code of Georgia (CCG).

155. Article 186 criminalizes *"the use, acquisition, possession or realization of property obtained by criminal means"*. Article 194 of the CCG defines as an offense *"the legalization of illicit income, i.e. giving a legal form to illegal and/or undocumented property (use, acquisition, possession, conversation, transfer or other action) for purposes of concealing its illegal and/or undocumented origin and/or helping any person to evade the legal consequences, as well as concealing or disguising its true nature, originating source, location, allotment, circulation, ownership and/or other related property right."* Article 194-1 of the CCG prescribes as an offense *"the use, acquisition, possession or realization of property received through illicit income legalization."* All three provisions set out aggravated offenses in paras.(2) and (3), including the commission of a relevant offense by a group or organized group, on a repetitive basis, or involving income in large or especially large quantity.

156. The assessors noted that the provisions in certain instances criminalize the same conduct and inquired about the hierarchy of the three norms. The authorities explained that Article 194 would be considered and treated as the main laundering offense and that the large majority of all ML cases in Georgia were tried on the basis of the aggravated offenses under Article 194 (2) and (3) of the CCG. Article 186 was, until recently, only applicable in relation to objects but not to funds or other assets obtained by criminal means. In preparation for the assessment, and to ensure that the acts of "acquisition, possession, or use" are also criminalized in the absence of the specific purpose required under Article 194, the scope of Article 186 was expanded to include all types of "property." The authorities indicated that the vast majority of cases based on Article 186 would, however, relate to the acquisition, possession or use of criminal objects as opposed to funds. It was further stated that Article 194-1 of the CCG would only cover the acquisition, possession, or use of property laundered as opposed to proceeds of crime in general. Article 194-1 of the CCG has never been applied in practice.

157. Georgia ratified the Vienna Convention on January 8, 1998 and the Palermo Convention on September 5, 2006.

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

158. Article 194 of the CCG criminalizes the legalization of illicit income, which is prescribed as "giving a legal form (use, acquisition, possession, conversion, transfer or other action) to the illegal

and/or undocumented property for purposes of concealing its illegal and/or undocumented origin and/or of helping any person to evade the legal consequences, as well as the concealing or disguising of its true nature, originating source, location, allotment, circulation, ownership and/or other related property right."

159. Article 186 of the CCG makes it an offense to "knowingly use, acquisition, possession, or realization of a property obtained by criminal means" and Article 194-1 of the CCG provides for criminal liability for "knowingly use, acquisition, possession or realization of property received through the illicit income legalization."

160. The ML offenses under Georgian law address all material elements as defined in the Palermo and Vienna Conventions. The "conversion or transfer," the "concealment or disguise of the nature, source, location, disposition, movement or rights and ownership" and "the acquisition, possession or use" of criminal proceeds are all explicitly covered under the provisions cited above.

161. The Vienna and Palermo Conventions require that countries criminalize the "acquisition, possession or use" of illicit property regardless of the purpose for which such acts are carried out. While under Article 194 of the CCG, such acts have to be carried out for the purpose of concealing the property's illegal and/or undocumented origin for the act to constitute ML, the offense under Article 186 of the CCG does not set out any specific purpose requirement and, thus, meets the requirements under the Conventions on this point.

The Laundered Property (c. 1.2):

162. The ML offense under Article 194 of the CCG applies to any "illicit income" which is any "illegal and/or undocumented property." The term "illegal property" is defined in a legally binding note to Article 194 of the CCG as "any property, also the income derived from that property, stocks (shares) that are gained by the offender, his/her family members, close relatives or the persons affiliated with him/her through the infringement of the law requirements" and "undocumented property" as "property, also the income derived from that property, stocks (shares) [in relation to which] an offender, his/her family members, close relatives or the persons affiliated with him/her are unable to present a document certifying that the property was obtained legally, or the property that was obtained by the monetary funds received from the realization of the illegal property." In other words, the law applies a reversed burden of proof.

163. In contrast to Article 194, Articles 186 and 194-1 of the CCG apply to "property" obtained by criminal means (Article 186) or through ML activities (Article 194-1).

164. The authorities stated that the term "property" as used in Articles 186, 194, and 194-1 of the CCG would be defined in accordance with Article 147 of the Civil Code to include "all items (objects) and immaterial property, which can be owned, used and disposed by natural persons and legal entities and purchased without limitation, if it is not prohibited by the law and does not contradict with moral norms."

165. Article 148 of the Civil Code further stipulates that an "object" may be either "movable or immovable" and Article 149 defines "immovable object" as "a tract of land with its subsoil minerals, the plants growing on the land, and buildings and other structures firmly attached to the land."

According to Article 152 of the Civil Code, "immaterial property" means "demands and rights which can be transferred to other persons and which are aimed to receive material benefit, and/or to receive a right to demand anything from other persons."

166. In discussion with the authorities, the assessors raised concerns that the term "property" as used in the Civil Code would, by definition, exclude any illicit property and, thus, would not be useful in the context of an ML prosecution.

167. The authorities explained that in a criminal context, it is long-standing practice of the courts to apply only the first part of the definition ("all items (objects) and immaterial property, which can be owned, used and disposed by natural persons and legal entities and purchased without limitation") and to ignore the second part ("if it is not prohibited by the law and does not contradict with moral norms"). The authorities further argued that the legislator made it very clear, through the references in Article 186 of the CCG to "property obtained by criminal means," in Article 194 of the CCG to "illegal property" and in Article 194-1 of the CCG to "property received through illicit income legalization," that in the context of an ML prosecution, the term "property" would, by definition, extend to illicit property. This interpretation was confirmed by the courts.[43] For example, in one case, the defendant was convicted for "receipt or demand, by a civil servant or a person of the equal status, directly or indirectly of money, securities, other property or property benefits" that were proceeds of a misappropriation offense. The term "property," thus, clearly includes illicit property, as required under the FATF standard.

168. Indirect proceeds of crime are explicitly covered for all predicate offenses based on the reference in the note to Article 194 to "income derived from" illicit property. The authorities stated that they are also implicitly covered under Article 186 and Article 194-1 of the CCG. This interpretation was also adopted in a Recommendation issued by the Chief Prosecutor in February 2012, in which he advises the prosecutors that Article 194[1] of the CCG was to be applied to "property received through the exchange of the property obtained by criminal means into the other property (for example: use, acquisition, possession, or realization of the picture, which was obtained in exchange for the stolen picture, etc.) "whereas Article 186 would apply more generally to "the use, acquisition, possession or realization of an income derived from the property obtained from the commission of crime (for example: use, acquisition, possession, or realization of an interest rate on a bank account of the property obtained by criminal means; use, acquisition, possession or realization of increase in market value of a property obtained by criminal means, etc.)."

169. In sum, the Georgian ML provisions apply to assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets.

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

170. None of the statutory provisions criminalizing ML require that a conviction for the underlying predicate offense be obtained to prove that property is the proceeds of crime. According to

[43] *Conviction of December 22, 2011 Giorgi Tabitdze and Merab Kurdgelashvili.*

the authorities, given that Article 194 applies to any illegal conduct (including noncriminal) and that the provision can be applied also to undocumented property (in other words, it can apply when the prosecutor is able to show that there is no evidence to establish the legitimate source of the property), it is not necessary to prove the underlying criminal conduct. Rather, it would suffice for the prosecution to establish that property cannot possibly have been obtained by legal means, based on the factual circumstances of the specific case.

171. In the context of Articles 186 or 194-1 of the CCG, the prosecution does have to establish beyond a reasonable doubt that a specific predicate offense has been committed for the ML provisions to apply. However, also in this context it is not necessary to obtain a conviction for the predicate offense and the courts have sentenced ML in an autonomous way.[44]

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

172. Of the three statutory provisions cri*minalizing ML, Article 194 of the CCG is the most far reaching in that it applies to any "illegal and/or undocumented property."* It suffices for the prosecution to establish beyond reasonable doubt that the property has been obtained through illegal conduct (including acts constituting a violation of administrative or civil law) or is undocumented property. The scope of the offense is, therefore, not limited to criminal offenses.

173. In comparison, both Article 186 and Article 194-1 of the CCG require that the prosecution establishes beyond reasonable doubt that property stems from the commission of a criminal offense.

174. All provisions under Georgian law criminalizing ML thus apply, at a minimum, to property that stems from the commission of a criminal offense. The table below establishes how each FATF-designated category of predicate offenses is criminalized. Under each FATF-designated category of predicate offenses, Georgia has criminalized at least one or more offenses as follows:

Predicate Offense	**Georgian Criminal Provisions**
Participation in an organized criminal group and racketeering	Articles 223, 224, 224/1, 226, 252 of the CCG.
Terrorism, including FT	Articles 323 – 331/1 of the CCG.
Trafficking in human beings and migrant smuggling	Articles 143/1, 143/2 and 143/3, and 344/1 of the CCG.
Sexual exploitation, including sexual exploitation of children	Articles 137 – 141 of the CCG.
Illicit trafficking in narcotic drugs and psychotropic substances	Articles 260 – 273 of the CCG
Illicit arms trafficking	Article 236 of the CCG.
Illicit trafficking in stolen and other goods	Article 186, 197/1, 200 of the CCG.
Corruption and bribery	Articles 203, 221, 338, 339, 340 of the CCG.
Fraud	Articles 180, 182, 219 of the CCG.

[44] For example, *Conviction of June 28, 2011 against Gocha Zeinklishvili; Conviction of January 21, 2011 against Davit Mukhigulashvili and Levan Khidesheli;* and *Conviction of October 18, 2011 against Giorgi Antadze and Omar Edilashvili.*

Counterfeiting Currency	Article 212 of the CCG.
Counterfeiting and piracy of products	Articles 189, 189/1, 196, 197 of the CCG.
Environmental crime	Articles 229/1 and 287 – 306 of the CCG.
Murder, grievous bodily injury	Articles 108 – 126 and 144/1 of the CCG.
Kidnapping, illegal restraining and hostage-taking	Articles 143, 144, 147, 149 of the CCG.
Robbery or theft	Articles 177 and 178 of the CCG.
Smuggling	Articles 214 of the CCG.
Extortion	Article 181 of the CCG.
Forgery	Articles 210 and 362 of the CCG.
Piracy	Article 228 of the CCG.
Insider trading and market manipulation	Article 202 of the CCG.

175. The ML provisions even go beyond the scope of the FATF standard on this point in that they apply to all offenses, including tax evasion which is criminalized under Article 218 of the CCG.

Threshold Approach for Predicate Offenses (c. 1.4):

176. As indicated above, Georgian law has adopted an all-crimes approach under Articles 186 and 194-1 of the CCG and applies Article 194 of the CCG to property stemming from any illegal conduct, whether or not criminal in nature.

Extraterritorially Committed Predicate Offenses (c. 1.5):

177. Articles 186, 194, and 194-1 of the CCG do not explicitly refer to illegal or criminal conduct committed abroad. The authorities argued that the ML provisions would, therefore, also be applicable in situations where property stems from activities that occurred abroad and that would have constituted criminal or illegal conduct had they occurred in Georgia.

178. In the context of Article 194 of the CCG, it is only required to establish that property is "undocumented" as indicated under criterion 2 above. No evidence has to be provided to establish any form of illegal or criminal conduct and it, thus, is irrelevant where conduct that generated the undocumented property occurred.

179. With regards to Articles 186 and 194-1of the CCG, the authorities supported their interpretation through reference to Article 4 of the CCG, which provides that a person who "commences, continues, ceases or ends" a crime in Georgia shall be subject to criminal liability under the Georgian law. It was stated that according to this provision, proceedings under Articles 186 and 194-1 of the CCG could be instituted in Georgia whenever part of the laundering activity occurred on Georgian territory, regardless of whether the underlying criminal conduct occurred in or outside Georgia. Dual criminality would not be a requirement in this context. The authorities' view has been confirmed by the courts.[45]

[45] For example, in *Conviction of January 21, 2011 against Davit Mukhigulashvili and Levan Khidesheli;* and *Conviction of October 18, 2011 against Giorgi Antadze and Omar Edilashvili*.

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

180. The statutory provisions criminalizing ML do not differentiate between persons who launder the proceeds of their own criminal offenses and persons who launder proceeds of another person's criminal conduct, and therefore, seem to apply in both cases. The Georgian courts criminalized self-laundering in a number of cases. [46]

Ancillary Offenses (c. 1.7):

181. Ancillary offenses are set out in the general provisions of the CCG and are applicable to all criminal offenses under Georgian law, including ML.

182. Chapter VI of the CCG deals with "incomplete crimes," Article 18 criminalizes the "preparation of crime," and Article 19 sets out the offense of "attempt to commit a crime." Articles 23, 24, and 25 deal with accomplice liability.

183. Article 18 of the CCG sets out an offense of "preparation for a crime" and applies in relation to any grave or particularly grave criminal offense as well as a number of expressly enumerated offenses, including Article 186 (1) and (2) and Article 194-1 (1) and (2) of the CCG. [47] Article 194 as well as the aggravated offenses under 194-1 (3) and Article 186 (3) of the CCG fall under the scope of Article 18 due to their categorization as "grave" or "particularly grave" crimes. For the offense to have been complete, the perpetrator must have intentionally created the conditions for the commission of a criminal offense. An overt act towards the commission of the crime is not required.

184. Article 23 of the CCG criminalizes "criminal complicity" and applies in the case of an "intentional joint participation of two or more persons in the commission of a crime." An overt act towards the commission of the offense or an attempt to commit the offense is required for Article 23 to apply.

185. Article 19 of the CCG criminalizes as attempt any conduct aimed at the commission of a criminal offense but that was not brought to completion. Attempt is criminalized in relation to any intentional crime under Georgian law.

186. Articles 24 and 25 of the CCG further extend criminal liability to any person who organizes, instigates, or acts as an accessory in the commission of a criminal offense. An accessory liability is defined liberally to apply to anybody who "gives support" to the commission of a crime.

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[46] For example, *Conviction of June 8, 2010, against Davit Gabunia, Itakli Khurtsidze, Giorgi Gabunia and Aleksandre Lordeli; Conviction of July 4, 2011 against Mamuka Gogitidze, Givi Verulidze and Besik Nikatsadze;* and *Conviction of August 19, 2010 against Vakhtang Goguadze, Mamuka Gogitidze, Givi Verulidze, Besik Nikatsadze, DaviT Gabunia, Itakli Khurtsidze and Vakhtang Goguadze.*

[47] Article 12 differentiates three types of criminal offenses: less grave offenses (intentional or negligent act sanctionable with imprisonment for up to five years); grave offenses (intentional act sanctionable with imprisonment for up to ten years, or a negligent act sanctionable with imprisonment for more than five years); and grave offenses (intentional act sanctionable with imprisonment for more than ten years or life).

187. The outlined provisions set out appropriate ancillary offenses to ML, including attempt, aiding and abetting, facilitating and counseling the commission thereof. In addition, association to commit ML can be prosecuted as "criminal complicity" under Article 23 of the CCG and Article 18 in cases where an overt act towards commission of the ML crime has not yet occurred.

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

188. See discussion under criterion 5. The Georgian ML provisions also apply to an act committed abroad that would have constituted criminal conduct had it occurred in Georgia, whereby it is irrelevant whether that conduct is criminalized in the foreign jurisdiction.

Liability of Natural Persons (c. 2.1):

189. The ML provisions apply to any person who intentionally commits any of the acts under Articles 194, 186, or 194-1 of the CCG with the knowledge that the property involved was "obtained by criminal means" (Article 186), "received through illicit income legalization" (Article 194-1) or is "illegal or undocumented property."

190. The authorities explained that for Article 194 of the CCG to apply, the prosecutor would merely have to establish that the perpetrator knew that the property in question was undocumented. It is not required to show that the perpetrator knew that the property has illegal or criminal sources. In the context of Article 186 of the CCG, it would have to be established that the person had general knowledge of the underlying criminal source of the property, without having to prove that the person knew exactly from which offense the proceeds were generated.

191. Under Article 194-1 of the CCG, the person would have to know that the property was obtained through ML activities.

192. In sum, all the provisions are in line with the minimum standard required under FATF Recommendation 2.

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

193. While there is no specific legal provision on this point, the authorities stated that under Georgian criminal procedures, the intentional element of any criminal offense, including ML, may always be inferred from objective factual circumstances. It was stated that the principle of free evaluation of the evidence by the judiciary is a long-standing practice in Georgia that has been confirmed by the judiciary in a vast number of cases. The authorities provided case law to establish this view.

Liability of Legal Persons (c. 2.3)

194. Since 2006, Georgian law recognizes the principle of criminal liability of legal persons. Article 107/1 and 107/2 of the CCG expressly stipulates that the ML provisions are applicable to legal persons. According to the authorities, in November 2011 two legal persons were convicted for laundering proceeds of tax evasion. In both cases, the directors of the companies as well as the

companies themselves were indicted. Assets of the directors were frozen, but not those of the legal persons.

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

195. Article 107/1 (8) of the CCG provides that criminal liability of a legal person does not exempt the legal person from its duty to redress damages it caused as a result of a criminal offense, or from other measures prescribed by law. The authorities stated that this provision would be interpreted to allow for the imposition of administrative and other sanctions against a legal person in addition and parallel to criminal sanctions.

Sanctions for ML (c. 2.5):

196. The sanctions provided for basic ML (i.e., in the absence of aggravating circumstances) vary depending on the legal provisions applicable to the relevant conduct. The offense under Article 194 of the CCG is subject to a fine or imprisonment of a term of three to six years. Under Articles 186 (1) and 194-1 (1) of the CCG, ML is sanctioned with a fine, or socially useful work for 180 to 200 hours, or correctional work for up to one year, or imprisonment for a term of up to two years.[48]

197. In aggravated circumstances, namely, if the ML offense has been committed repeatedly, by a group based on prior agreement, or the conduct involved property in excess of GEL 30,000, the sanctions available are a prison sentence of six to nine years (Article 194 (2) of the CCG) or a fine or imprisonment for two to five years (Articles 186 (2) and 194-1 (2) of the CCG).

198. Even stricter sanctions are available in cases involving an organized group, abuse of official power, or property in excess of GEL 50,000. Article 194 (3) of the CCG provides for a sanction of imprisonment for nine to twelve years and Articles 186 (3) and 194-1 (3) of the CCG of four to seven years. Under all three provisions, a legal person convicted of an ML offense may be sanctioned to liquidation of the person or deprivation of the right to pursue a business, and a fine.

199. The sanctions for ML are generally consistent with the sanctions applicable to other economic crimes under Georgian law. For example, fraud is sanctioned with a fine, or socially useful work for 170 to 200 hours, or correctional work for up to two years, or imprisonment for a term of two to four years; embezzlement with a fine or imprisonment for a term of up to three years; extortion with a fine or imprisonment for a term of two to four years; and corruption with imprisonment for up to two years.

200. The sanctions set out under Article 194 of the CCG are in line with the sanctions adopted by other jurisdictions in the region. For example, both Armenian and Azerbaijani law follows a similar concept as Georgian law. Basic ML offenses are punished with imprisonment of up to four years (in the case of Armenia) and a fine or imprisonment of up to five years (in the case of Azerbaijan). In the circumstances provided for under Articles 194 (2) of the CCG, both Armenia and Azerbaijan provide

[48] Socially useful work is unpaid work carried out by a convict during his/her spare time, whereas correctional work is service at the workplace of the convict.

for a prison sentence of four to eight years. Cases covered under Articles 194 (3) of the CCG are sanctioned with a prison term of six to twelve years in Armenia and seven to twelve years in Azerbaijan.

	Armenia	Azerbaijan	Georgia
Basic ML	Imprisonment of up to 4 year	Fine or imprisonment of up to five years	A fine or imprisonment for three to six years
Grave ML Offense	Imprisonment for four to eight years	Imprisonment for four to eight years	Imprisonment for six to nine years
Especially grave ML Offense	Imprisonment for six to twelve years	Imprisonment for seven to twelve years	Imprisonment for nine to twelve years

201. The sanctions applied by the courts for ML are generally on the lower end of the spectrum, both in the context of autonomous offenses and offenses tried in combination with the predicate offense. In particular, cases tried on the basis of the aggravated offenses under Article 194 (2) and (3) of the CCG, which is the majority of all ML cases, are rarely punished with the full sanction available (six to nine years under para. (2) and 9 to 12 years under para. (3)). The authorities stated that this was due to the fact that the prosecution would usually enter into a plea agreement with the defendant in exchange for information. Based on the agreement, the prosecution then applies to the court for imposition of a less severe sanction than the one provided for under the relevant legal provision. In 2010, 12 persons convicted of ML entered into a plea agreement with the prosecution. In 2011, 91 defendants were convicted and sentenced on the basis of a plea agreement. The authorities stated that plea agreements would generally be offered in exchange for information in only two situations: in relation to minor offenses or, in the case of grave offenses such as Article 194 (2) or (3) of the CCG, when the defendant participated in but did not actually control or orchestrate a specific ML scheme. Other factors that would be taken into consideration are whether the person has a criminal record, and whether the defendant agrees to reimburse Georgia for any damages to the state budget due to unpaid taxes, misappropriation, embezzlement etc. Representatives stated that in the context of the ML offenses tried, it was not considered that plea agreements were offered too liberally. This was due to the fact that in most cases, the defendant was merely acting as a straw person for the persons actually controlling a specific ML scheme.

202. The table below indicates examples of sanctions imposed for ML and the underlying predicate offense:

LEGAL PROVISION	IMPRISONMENT SANCTION IMPOSED
Article 194 (2) and (3)	17 years, of which 11 for ML.
Article 194 (2) and (3)	4 years, of which 3 years for ML.
Article 194 (2) and (3)	5 years, of which 1 year for ML.
Article 194 (3)	5 years, of which 3 years for ML.
Article 194 (3) in combination with Article 25	3 years, of which 2 years for attempted ML.
Article 194 (1)	4 years, of which 1 year for ML.
Article 194 (3) in combination with Article 24	6 years, of which 1 year and 6 months for ML.
Article 194 (2) and (3) in combination with Article 24	17 years, of which 9 years for ML.
Article 194 (2) in combination with Article 24	13 years and 9 months of which 6 years for ML.
Article 194 (3) in combination with Article 24	14 years, of which 9 years for ML.
Article 194 (3) in combination with Article 24	12 years and 6 months. of which 9 years for ML.
Article 194 (2) and (3)	1 year, of which 6 months for ML.
Article 194 (3)	1 year, of which 6 months for ML.
Article 194 (3)	2 years, of which 1 year and 6 months for ML.
Article 194 (3)	1 year, of which 4 months for ML.
Article 194 (2)	3 years, of which 1 year and 6 months for ML.

203. In addition, there are a number of cases in which a conviction was obtained and sanctions imposed for the ML offense alone as outlined in the table below:

YEAR	LEGAL PROVISION	SANCTION IMPOSED
2007	Article 194 (2) and (3)	3 years (suspended) and a fine of €435
	Article 194 (2)	1 year, 8 months and 19 days

	Article 194 (2)	1 year, 8 months and 19 days
	Article 194 (2) and (3) in combination with Article 24	1 year (suspended) and a fine of €434.010
	Article 194 (3) in combination with Article 19	5 years (suspended) and a fine of €4.340
2010	Article 194 (1)	5 years (suspended) and community labor of 200 hours
2011	Article 194 (3)	1 year (suspended) and a fine of €44.027
	Articles 194 (2) and (3)	9 years and a fine of €88.055
	Article 194 (2) and (3)	9 years and a fine of €22.013
	Article 194 (3)	1 year (suspended) and a fine of €264.165
	Article 194 (2) and (3)	1 year (suspended) and a fine of €132.082
	Article 194 (2) and (3)	1 year (suspended) and a fine of 176.110 EUR
	Article 194 (2) and (3)	1 year (suspended) and a fine of €176.110
	Article 194 (1)	6 years
	Article 194 (3)	1 year (suspended) and a fine of €4.402

204. In relation to the two legal persons convicted for ML in November 2011, the sanctions imposed were liquidation of the legal entities.

205. After the last assessment by MONEYVAL in 2006, Georgia's legislator increased the sanctions for ML to address one of the shortcomings identified in the evaluation report. While this effort is a sign of Georgia's willingness to improve the system to effectively fight ML, in practice the frequent use of plea agreements in ML cases seems to undermine this legislative effort in the sense that the prosecution hardly ever applies for the stricter sanctions now available. In light of this information, the assessors find that Georgian authorities do not apply the sanctions regime in a sufficiently dissuasive and effective manner. While the assessors agree that plea agreements can be a useful tool in the fight against organized and serious crime, such agreements should be applied in a selective manner, in particular in the context of aggravated offenses.

Implementation and Statistics (R.32):

206. Statistics on ML were provided by the Ministry of Justice. In summary, between 2005 and 2011, 133 cases were investigated for ML, of which 81 resulted in a prosecution and 102 in a conviction. Of those, 54 cases related to autonomous ML. The reason why the number of cases in which a conviction was obtained is higher than the number of cases prosecuted is that a prosecution may be split into a number of separate cases once it gets to the trial level.

207. The vast majority of ML investigations since 2007 were triggered by an STR even though since 2010 the number of cases referred to the prosecutor's office from another law enforcement authority has increased significantly. In addition, a conviction based on Article 186 of the CCG was obtained in 291 cases. None of the convictions were based on Articles 194-1 of the CCG.

Year	Investigations	Prosecutions	Convictions (final)
2005	16	6 (17 persons)	2 (10 persons)
2006	10	4 (4 persons)	3 (5 persons)
2007	9	2 (2 persons)	1 (2 persons)
2008	9	3 (4 persons)	4 (5 persons)
2009	9	4 (6 persons)	1 (1 person)
2010	22	17 (29 persons)	16 (19 persons)
2011	58	45 (143 persons)	75 (123 persons)

208. The table below summarizes general crime statistics provided by Ministry of Justice for the years 2010 and 2011. As indicated above, the number of cases in which a conviction was obtained may in some instances be higher than the number of cases prosecuted due to the fact that a prosecution can be split into a number of separate cases once it gets to the trial level.

	2010			**2011 (Jan – Nov.)**		
Predicate Offense	Investigations (cases)	Prosecutions (persons)	Convictions (persons)	Investigations (persons)	Prosecutions (persons)	Convictions (persons)
Participation in an organized criminal group and racketeering	20	51	18	20	39	109
Terrorism, including FT	-	1	-	14	38	23

Trafficking in human beings and migrant smuggling	11	1	-	7		2
Sexual exploitation, including sexual exploitation of children			1	2	-	-
Illicit trafficking in narcotic drugs and psychotropic substances	2645	2566	2524	1676	1679	1678
Illicit arms trafficking	1559	890	1036	1306	777	906
Illicit trafficking in stolen and other goods	106	150	176	96	104	115
Corruption and bribery	359	255	237	282	233	549
Fraud	2150	1701	1532	1873	1193	1388
Counterfeiting Currency	98	36	38	67	13	8
Counterfeiting and piracy of products				1	4	-
Environmental crime				71	98	99
Murder, grievous bodily injury	285	198	318	148	151	186
Kidnapping, illegal restraining and hostage-taking	9	13	16	2	6	9
Robbery or theft	13413	4694	4301	10768	3813	3997
Smuggling	32	43	59	26	21	16
Extortion	93	64	58	70	57	73
Forgery	363	703	580	359	603	589
Piracy				-	-	-
Insider trading and market manipulation				-	-	-

209. The authorities stated that so far, a conviction could be secured in all cases that were filed with the court and that the number of investigations and prosecutions terminated was rather low. It was further indicated that the ratio of investigations initiated vs. convictions obtained for ML as well as the total number of investigations and prosecutions for ML improved significantly since 2005 due to increased political will to combat such crimes, coupled with amendments to the legislation and extensive training of law enforcement authorities and members of the judiciary on ML. Another contributing factor was the issuance by the Ministry of Justice in January 2010 of guidelines to all prosecutors and investigators, urging them to focus also on financial aspects in the course of conducting investigations for proceeds generating crimes.

210. According to information provided by the authorities, between 2007 and 2011, the main predicate offenses involved in ML cases were falsification of official and contractual documents (convictions in relation to 47 persons) followed by smuggling offenses (convictions in relation to 14 persons), corruption and bribery (convictions in relation to 6 person), theft, illegal logging, and illegal entrepreneurial activity (convictions of 5 persons in each category). In some cases, convictions were obtained for more than one predicate offense. No ML convictions were obtained in the context of illicit trafficking in narcotic drugs and psychotropic substances, participation in an organized criminal group or racketeering, or illicit trafficking in human beings or arms.

211. Georgia has in place a strong and comprehensive legal framework to prosecute and sanction ML. Since the issuance of the Ministry of Justice guidelines in January 2010, the number of investigations, prosecutions, and convictions has increased and a good number of cases have been investigated and prosecuted.

Effectiveness:

212. Despite the positive developments in strengthening and implementing Georgia's legal framework, the assessors question whether the ML provisions are applied effectively in the context of the most significant proceeds generating crimes. In particular, there are four main areas of concern:

- First, when comparing the cases in which ML convictions were obtained with Georgia's general crime profile, it seems that the ML provisions are not applied in the context of those predicate offenses that are most likely to generate proceeds. For example, in 2010 and 2011 more than 4,000 persons were convicted in relation to drug-related crimes, of which more than 150 were convicted for cross-border trafficking of drugs. Furthermore, 127 persons were convicted of participation in an illegal armed formation or membership of the "thieves-in-law" organization, and over 2,000 persons were convicted in relation to the illegal purchase, storage, carrying, manufacturing, transportation, or sale of arms. No ML convictions were obtained in relation to such crimes. In particular, the following categories of predicate offenses were discussed:

    - On the lack of ML convictions in relation to drug-trafficking offenses, the authorities explained that this was due to the fact that the statistics for drug-related offenses would also include cases of illegal retention as opposed to sale or purchase of drugs, and that 95 percent of all cases under this category would relate to possession of illegal drugs for private use. While the assessors acknowledge this fact, it must, nevertheless, be noted that illegal circulation of drugs was the second most frequently

registered predicate crime in Georgia both in 2009 and 2010, and it is, thus, not credible that no proceeds were generated through illicit trafficking of drugs in Georgia;

- In relation to organized crime, it was stated that law enforcement undertook serious efforts between 2003 and 2006 to suppress domestic organized criminal groups, also called "thieves-in-law." The measures taken resulted in the eradication of such groups in Georgia. Several authorities indicated that, by now, members of such groups would either be held in prison or have fled the country. Close surveillance of members of the organization as well as their family members and friends would warrant that leaders of the organizations no longer orchestrate or control any criminal activity in Georgia. However, the statistics set out above (70 persons were convicted in 2010 and 2011 of membership of the "thieves-in-law" organization) indicate that the authorities have not been entirely successful in preventing such organizations from operating in Georgia and it is unclear why no ML charges have been filed in relation to organized crime since 2007. Furthermore, an increased number of investigations in European countries focus on the activities of Georgian criminal organizations, which expose the risk of proceeds from such crimes being channeled back to Georgia. In the fall of 2011, 23 Georgian nationals were indicted in France for participation in an organized group. In 2010, Austria, Spain, Italy, and Germany carried out operation "Java" which resulted in the arrest of close to 100 alleged members of the "thieves-in-law" organization, amongst them a number of high-ranking members. Based on these considerations, the conclusion may be drawn that the ML provisions are not sufficiently utilized to address the risks posed from domestic and transnational organized crime;

- In relation to human trafficking, it was stated that such offenses would not generate significant criminal proceeds in Georgia. However, Georgia was cited to have had convictions for human trafficking in relation to 39 persons in 2009, resulting in an average sentence of 21 years imprisonment.[49] Ten investigations were initiated in 2010, some of which are ongoing. The rather high sentences imposed in these cases suggest that the convictions were in relation to serious trafficking operations.

- Secondly, in response to the assessors' inquiry as to why so many ML cases involved "laundering of undocumented property" or falsification of documents, the authorities responded that this was because there had been several cases in which money was channeled through the books and accounts of (both domestic and offshore) legal entities. In a number of these cases, Georgian residents and/or citizens falsified the companies' accounting books, invoices, expense reports, commercial license documents, tax declarations, or other documents to conceal money flows. Given the lack of information on the predicate offense that initially generated the proceeds, or the natural persons controlling or orchestrating such schemes, law enforcement authorities opted to prosecute for "laundering of undocumented

[49] Statistics were taken from the 2010 and 2011 U.S. State Department Reports on Trafficking in Persons.

property" or for ML in combination with falsification of documents.[50] While the assessors welcome the authorities' initiative to hold the perpetrators in such cases accountable for ML, increased efforts should also be put on investigating the background of such cases, in particular to establish the actual source of the property, to identify the countries from/to which proceeds are transferred, and consequently to apply the ML provisions also to the persons controlling or orchestrating such schemes. In cases where such persons are located abroad and it is impractical or impossible to file charges in Georgia, the evidence gathered should be provided to competent authorities in the relevant foreign countries in all cases. Furthermore, based on the rather high number of such cases as opposed to the low number of convictions of legal persons, the conclusion may be drawn that the ML provisions are not yet applied effectively in relation to legal persons.

- Thirdly, based on discussions with various law enforcement authorities and on the statistics provided, it seems that most ML cases have been initiated by the Financial Monitoring Service (FMS) through the provision of CTRs and STRs. Only few ML cases were detected in the context of an investigation for a predicate offense. This raises questions about the extent to which law enforcement focuses on the financial aspects of predicate crime.

- Lastly, in light of the concerns expressed under Section 1 and Recommendation 30 of this report on the lack of independence of the Georgian judiciary and law enforcement authorities, the application of Article 194 of the CCG to any illegal or undocumented property as opposed to only criminal proceeds bears the risk of abuse of the provisions, and thus may undermine the effectiveness of the AML/CFT framework as a whole.

213. In summary, the assessors recommend that the authorities review the approach taken in applying the ML provisions to ensure that the strong legal framework in place is used to more effectively combat predicate crimes both in a domestic and transnational context.

2.1.2. Recommendations and Comments

- Utilize the option to enter into a plea agreement in a more selective manner, in particular in the context of aggravated offenses, and ensure that in all other cases, the sanctions regime for ML is applied in a dissuasive and effective manner.

[50] Based on the statistics provided by the authorities, it seems that between 2007 and 2011 convictions in relation to more than 40 persons follow the described scheme. The assessors calculated this number by counting only those convictions that were obtained for ML or ML and forgery of documents but no other offenses. The assessors' understanding was further confirmed by the fact that the majority of convictions for grave and especially grave ML Article 194 (2) and (3) of the CCG were obtained on the basis of a plea agreement, whereby the authorities stated in the context of serious offenses such agreements would only be offered to those persons whose level of participation in the commission of the crime was minor. The authorities stated that in some of these investigations launched in 2011, a separate investigation was launched to identify persons outside of Georgia that were involved in such schemes and to be able to obtain assistance from other countries in doing so.

- Review the approach taken in applying the ML provisions to ensure that the strong legal framework in place is used to combat predicate crime effectively both in a domestic and transnational context. In particular, a proactive approach should be put on investigating and prosecuting those persons that orchestrate and control ML schemes through Georgia. Law enforcement authorities should also address financial flows in their investigations for predicate offenses to detect any potential ML activities.

2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[51]
R.1	**LC**	**Effectiveness:** • The ML provisions are not applied in a sufficiently effective manner, both in relation to domestic and transnational predicate crimes.
R.2	**LC**	• Due to the frequent use of plea agreements, the sanctions regime for ML is not applied in a sufficiently dissuasive and effective manner. **Effectiveness:** • The ML provisions are not applied effectively to legal persons.

2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Special Recommendations II (rated NC in the third mutual evaluation)

Legal Framework:

214. Chapter XXXVIII of the CCG sets out a number of terrorism offenses, including an autonomous offense of financing of terrorism ("FT") under Article 331/1. Aggravated FT offenses are set out under Article 331/1 (2) for commission of the offense by an organization or repeatedly, and Article 331/1 (3) for commission of an offense by a terrorist organization or an offense involving grave consequences.

215. The FT offense was introduced in July 2006 and then amended twice, most notably to make the offense applicable to the financing of individual terrorists.

216. At the time of the on-site mission, Georgia had investigated one case of FT, resulting in the prosecution of three individuals. The case was still pending and related to activities in the break-away zones.

217. Georgia ratified the International Convention for the Suppression of the Financing of Terrorism ("FT Convention") on September 27, 2002 and all nine Conventions and Protocols listed in its Annex.

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

Criminalization of FT (c. II.1):

218. Article 331/1 of the CCG criminalizes the FT as the "collection or provision of funds or other property, knowing that it will fully or partially be used or is possible to be used by a terrorist or terrorist organisation or/and for the commission of one of the offenses envisaged by Articles 144, 227, 227/1, 227/2, 230, 231, 231/1, 231/2, 323-330 and 330/2 of the present Code, regardless whether any of the offense referred to in these articles has been committed."

219. The material elements of the FT offense (namely the "collection or provision, directly or indirectly, of funds and other property") are both covered under Article 331/1. The requirement that the collection or provision takes place with the intent that the funds collected or provided are to be used for FT is also covered.

220. The authorities stated that the term "property" under Articles 147–149 would be defined in accordance with Article 152 of the Civil Code and extends to assets of every kind, whether tangible or intangible, moveable or immovable, and legal documents or instruments in any form. A detailed discussion of this point is provided under Recommendation 1 of this report.

Financing of Terrorist Acts:

221. Pursuant to Article 2 of the TF Convention, countries must criminalize the financing of (1) conduct covered by the offenses set forth in the nine Conventions and Protocols listed in the Annex to the FT Convention ("the convention offenses") and (2) 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 a population, or to compel a government or an international organization to do or to abstain from doing any act ("the generic offense").

222. Article 331/1 of the CCG applies whenever a person collects or provides funds or property with the intention that they be used for the commission of any crime stipulated by Articles 144, 227, 227/1, 227/2, 230, 231, 231/1, 231/2, 323-330, and 330/2 of the CCG. Article 323 of the CCG sets out a general offense of terrorism and applies to any act that involves "explosion, arson, the use of arms or other act that pose a danger of human death or of significant damage to property or of other grave consequences and also infringes upon public safety, strategic, political and economic state interests committed with the aim to create fear among population or exert pressure on internal or foreign authorities or international organization."

223. The requirement that an act under Article 323 of the CCG "infringes upon public safety, strategic, political or economic state interests" for it to constitute a "terrorist act" is not reflected in the definition of the generic offense under the FT Convention. The authorities stated, however, that in practice this requirement would not pose any limitation in that the court would always consider an act under Article 323 to "infringe upon public safety." The evidentiary burden to prove this element would, therefore, not be high. While the assessors see merit in this argument, it should be noted that

the FT offense have never been applied by the court and that an element of uncertainty, thus, remains on this point.[52]

224. With respect to the convention offenses, the provisions cross referenced in Article 331/1, namely, Articles 144, 227, 227/1, 227/2, 230, 231, 231/1, 231/2, 323-330, and 330/2 of the CCG cover most of the offenses defined in the nine Conventions and Protocols listed in the Annex to the FT Convention. However, some gaps remain as it is unclear how the offenses defined in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation are covered under the scope of Article 331/1 of the CCG. Offenses under the International Convention for the Suppression of Terrorist Bombing are covered only if committed with terrorist intent.[53]

225. For a person to be held criminally liable for FT, Article 331/1 of the CCG does not require that the funds were actually used to carry out or attempt a terrorist act or were linked to a specific terrorist act. It is merely required that the perpetrator intended to support the commission of a terrorist act, or a terrorist or terrorist organization for the offense to have been committed.

Financing of Terrorists and Terrorist Organizations:

226. Article 331/1 of the CCG applies to the collection or provision of funds or other property, knowing in advance that it will or may fully or partially be used by a terrorist or a terrorist organization. The language of Article 331/1 does not require that the funds are provided with the intention to support a specific terrorist act, but applies also in situations where property is provided to a terrorist or terrorist organization for legitimate use, such as for example to cover basic living expenses. The authorities confirmed this interpretation.

227. The terms "terrorist" and "terrorist organization" are defined in the Law of Georgia on Combating Terrorism ("Terrorism Law") and are applicable to Article 331/1 of the CCG. Article 1of the Terrorism Law defines "terrorist" as "a person who participates in terrorist activity" which is further defined as an "activity the liability for which is determined by Chapter XXXVII (Articles 323-331/1) of the CCG." For the term to be defined fully in line with the FATF standard, the offenses Article 323-331/1 would, thus, have to cover both the generic and the convention offenses. As discussed above, uncertainty exists as to how the courts will interpret the requirement under Article 323 of the CCG that an act "infringes on public safety," etc. Furthermore, the majority of convention offenses are not covered under Article 323-331/1 of CCG, in particular the offenses under the Convention for the Suppression of the Unlawful Seizure of Aircraft; the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation; the Convention on the Physical Protection of Nuclear Material; and the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf are not covered. As a result, the definition

[52] The requirement that an act must "infringe upon public safety" for it to constitute a terrorist act was removed from the provision through a legal amendment on March 15, 2012.

[53] The offenses under the two Conventions were criminalized in Georgia on March 15, 2012, and Article 331/1 of the CCG was amended to include these new offenses within the scope of the FT offense.

of the term "terrorist" is considerably limited in scope compared to the definition of the term under the FATF standard.

228. "Terrorist organization" is defined under Article 1 (g) of the Terrorism Law as "an organization (regardless of its form), established for realization of terrorist activity (an act of terrorism). An organization can be deemed as a terrorist organization if at least one of its structural subdivisions or at least one of its members carried out terrorist activity (an act of terrorism) with the authorization of the leadership of this organization." While the definition is slightly narrower than the definition of the term under the FATF standard in that it requires a structural organization for a group to be considered a "terrorist organization," in cases where funds are provided to two or more persons operating without any structural organization, the prosecution could still base criminal charges on the financing of an individual terrorist in relation to each group member.

229. As in the context of the financing of an individual terrorist and for the reasons already indicated above, the term "terrorist activity" is considerably narrower in scope than the term "terrorist act" as defined under the FATF standard, which in turn has a limiting effect on the definition of "terrorist organization."

Attempt and ancillary offenses:

230. The general provisions of the Georgian CCG apply to all criminal offenses, regardless of whether they are set out in the CCG or another law. Chapter VI of the CCG is, thus, also applicable to the FT offense under Article 331/1. In particular, Articles 18 (preparation), 19 (attempt) and 23–25 (accomplice liability) all apply. For a detailed discussion of these provisions, see criterion 1.7.

Predicate Offense for ML (c. II.2):

231. As indicated under criterion 1.3., the Georgian ML provisions apply in relation to all criminal conducts. The FT offense under Article 331/1 of the CCG is, therefore, a predicate offense for ML, as required under the international standard.

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

232. Article 331/1 of the CCG does not address extraterritorial jurisdiction. However, the authorities stated that the offense could be applied regardless of whether or not the financed act or organization is located in Georgia. Reference was again made to Article 4 of the CCG, which provides that a person who "commences, continues, ceases or ends" a crime in Georgia shall be subject to criminal liability under the Georgian law and thus supports the authorities' view that the FT provision can be applied also in situations where merely the financing activity is carried out in Georgia but the financed act/individual/organization is located abroad.

233. The assessors raised concern that the reference under Article 323of the CCG to specific provisions of the CCG could be interpreted to mean that only a conduct that can be prosecuted as an offense in Georgia, and, therefore has been committed in Georgia, would qualify under Article 323. The authorities clarified, however, that this was not the case and that Article 331/1 of the CCG could also be applied where a conduct that was committed abroad would have constituted a terrorist act, had it occurred in Georgia.

234. In the absence of any case law on FT, it is difficult to confirm the authorities' view. However, the authorities stated that the courts have applied this logic in other contexts. For example, just like Article 323, Article 18 of the CCG which relates to the preparation of a crime, is drafted to apply only in relation to expressly-referenced provisions under the CCG. Nevertheless, the courts have applied Article 18 also in the context of criminal offenses that have been carried out abroad. The authorities argued that the court would follow the same thinking in the context of Article 331/1. The authorities' view was also confirmed by representatives of the judiciary. Georgian law can, thus, be considered to be in line with the FATF standard on this point.

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

235. The FT offense under Article 331/1 of the CCG applies to any person who carries out the required conduct "knowing in advance that [the funds or property] will or may fully or partially be used" to support terrorism. The knowledge element may be inferred from objective factual circumstances as discussed under criterion 2.2.

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

236. Georgian law recognizes the principle of criminal liability of legal persons. Article 107/2 of the CCG lists the offenses in relation to which criminal liability may be imposed for legal persons and includes a reference to all terrorism offenses and FT. In practice, the FT provisions have never been applied to a legal person. As indicated under criterion 2.4. above, Article 107/1 (8) of the CCG provides that making a legal person subject to criminal liability for FT does not preclude the possibility of parallel criminal, civil, or administrative sanctions.

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

237. The basic FT offense under Article 331/1 of the CCG is sanctioned with imprisonment for a term of 10 to 14 years. In aggravated circumstances, the sanction is increased to imprisonment for a term of 14 to 17 years (if the offense is committed by an organization or repeatedly) or even to imprisonment for a term of 17 to 20 years or life (if committed by a terrorist organization of resulting in grave consequences). Sanctions available in relation to legal persons are a fine, liquidation, and deprivation of the right to pursue any further activity.

238. The sanctions for FT are comparable only to those available in relation to the most serious crimes under Georgian law, such as aggravated murder, torture, terrorism, and trafficking in human beings.

239. The sanctions provided seem to be stricter than those set out under the laws of some neighboring countries. For example, Armenia sanctions FT with imprisonment for three to seven years (for the basic offense) or eight to twelve years (in aggravated circumstances). Azerbaijan sets out a sanction of imprisonment for ten to twelve years.

	Armenia	**Azerbaijan**	**Georgia**
Basic FT	Imprisonment of three to seven years	Imprisonment for ten to twelve years	Imprisonment for ten to fourteen years

Aggravated FT Offense	Imprisonment for eight to twelve years	Imprisonment for ten to twelve years	Imprisonment for fourteen to seventeen years; or seventeen to twenty years or life.

240. The statutory sanctions available for FT can be considered as proportionate. In the absence of any case law, however, it remains to be seen whether the judiciary will also apply them in an effective and dissuasive manner.

Implementation and Statistics (R.32):

241. At the time of the assessment, Georgia has had one investigation for FT resulting in the prosecution of three individuals. The investigation related to conduct that occurred in the break-away zones and involved the provision of arms and US$4,000 in cash to support the commission of a terrorist act in Tbilisi. The case was pending at the time of the on-site visit. There have been no ML cases involving FT.

Effectiveness:

242. In discussions with the authorities it was indicated that the risk from domestic terrorists or terrorist organizations was perceived as low and, accordingly, FT was not a major area of concern in a domestic context.

243. However, the authorities stated that since 2009, numerous acts of terrorism were planned and organized from the breakaway-zones and carried out in Tbilisi. This view is also reflected in the *Evaluations of Threats Faced by Georgia 2007–2009* issued through presidential decree, where it is stated that "limited control of state borders […] increases the probability of terrorism." In Georgia's 2006 report to the UN Security Council Committee established pursuant to Resolution 1267, it is stated that "The conflict zones on the territory of Georgia, in particular, the territories of the Autonomous Republic of Abkhazia and the Tskhinvali Region/South Ossetia, that are beyond the jurisdiction of Georgia, also pose a danger. The separatist regimes fail to control the situation in the above regions that have led to establishment of favorable conditions for activities of terrorist groups as well as for flourishing smuggling, trafficking, and other transnational organized crimes". As noted above, the information has not been examined by the assessors.

2.2.2. Recommendations and Comments

- Amend Article 323 to remove the requirement that an act "infringes upon public safety, etc."
- Criminalize all offenses defined in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and include them within the scope of Article 331/1.
- Ensure that offenses under the International Convention for the Suppression of Terrorist Bombings fall within the scope of Article 331/1 also in cases where no terroristic intent can be proven.

- Define the terms "terrorist" and "terrorist organization" in line with the FATF standard by covering within the scope of "terrorist activity" all terrorist acts as defined under the FATF standard.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The requirement for an act to "infringe upon public safety, etc." to qualify as a terrorist act unduly narrows the scope of the terrorism offense. • Scope of "terrorist acts" is too narrow. Not all offenses defined in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation are criminalized under Georgian law and are thus not within the scope of Article 331/1. The financing of offenses under the International Convention for the Suppression of Terrorist Bombings is covered only where it can be established that such acts are carried out with terrorist intent. • The definitions of the terms "terrorist" and "terrorist organization" are too narrow as they do not extend to all "terrorist acts" as defined under the FATF standard.

2.3. Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1. Description and Analysis

Legal Framework:

Recommendation 3 (rated LC in the third mutual evaluation)

244. Article 52 of the CCG provides for the forfeiture of proceeds and instrumentalities of crime in the context of a criminal conviction. Provisional measures are prescribed through Articles 151–158 of the Criminal Procedure Code ("CPC"). In relation to a number of offenses, Georgian law also provides for civil forfeiture based on Articles 356/1–356/7 of the Civil Procedure Code.

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

245. Georgian law, through Article 52 of the CCG, provides for the conviction-based confiscation of proceeds, objects, and instrumentalities of any intentional crime, as well as of instrumentalities that were intended to be used in the commission of such a crime. Confiscation is a mandatory sanction. Article 52 of the CCG applies in relation to any intentional crime, thus including to ML, FT, and all FATF-designated categories of predicate offenses.

246. Article 52 (1) of the CCG clarifies that forfeiture would mean "forfeiture without compensation in favor of the state of the object and/or instrumentalities of the crime, item intended for the commission of crime and/or property acquired through criminal means."

247. Article 52 (2) of the CCG pertains to instrumentalities used or intended to be used in the commission of a crime, as well as to objects of any intentional criminal offense and prescribes confiscation of such property whenever such measure is "necessary for state and public interest, to protect the rights and freedoms of certain persons or to avoid the commission of a new crime." The authorities explained that this requirement would have to be established before the court, and that in practice, it would always be met as the court would automatically consider the confiscation of instrumentalities and objects of crime to be in the state's and public's interest. The authorities provided a case law confirming that Article 52 (2) has been applied in autonomous ML cases to confiscate the objects of the offense.

248. Article 52 (3) of the CCG regulates the confiscation of proceeds of crime and stipulates that "property acquired through criminal means as well as any proceeds derived from such property or the property of equivalent value" may be confiscated if the prosecution can prove that the property has been obtained through criminal means. Confiscation measures are, thus, applicable in relation to proceeds of any predicate or ML offense, or of equivalent value to such proceeds.

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

249. Para. (3) of Article 52 of the CCG applies not only in relation to direct proceeds of crime but also to any indirect proceeds (i.e., property derived from the direct proceeds).

250. In the case of instrumentalities or objects held or owned by a third party, Article 52 (2) of the CCG applies due to the reference to "item[s] owned by or in lawful possession of the accused or convicted." No such reference is provided for under Article 52 (3) in relation to proceeds. However, the authorities maintained that confiscation of proceeds held or owned by a third party would nevertheless be possible due to the reference to "property of the convicted person acquired by criminal means." It was stated that the provision would not differentiate between property that is owned or held by the defendant vs. a third party but merely requires that property subject to confiscation is proven to have at some point been acquired by the defendant through criminal means. In addition, it was argued that Article 52 (3) would allow for equivalent value confiscation and, thus, for the confiscation of any property owned or held by the defendant to satisfy a specific order. This view was also confirmed by the courts in a *Conviction of June 8, 2010, against Davit Gabunia, Itakli Khurtsidze, Giorgi Gabunia and Aleksandre Lordeli*, where the court confiscated two apartments registered on the names of third p*arties, and Conviction of January 21, 2011 against Davit Mukhigulashvili and Levan Khidesheli,* where the *co*urt confiscated funds held in bank accounts of a legal person.

251. The term "property" is defined in the Civil Code as indicated under Recommendation 1 above.

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

252. Article 152 of the CPC defines arrest of property as "the prohibition of the disposal of this property, and in case of necessity, also its use by person who has ownership or possession over this property."

253. Article 151 of the CPC provides that the arrest of property may be ordered to secure a confiscation if there is a suspicion that the property will be hidden, spent or that the property constitutes proceeds of crime. According to the authorities, it may apply to any type of property that may become subject to confiscation, including instrumentalities used or intended to be used in the commission of a crime, as well as objects and direct and/or indirect proceeds of crime. In cases where the proceeds of crime cannot be located, Article 151 allows for the arrest of property equivalent in value to proceeds of crime.

254. The arrest measure pursuant to Article 151 CPC may be applied to any property of the defendant, or the person financially liable for the defendant's action and/or his associates. The authorities argued that the reference to "associates" should be interpreted to allow for freezing of property owned or held by third parties. This view is supported by Article 152 of the CPC, which describes arrest measures to prohibit the disposal over or use of frozen property by any person who owns or possesses it.

255. As a general rule, Article 154 of the CPC requires a court order to freeze property under Article 151. In urgent circumstances, however, the prosecutor may issue a ruling to arrest property.

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

256. Pursuant to Article 154 of the CPC, the judge shall decide on a motion to arrest property within 48 hours without conducting an oral hearing or notifying the party concerned prior to issuing the notice. The judge is, however, given discretion to review the motion with participation of the party which filed the motion, i.e., the prosecution.

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

257. Law enforcement authorities have a wide range of mechanisms available to identify and trace assets that are or may become subject to confiscation. Information and documents covered by legal privilege may, however, not be accessed by investigative authorities, which could constitute a severe obstacle in tracing proceeds of crime. Further information on this point is provided under Recommendations 28 below.

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

258. Bona fide third parties affected by a freezing measure under Article 151 CPC may apply to the court to have their property unfrozen using the provisions of the CPC. The applicant has to establish, based on the civil law standard, that the property subject to the arrest does not constitute proceeds or objects of crime, or instrumentalities used or intended to be used in the commission of crime. In relation to property that has already been confiscated, the applicant may file a tort claim in cases where return of the property is no longer possible. A decision by the civil court regarding the third party's property takes precedence over, and ultimately will modify the order of the criminal court with respect to the property.

Power to Void Actions (c. 3.6):

259. There is no express provision in the CPC that would allow a court or prosecutor to prevent or void actions, whether contractual or otherwise, where the person involved knew or should have

known that as a result of those actions, the authorities would be prejudiced in their ability to recover property subject to confiscation. However, a transaction made only for the sake of appearances, without the intention to create legal consequences corresponding to its terms, or to conceal another transaction, is considered void pursuant to Article 56 of the Civil Code.

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):

260. Articles 356/1–356/6 of the CPC provide for the civil forfeiture of any property held by a person convicted for the offenses of racketeering, trafficking in drugs or human beings, or membership in the thieves-of-law organization. In addition, the provisions allow for confiscation of any illicit or undocumented property held by a family member or associate of the convicted person. A reversed burden of proof is applied in the context of civil forfeiture proceedings.

261. The final decision on the confiscation of property is made by the Court with the participation of all parties. The relevant decision of the Court (first instance Court) is the subject of appeal. The parties to a dispute have the right to appeal the Court's decision in the Court of Appeal and later in the Supreme Court of Georgia.

Implementation and Statistics (R.32):

262. According to statistics provided by the Office of the Chief Prosecutor of Georgia, since 2005 provisional measures were applied in 29 ML cases, resulting in confiscation of property in 23 cases. These numbers translate into approximately €20.5 million (+ real estate the value of which was not assessed) frozen versus approximately €9.9 million eventually confiscated. In all cases, the confiscation order was fully satisfied in the course of the execution of the order. Representatives of the prosecutor's office stated that the property indicated below included different types of moveable and immovable property, including real estate, bank accounts, and cars.

	Proceeds Frozen in €	Proceeds Seized in €	Proceeds Confiscated in €
2005	572.000 (1 case)	-	572.000 (1 case)
2006	4.548.000 (2 cases)	-	3.214.000 (1 case)
2007	1.949.000 (2 cases)		1.015.213
2008	8.751.609 (2 cases)	543.486 (2 cases)	2.023.248 (2 cases)
2009	1.738.200 (5 cases)	-	-
2010	108.726 (2 cases)	101.565 (3 cases)	700.000 (6 cases)
2011	2.789.468 + 13 real estate objects, the value of which was not determined (7 cases)	228.077 (3 cases)	2.417.638 (11 cases)

263. The table below sets out statistics for confiscations in relation to predicate offenses for the years 2010 and 2011. The most significant amounts of money were confiscated in the context of drug offenses (approximately €1.7 million), followed by fraud (approximately €280,000), illegal entrepreneurial activity (approximately €70,000), and membership of the criminal world (approximately €30,000). Instrumentalities were also confiscated in other categories of crimes. No statistics were provided on the amounts frozen or seized.

Crimes	Money	Transport means	Real estate	Land	Timber	electronic devises, technical tools, other materials	Arms	Jewelry	Shares
Murder; incl. aggravated	US$6,400	1	-	-	-	-	-	-	-
Intentional Grave Damage to health	-	7	-		-	1	-	-	-
Illegal Imprisonment	-	4	-	-	-	-	-	-	-
Taking Hostages	-	2	-	-	-	-	-	-	-
Theft	-	67	-	-	799.16 m^3	67	-	-	-
Fraud	GEL 109 479 US$309,100 €12,980 100 Laryea	12	1 flat	280.8ha	-	-		798.77 gr	
Extortion	-	1	45.93 m^2	-	-	-	-	-	in 2 legal entities
Misappropriation or Embezzlement		1	4 buildings	39 836 m^2	-	-	-	-	-
Purchase or Sale knowingly of an Object Obtained by Criminal Means	-	8	-	-	187.66 m3	Food products: 350kg (662 units);	-	-	-
Violation of Property Rights	-	-	-	-	-	-	-	-	-
Illegal Entrepreneurial Activity	GEL 123 800 US$11,540	4	-	-	-	Medicaments: 1080 units; technical	-	-	-

						device: 1 unit			
Falsification	-	-	-	-	-	Technical devices: 25	-	-	-
Production, Storage, Sale and Transportation of an Excisable Good without Excise Stamp	-	6	-	-	-	Alcohol and tobacco products: 21 814 Units, alcohol with average price of 4000 GEL	-	-	-
Production, Sale or /and Use of False Excise Stamps	-	1	-	-	-	-	-	--	-
Sale, Purchase and Use or/and transfer of the Excise stamps for their Second Use	-	1	-	-	-	-	-	--	-
Illegal obtention of a credit	-	1	162 m^2	470 m^2	-	-	-	-	-
Credit Card and Charge Card Forgery and Sale or Use of Forged Credit and Charge Cards	-	3	-	-	-	Fuel 156 230l; Other property: 212 Units	-	5	-
Violation of Customs regulations	GEL 36 071.35	32	-	-	-	Fuel 549 120 l, alcohol - 3 360 l, Food products - 25 470 kg, scrap metal: 192 950 kg	-	41 074 gr.	Shares of legal entity
Membership of the Criminal World,	US$40,700	-	-	-	-	-	-	-	-

Criminal in law									
Illegal purchase, storage, carrying, manufacturing, transportation, dispatch or sale of a firearm, military supplies, explosives, or explosive devices.	US$1,700	8				Technical devices: 2 units	Arms: 62; military supplies: 121 000 units		
Illegal manufacturing, production, purchase, storage, Transportation, dispatch or sale of narcotic drugs, its analogue or precursor	GEL 43,966 , US$3,030	101				Technical device: 1 Unit		1 unit	
Illegal import, export or international transit of narcotic drugs, its analogue or precursor in Georgia	€1,684,670, GEL 4,000	4				Technical devices: 29 Units			
Illegal catching of fish or other aquatic organisms	-	-	-	-	-	Technical devices: 21 Units; food products: 3 089 kg	-	-	-
Illegal cutting of trees and bushes	-	-	-	-	86,832 m^3	-	-	-	-
Excess of official authority				1 unit					
Tax evasion	-	4	-	900 m^3		-	-	-	-

Effectiveness:

264. Georgia has in place strong criminal provisions allowing for the arrest and confiscation of all types of instrumentalities and proceeds of crime, which are supplemented by civil forfeiture provisions. The confiscation framework has also produced some results considering that over €9.9 million were confiscated in the context of ML offenses alone.

265. With respect to the arrest provisions, the authorities indicated that in practice, provisional measures are applied in a liberal manner, and that the court would apply a rather low standard of proof to establish the existence of a suspicion that property will be dissipated or is the proceeds of crime. This view was supported by reference to the statistics above, which indicate that significant sums have been arrested but only a smaller percentage thereof has eventually been confiscated. The authorities explained that this was due to the fact that in many cases, all property of the suspect is frozen, but only certain amounts thereof can later be proven beyond reasonable doubt to constitute proceeds or instrumentalities of crime.

266. However, when comparing the number of investigations, prosecutions, and convictions for predicate offenses with the amounts of assets seized in 2010 and 2011, questions remain as to how effectively the legal provisions are applied to confiscate proceeds of crime. For example, between 2010 and 2011, close to 3,000 convictions for fraud offenses resulted in the confiscation of about €280,000 and a number of real estate objects, and about 2,000 convictions for arms-related offenses resulted in the confiscation of €1,200 and instrumentalities. Given the large number of convictions relating to trafficking in stolen or other goods, corruption and bribery, forgery, and robbery or theft, it is surprising that barely any property and no funds were confiscated in the context of such offenses. A renewed focus on applying the ML provisions to the most significant proceeds-generating crimes would likely result in a more frequent application of the confiscation provisions and, thus, provide an effective tool in combating all forms of proceeds-generating crimes, including drug, arms, and human trafficking.

267. Furthermore, in discussion with the authorities, the question was raised as to why since 2007, confiscation orders were issued in only 23 out of 55 ML cases, given the mandatory nature of Article 52 of the CCG. The authorities explained that it was general practice in Georgia to advise the court to issue a confiscation order only in cases where property can actually be located. In cases where it was established that a person obtained a certain amount of proceeds of crime but the location of the proceeds are unknown and the defendant does not own any other property in Georgia, the prosecutor would not apply for confiscation. In the specific context of those ML cases where funds are channeled through Georgian legal entities with the assistance of local nominee directors or nominee shareholders, as referenced under Recommendation 1 of this report, the convicted person, namely, the Georgian straw person, would in most cases not own or hold any property in Georgia. Accordingly, no confiscation or confiscation of small amounts was ordered in the context of these convictions.

268. The assessors strongly urge the authorities to review their current practice and to consider applying confiscation measures not only in cases where property is available for confiscation but in all cases. Even in cases where the convict does not hold any property in Georgia, such a conviction can be registered with the Georgian courts and confiscation of any future property equivalent in value to proceeds be warranted.

269. In the context of the ML schemes with an international component as indicated above, it should be noted that a domestic confiscation order may also be enforced abroad based on an exequatur decision by a foreign court. Increased efforts by law enforcement authorities to obtain a conviction not only of the local straw men but also the person in control of such schemes coupled with a more liberal application of the confiscation provisions as indicated in this paragraph may provide a useful tool for the Georgian authorities to combat transnational organized crime, and prevent proceeds from crime conducted abroad to be channeled back into Georgia.

2.3.2. Recommendations and Comments

- Review the scope of legal privilege to ensure that LEAs powers to trace proceeds and instrumentalities of crime is not negatively affected.
- Make more frequent use of the confiscation framework by applying the confiscation provisions in all cases, not only those where property can be located.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• There is a lack of clear legal basis for the compelled production of financial records from lawyers. **Effectiveness:** • The confiscation framework does not seem to be implemented in a fully effective manner.

2.4. Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1. Description and Analysis

Special Recommendation III (rated PC in the 3rd mutual evaluation)

Legal Framework:

270. Georgia established a framework to implement the United Nations Security Council Resolution (UNSCR) 1267 and successor resolutions and the UNSCR 1373 in 2006 and 2008, respectively, and amended it in December 2011.

271. The now repealed Decree of the Head of the FMS of Georgia of October 31, 2006 Number 116 (for UNSCR 1267), Decree of the President of Georgia of January 17, 2008, No. 18 (for UNSCR 1373), and Articles 5.7, 9.2 and 10.4.f of the AML Law required monitoring entities to report and temporarily freeze transactions involving persons designated under UNSCR 1267 or 1373, and provided the FMS with the power to apply to the court for extension of the freeze in case of a suspicion of criminal activity. The freezing mechanism was closely tied to the criminal process under Georgian law. In practice, no asset or property was ever located or frozen in Georgia under this process. According to the authorities, there were three cases in which monitoring entities reported

transactions under the relevant provisions. However, in all cases, the person involved in the reported transaction turned out to not be the person subject to UNSCR 1267 or 1373.

272. In December 2011,[54] these provisions were repealed and replaced by Articles 13/1 and 13/2 of the AML Law. The new provisions call for the establishment of a Governmental Commission ("the Commission") in charge of issuing the list of persons and entities under UNSCR 1373, and applying to the court for the issuance of a freezing order in relation to property of persons designated under UNSCR 1267 or listed by the Commission under UNSCR 1373. The composition of the Commission as well as its structure, powers, and rules are set out by Decree No. 487 of the Government of Georgia (the Decree) which was adopted on December 21, 2011. In addition, a new chapter VII was added to the Administrative Procedure Code of Georgia to regulate administrative freezing orders under the Decree. Meetings of the Commission may be called by the Commission's Secretariat, which is the Public International Law Department of the Ministry of Justice. The Commission met for the first time on January 31, 2012 and during its inaugural session decided to file an application with the court for the issuance of a freezing order in relation to property of any person or entity designated in accordance with UNSCR 1267 and its successor resolutions. The court issued the requested order on February 13, 2012. The Commission intends to hold meetings whenever there is a need to do so, most notably when there are any changes to the UN lists.

273. The freezing order of February 13, 2012 was issued by the court before any property has been located and was therefore applicable to any person that may be holding or administering targeted funds.

274. Given the very recent enactment of the new provisions, the effectiveness of the new freezing mechanism cannot be established for the purposes of this assessment.

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

275. Pursuant to Articles 4 and 7 of the Decree, the Commission established under Article 13/1 of the AML Law "shall be authorized to apply to the court for freezing of property owned by persons referred to [in] the UN Resolutions." Article 21/31 of the Administrative Procedure Code further requires that the motion filed by the Commission is "grounded" and provides "information about the person" designated by the UN and his/her property. The term "person" is defined in the Civil Code and includes individuals, legal entities, and organizations.

276. Article 21/22 of the Administrative Procedure Code requires the court to issue a freezing order if it has been determined that the person referred to in the motion is the person designated by the UN Resolution. The court's decision must be issued within 15 days after the Commission's filing of the application, and without prior notice to the person concerned.

277. Pursuant to Articles 4 and 7 of the Decree, the Commission must apply for the freezing of "property of the persons owned by the persons referred to the UN Resolutions." The Administrative

[54] i.e., after the assessment mission to Tbilisi but within the two-months time period granted to countries to make changes to the AML/CFT system for purposes of integration in the assessment report.

Procedure Code goes a bit further in the sense that it applies the freezing measures in relation to any "property owned by" such persons, as well by other persons."

278. Article 21/32 of the Administrative Procedure Code clarifies that a freezing order issued by the court may be maintained permanently unless the order is cancelled. Article 21/34 further provides that in relation to persons designated by the UN, the court may only cancel a freezing order if that person "was removed from the UN resolution or the sanctions have been abolished against him; "the person does not correspond to the person referred to in the UN Resolutions," or "due to certain circumstances freezing the property of the person shall be inexpedient."

279. When analyzing the new system in light of the requirements under UNSCR 1267 and successor resolutions, a number of issues arise:

280. First, the requirement under Article 21/31 of the Administrative Procedure Code for the Commission's application to be "grounded" supports the conclusion that the courts may review an application with a view to determine whether merits of the case warrant such a measure. The obligation under UNSCR 1267 and its successor resolutions, however, is that the funds of designated persons, groups, or entities are frozen in all cases. Countries do not have discretion to review the merits of a specific case.

281. Article 21/31 of the Administrative Procedure Code also has potential to pose a practical problem in that it requires the Commission's application to provide information about the person in relation to whom the application relates. In the context of designations under UNSCR, the evidence based on which such designations are made is usually not publicly available. Rather, the country initiating a designation at the UN level generally provides the underlying information to the UN Sanctions Committee only but not individual member states. This is because in many cases, the underlying information is classified intelligence. The authorities indicated that Article 21/31 of the Administrative Procedure Code would not apply for designations under UNSCR 1267 and, therefore, it would not be required to provide information to establish that an application is "grounded" if it relates to UN-designated persons or entities. It is not clear to the assessors how the authorities come to this conclusion, given that the language of Article 21/31 does not exempt UNSCR 1267 designations. It remains to be seen how the Georgian courts will interpret this provision and whether the authorities will be able to overcome any potential practical challenges on this point.

282. Secondly, the requirement to issue a freezing order within 15 days from receipt of an application does not meet the requirement under the standard to take freezing measures in a "timely" manner, i.e., within a matter of hours of a UN designation. After its inaugural meeting, it took the Commission 10 days to file an application for a freezing order and another three days for the court to issue the order. While the authorities expect that this timeframe will get shorter once the Commission and the court have more experience in applying the process, legally, the court would still have up to 15 days to issue the order once it has received a specific motion.

283. Lastly, the grounds to cancel a freezing order based on such measures being "inexpedient" is problematic in the sense that UNSCR 1267 and its successor resolutions do not provide countries with the discretion to alter or lift a specific freezing measure in relation to a designated person, group, or entity. The only reason such a measure could possibly be lifted by a domestic court is due to the affected individual, person, or entity having been removed from the UN list. The authorities stated

that in practice, the provision would be interpreted in line with the requirement under UNSCR 1452, to allow for access to frozen funds to cover basic living expenses and humanitarian needs. The Commission also issued guidance to the public to this effect, which was published on the Commission's homepage. The fact remains, however, that the legal provision itself is much more permissive than the procedures under UNSCR 1452 and an amendment thereof would, thus, be advisable.

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

284. Article 4 of the Decree designates the Commission as the responsible authority for persons determined to be terrorists under UNSCR 1373. The Commission's power extends to both natural persons and legal persons.

285. The authorities stated that the Commission would consider any information received by local or foreign competent authorities to determine whether or not somebody should be designated as a terrorist under UNSCR 1373. The decision would be made based on reasonable grounds to suspect that a person has a link with terrorism, or finances or otherwise supports terrorism. A pending investigation or prosecution would not be required for a person to be designated as a terrorist by the Commission's list.

286. Once a person is included in the Commission's list, the same measures apply as in the context of UNSCR 1267 (described under criterion III.1 above). The Commission may file a motion with the court for the freezing of property of listed persons and the court is required to issue a decision on this motion *ex parte* and within 15 days from the submission of the application. The provisions and procedures to freeze assets of persons designated or to be designated under UNSCR 1373, thus also raise the issue of timing for issuance of freezing orders as already noted in the discussion under criterion III.1 above.

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

287. As indicated under criterion III.2, the Commission has an express mandate under Articles 4 and 7 of the Decree to establish the list of persons subject to the measures under UNSCR 1373 and may initiate changes to the list both upon request of a domestic or foreign entity.

288. The provisions and mechanisms in place to implement UNSCR 1373 in a domestic context are, thus, also available for actions initiated under the freezing mechanisms of other jurisdictions.

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

289. Articles 4 and 7 of the Decree apply to property "related to persons" designated by the UN under UNSCR 1267 or listed by the Commission under UNSCR 1373 but the term "related to" is not defined. The Administrative Procedure Code refers to the freezing of "property" which it defined under Articles 21–30 as "all items (objects) and immaterial property, revenue obtained from this property, or property purchased by this revenue which can be possessed, used and disposed by persons referred to in this chapter directly or indirectly, independently or together with other persons." The definition of the term "property" is broad enough to include assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal

documents or instruments evidencing title to or interest in such assets, and to apply also to jointly owned property.

290. Neither the Decree nor the Administrative Procedure Code make reference to property controlled as opposed to possessed, used, or disposed of by a designated or listed person. However, the Commissions' request for the court to issue a freezing order related to any property "possessed or controlled" by UN-designated persons on February 10, 2012, and on February 13, 2012, the courts gave suit. The provisions have, thus, been applied in line with the FATF standard to also cover property controlled by designated persons.

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

291. Any freezing orders will be sent to the National Enforcement Bureau (NBE) which will circulate them to all monitoring entities through the relevant supervisory authorities, and to the debtor registry (which is a publicly available electronic database that is checked whenever a vehicle or firearm or property, claims or rights are registered). All freezing orders are publicly available on the official website of the Tbilisi City Court and the designations made under UNSCR 1373 will be posted on the Commission's homepage.

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

292. The Commission has issued guidance on listing and delisting procedures on its website.[55] However, those guidance notes are more on the general process and that they do not address the steps that the monitoring entities must take to implement the freezing orders, and particularly, the measures that must be taken in case property or funds of a person named in the order is detected.

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

293. A decision by the Commission to designate a person under UNSCR 1373, or to apply for issuance of a freezing measure in relation to a listed or designated person, can be appealed with the Commission. Pursuant to Articles 4 (d) and 7 of the Decree, applications filed with the Commission for delisting of a person from the UN list, and/or the unfreezing of that person's property, shall be forwarded by the Commission to the competent bodies at the UN within reasonable time and the appellant be informed about this decision. In the context of an application by a person listed under UNSCR 1373, the Commission may decide on the appeal and if granted, shall remove the person from its list and/or apply to the court for unfreezing of that person's property, as the case may be.

294. Freezing orders issued by the court can also be appealed with the court. An appeal must be filed within 48 hours after serving of the order to the party concerned and a decision be made by the appellate court within 15 days from when the appeal was filed. The decision by the appellate court is final.

[55] http://www.justice.gov.ge/index.php?lang_id=GEO&sec_id=800.

295. After expiration of the 15 days, a motion to unfreeze property may be filed with the courts only by the Commission pursuant to Article 21/33 of the Administrative Procedure Code. Such measures do not seem to be available directly to affected parties.

296. In the context of UNSCR 1267, the court's discretion to review a freezing mechanism based on an application by the Commission is limited to the question of whether the relevant person is still designated by the UN, whether the person subject to the order is the same as the person on the UN list, and that the freezing measure is not inexpedient. As already indicated under criterion 1, however, the provisions to cancel a freezing order based on such measures being "inexpedient" is problematic in that UNSCR 1267 and its successor resolutions do not provide countries with discretion to alter or lift a specific freezing measure in relation to a designated person, group, or entity.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8); Review of Freezing Decisions (c. III.10):

297. The Commission may petition the court for a lifting of the measure under Article 21/34 of the Administrative Procedure Code based on the argument that the person is not the same as the person listed by the Commission or designated by the UN. Alternatively, a person inadvertently affected may file an appeal directly with the courts under Article 21/33 of the Administrative Procedure Code.

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

298. The law does not set out a mechanism to enable designated or listed persons to access funds for necessary or extraordinary expenses. While Article 21/34 of the Administrative Procedures Code grants the court the power to unfreeze property if it was established that the measure was "inexpedient" in a certain case, this motion may only be filed by the Commission and not by a party affected by the freezing measure.

299. The Commission has issued guidance on the processes for filing an application to get access to frozen funds for humanitarian purposes and that provides for a notification/approval mechanism to the UN before funds can be accessed. However, as this guidance was not available in English is it not clear to what extent the process set out therein is line with the requirements under UNSCR 1452.

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

300. As discussed in great detail under Recommendation 3 of this report, freezing measures are also available in a criminal context. In comparison to freezing orders under the Administrative Procedure Code, criminal freezing measures are temporary in nature, apply only in relation to proceeds and instrumentalities of crime and, most importantly, require that the person holding or owning the frozen funds is subject to a criminal investigation or prosecution in Georgia.

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

301. Article 21/32 of the Administrative Procedures Code determined that the court shall take into account the rights of bona fide third parties when examining a motion by the Commission to freeze property. Once a freezing order has been issued, bona fide third parties may apply for the order to be reviewed based on Articles 21/33 of the Administrative Procedure Code.

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

302. Article 4.e of the Decree sets out a mandate for the Commission to monitor enforcement of the court's freezing orders, including by monitoring entities. During its inaugural meeting, the Commission delegated this task to the NBE and requested that the NBE inform all supervisory authorities of any court orders, with a request to forward the order to monitoring entities. The authorities stated that the NBE would also be responsible for adding designated persons to a national list of debtors. It was, however, not established that the supervisory authorities, in the course of their on-site and off-site audit work, also check whether the monitoring entities comply with the administrative freezing orders.

303. The CCG of Georgia provides for sanctions under Article 381 for a failure to comply with a decision of the court or to interfere with its execution. The imprisonment term may be up to two years. The provision has never been applied in the context of implementing the above-referenced provisions.

Implementation and Statistics (R.32):

304. While there is no express obligation for FIs to check their client databases against the freezing orders, the authorities stated that monitoring entities would do so as a matter of practice, and that most FIs would use software such as World Check.

305. At the time of the assessment, no assets have been frozen in Georgia pursuant to UNSCR 1267 or 1373. According to the authorities, three suspicious transactions reports have been filed prior to the implementation of the new system, one by a currency exchange business and the two others by banks. In all three cases, the persons reported turned out to be not the same as the listed designated person and, therefore, no the freezing measure was taken. No Georgian citizens have ever been listed pursuant to UNSCR 1267 by a competent UN Sanctions Committee. According to the authorities, so far they have not been requested to give effect to a foreign freezing measure.

Effectiveness:

306. Given the recent enforcement of the new system, it is not possible for the assessors to gauge the effectiveness of Georgia's mechanisms as outlined in this section. However, through a legal analysis of the relevant provisions, the assessors identified a number of shortcomings that would have a severe impact on the effectiveness of the system, if practical cases were to arise:

307. The language of Article 21/31 of the Administrative Procedure Code could be interpreted by the courts to allow for a review on the merits of each case in the context of designations under UNSCR 1267 and the court's power to lift a freezing order in relation to UN designated persons, groups, or entities based on such measures being "inexpedient" is problematic in that UNSCR 1267 and its successor resolutions do not provide countries with discretion to alter or lift a specific freezing measure.

308. Furthermore, the reference under UNSCR 1267 to "freeze without delay" should be interpreted to require a freezing measure to be applied within a matter of hours from the designation of a person by a competent UN Sanctions Committee. It appears that the Commission can be

convened and an application for a freezing order be filed with the court rather quickly. However, once an application has been filed, the court has 15 days to issue a decision; it could, therefore, take days or even weeks before a freezing order is issued. This time span cannot be considered "without delay," and has the potential to hinder severely the effectiveness of the system.

2.4.2. Recommendations and Comments

The authorities are recommended to:

- Amend Article 21/31 of the Administrative Procedures Code in order to clarify that an application for a freezing order must be considered "grounded" by the courts whenever a person is designated by the UN Sanctions Committed under UNSCR 1267.

- Ensure that freezing measures under UNSCR 1267 and 1373 are applied "without delay" including where such measures are requested by a foreign authority, and consider whether the 15-day period granted under Article 21/32 of the Administrative Procedures Code to issue a freezing order is too permissive. "Without delay" should be interpreted to mean within a matter of hours from the designation of the person.

- Remove the court's power to review a freezing order in relation to UN-designated persons, groups, or entities.

- Ensure that there are adequate processes in place to grant access to frozen funds for necessary or extraordinary expenses in line with the requirements under UNSCR 1452.

- Issue more detailed guidance to monitoring entities on how to implement their obligations under freezing orders.

- Ensure that monitoring entity's compliance with the obligations under freezing orders is appropriately monitored.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• The language of Article 21/31 of the Administrative Procedure Code allows for the courts to review the merits of each case in the context of designations under UNSCR 1267. • Freezing measures under UNSCR 1267 and 1373 may not be applied "without delay." • Court's power to lift a freezing order is not admissible under UNSCR 1267. • Unclear whether there are adequate processes in place to grant access to frozen funds for necessary or extraordinary expenses in line with the requirements under UNSCR 1452.

		Implementation • Guidance to monitoring entities is not sufficiently detailed. • There is no monitoring of monitoring entities' compliance with freezing orders. • The new mechanism has been introduced only very recently and its effectiveness can therefore not be established.

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

2.5.1. Description and Analysis

Recommendation 26 (Rated LC in Moneyval's third round MER)

Legal Framework:

309. The Financial Monitoring Service (FMS)—the Financial Intelligence Unit of Georgia— was established pursuant to Article 10 of the 2003 AML Law. The status of the FMS is also defined under Article 53 to 55 of the Organic Law of Georgia on the "National Bank of Georgia" adopted in September 24, 2009—the NBG organic Law. The Presidential Ordinance of 23 August 2007 was amended on November 26, 2009 on "Approving the Regulation of Financial Monitoring Service of Georgia—Legal Entity of Public Law" that became effective on December 1, 2009—FMS Presidential Ordinance of 2009.

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

310. The FMS was created in 2003 and became operational in 2004. According to Article 10 of the AML Law and Article 53.6 of the NBG organic Law, the FMS is an independent authority not subordinated to any agency in performing its activities. It is accountable and submits annual reports on its activities to the President of Georgia. Pursuant to Article 4.1 of the FMS Presidential Ordinance and Article 54.1 of the NBG organic Law, the Head of the FMS is appointed by the President of Georgia in agreement with the Council of the NBG for a term of four years.

311. The FMS serves as the national center for receiving, analyzing, and disseminating suspicious transaction reports (STRs), cash transaction reports (CTRs), and other relevant information concerning ML and terrorist financing activities. Overall, the FMS is receiving suspicious transactions, automatic reports about natural and legal persons from watch zones (42 countries). Due to lack of understanding of the requirements, unusual, attempted and threshold reporting are in most of cases filed and counted as CTRs. Both reports are received from monitoring entities as defined by the FATF standards and public agencies like the NAPR and customs at the Ministry of Finance (declarations).

312. Pursuant to Article 9.1 of the AML Law, "monitoring entities" are obliged to submit relevant information to the FMS. For more details about entities required to report, please refer to the description under Recommendations 13 and 16. The FMS also has the authority to initiate cases

where information has been provided by another source, such as the media or public. Monitoring entities under the AML Law include most of the reporting entities defined in the FATF standards and other public agencies (Customs at the Revenue Service and the National Agency for Public Registry (NAPR).[56] Following the amendments of the AML/CFT Law of December 2011, leasing companies, accountants, and auditors were included under the list of monitoring entities; however, electronic money institutions, companies, real estate agencies, lawyers, and trust and company service providers (TCS) were not added to the list.

313. In addition, Article 10.4.e of the AML/CFT Law provides the FMS with the power to obtain any information from all monitoring entities and state or local self-governance bodies or institutions (which exercises public legal authority), as well as any individual or legal entity.

314. In accordance with Article 10.5.b of the AML/CFT Law, the FMS is authorized, after conducting analysis of the relevant information, to disseminate the information and the available materials in duplicate copies to the Prosecutor's Office (PO) and the Ministry of Internal Affairs (MIA) for investigation or action when there are grounds to suspect ML or FT.

315. Finally and according to Article 10.4.c, the FMS was empowered to issue normative acts (hereafter called Decree) to monitoring entities on the conditions and procedures for receiving, systemizing, processing, and forwarding the relevant information and identification of the person. More information about normative acts could be found under Section 1 of the report. Article 10.4.c of the AML/CFT Law of December 2011 was amended to enable the FMS to adopt (issue) normative acts within its competence for the purposed of implementation of the AML/CXFT Law.

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

316. In consultation with the relevant supervisory bodies, the FMS issued decrees determining detailed requirements for identification and customer due diligence (CDD), record keeping and reporting including the manner of reporting for banks (2004), exchange bureau (2004), credit union (2004), insurance companies (2004), notaries (2004), NAPR (2010), casinos and gambling, lottery games (2004), securities (2008), brokerage firms (2008),[57] microfinance companies (2008), and money remittance (2009). These decrees were amended several times including in 2011. Additional indicators[58] were issued to banks (January 2010), insurance companies (May 2010), and notaries and NAPR (October 2011). These indicators were developed based on the FATF typologies and indicators and other countries' experiences.

[56] The National Agency of Public Registry is responsible for the registration of legal persons and real estate and considered as a monitoring and reporting entity.

[57] The first Decree for brokerage companies and securities registrars was issued in 2004. In 2008, FMS issued two separate decrees: one for brokerage companies and another for securities registrars.

[58] FMS indicators were called "Guidance on essential indicators for detection of suspicious or unusual transactions."

317. Furthermore, in 2004, 2008, and 2009 the FMS has issued recommendations on completing reporting forms for transactions subject to monitoring. During the on-site mission, the FMS started receiving STRs and CTRs electronically through the FMS website from all monitoring entities, and migrating the received data to the new database for the receipt and processing of information from monitoring entities. Under the old system, the reports were received by encrypted email and sometimes manually. At the time of registration of the reporting entity, the FMS provides a CD containing the relevant decree, indicators, manual for reporting and all other relevant information. Updated decrees are published in the official gazette[59] of the Ministry of Justice, and usually dispatched by email. STR and CTR forms were also issued in 2004 and updated recently following the development of the new system for receipt of information.

318. The Decree and rules determining the manner of reporting are published on the FMS website: http://www.fms.gov.ge/?lang=geo. In addition, FMS organizes meetings with banks and other reporting entities to explain and answer clarifications related to the manner of reporting or other issues. These sessions are usually organized mainly for banks and some other FIs. The FMS also answers calls and emails from reporting entities to clarify the requirements.

319. It is important to note that the STR and CTR forms developed by the FMS and communicated to monitoring entities are confusing. The title is not cohesive with the content and boxes in the forms. They include not only a field for suspicious or threshold reporting, respectively, but also others for attempted, suspicious/watch zones and countries and unusual transactions, declarations from customs and the NAPR. For more information, please refer to detailed information under Recommendation 19.

320. From meetings with monitoring entities, the assessment team identified weaknesses in the reporting regime, more precisely, it was clear that reporting entities are facing difficulties in distinguishing between: (i) suspicious transactions in general and more precisely attempted suspicious transactions that are never reported before the execution, and automatic reporting of persons from watch zone and on the UNSCRs; and (ii) threshold reporting that is partly due to the complexity of the guidance on the manner of reporting, including the specification of STR and CTR reporting forms. As mentioned above the forms developed by the FMS are confusing and lead to automatic reporting more than based on suspicion.

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

321. In addition to its power to request information from all monitoring entities and state or local self-governance bodies or institutions as well as any individual or legal entity stated in Article 10.4.e, the FMS concluded MOUs with all supervisory bodies and law enforcement agencies (LEAs) as follows: NBG in May 2007, MIA in June 2008, MOJ including the Prosecutor's Office in January 2009, MOF in January 2009, and Revenue Service including customs in February 2011. The MOUs determine the information that should be exchanged between the FMS and concerned authorities and require strict confidentiality and protection of the information. These MOUs also allow the FMS to access directly some of the administrative and law enforcement databases held by the MOJ and the MIA.

[59] www.matsne.gov.ge.

322. Other administrative and law enforcement information are mostly accessed directly by the FMS. It enables the analysts to conduct preliminary analysis by matching the collected information to the one contained in the STRs and CTRs. The following table illustrates the information FMS has access to, through five terminals starting with the most accessible:

SOURCE	TYPE OF INFORMATION
FMS own database accessible to the Head of the FMS analysts, and staff of collection department	• **FMS local database:** Information about previous STRs, CTRs including declarations from customs. **As of end of 2011, the database contained:** - 52997 **STRs** - 382335 **CTRs including customs declarations**
Ministry of Internal Affairs Direct access–confidential	• **Police Database:** National Identification cards including photo, passports of Georgians, vehicle registration for natural and legal persons, border-crossing of individuals. • **Criminal Records databases:** contains only information on convictions, detained individuals, persons on probationary treatment, firearms registration, missing individuals and vehicles. No information on investigation and prosecutions or trial in process is contained in this database. Information on conviction is obtained upon request after two days.
Revenue Service–Ministry of Finance Direct access–confidential	• **Tax Database:** financial information on declared tax, revenues and activities of legal persons including import/export by companies.
National Public Registry Direct Access–open source	• **Commercial database:** License number, charter, expiration date, address and shareholders and managers of legal persons.[60] • **Real Estate database:** title information under the name of natural and legal persons with information on the estimated value, date of registration, address, type, and mortgages. • **Civil Registry Database:** ID information (name and surname, date of birth, personal ID number, passports and ID cards) on individuals.
Private Company Direct access–open source with paid subscription	• **Credit database:** credit records on natural and legal persons including the amount of loans, date of issuance, ID data, status of loan.
Bureau of data on public officials financial disclosures Direct Access–open source	• **Database of disclosures:** disclosures of public officials and their family members–information about their property, annual income, and spending.

[60] This information on beneficial owners is not complete (See more information under Recommendation 33).

Open Sources	• **Internet and foreign open databases:** Analysts use open sources frequently, but the process has not been formalized or included in an internal procedure. • **World-Check**: a searchable database updated regularly and containing UN, OFAC, and U.S. lists.
Egmont Secure Web (ESW)	• Allows exchange of information with foreign counterparts.

323. Overall, FMS has direct and indirect access to a large number of financial, administrative, and law enforcement databases that allows it to undertake the analysis of STRs and CTRs. The commercial database held at NAPR does not hold updated accurate information about the beneficial owners of companies established before January 1, 2010. The FMS does not have access to some law enforcement information like the investigation and prosecution or trial in process records. Open sources are used frequently but not in a systematic way. The process has not been formalized or included in an internal procedure. (e.g., access to foreign open commercial or real estate databases).

Analysis of the received and collected information:

324. The FMS does not have software to assess the risk of individual reports or a system for automated alerts to match new information with the old one. The four analysts working for the FMS since its establishment go through all received STRs and CTRs and decide to open cases based on the amount of the transaction or the risk of the originating country, age of the persons involved in the suspicious transaction, and frequency of transactions. STRs and CTRs are treated and analyzed in the same manner. When one of these reports raises red flags to the analyst, a case is opened and data from the above-mentioned databases is collected to conduct tactical analysis. The analysts did not develop local trends and typologies or objectives criteria to open a case but rely on their knowledge and experience. The analysts use custom-developed software for their analysis, which is not integrated with the governmental databases to which the FMS has access.

325. The table below shows the number of ML cases opened since 2004. In addition, eight cases related to FT were opened after positive hits with the UNSCRs (for more details, please refer to details under SR.III). The number is extremely low when compared to the large number of STRs received. However, as discussed in detail under the section on reporting, the majority of information received by the FMS is CTRs. When a case is opened based on risk identified in a report (STR or CTR), analysts were often able to identify hundreds of STRs and thousands of CTRs relevant to the suspicious person(s). For more details, please refer to the discussion R.13 and SR.IV.

Year	Opened cases
2004	47
2005	28
2006	38
2007	57
2008	50
2009	43
2010	26
2011	56

326. Breakdown of disseminations vs. opened cases per year.

Year	Dissemination vs. opened cases	Results
2004	5/47	10,6%
2005	12/28	42,8%
2006	14/38	36,8%
2007	17/57	29,8%
2008	10/50	20%
2009	8/43	18,6%
2010	9/26	34,6%
2011	15/56	26,7%
Total	90/345	26% of opened cases are disseminated

327. A preliminary tactical analysis is conducted in order to examine the specific pieces of information contained in the STRs and CTRs. The analysis is limited to matching the information contained in the STRs to the information contained in FMS's internal database and collected through the other accessible databases. The analysts do not perform operational analysis to produce activity patterns, new targets, relationship among the subjects and accomplices and investigative leads and criminal profiles. The report is usually drafted in one or two weeks and includes a diagram developed with primitive visualization software.

328. The FMS does not have sophisticated technology or tools available to analysts. The methods for evaluating the quality of the intelligence product internally are still manual. Furthermore, the FMS does not conduct operational or strategic analysis at this stage to further develop the knowledge base that would be useful in its future activities.

Additional Information from Reporting Parties (c. 26.4):

329. As indicated, the FMS has the power to request additional information directly from monitoring entities. Article 10.4.a of the AML/CFT Law allows the FMS to request additional information from all monitoring entities and extends to those who did not send the report.

330. The reports received by the FMS are indexed, processed, and entered into the database. The FMS follows a strict validation rule and returns to the reporting entities to require the completion of the information when fields are omitted. The validation process takes a day or two to be finalized.

331. The FMS requests, in most of the opened cases, additional information from banks. Information is provided, as indicated in the decrees, within two days of the request. Sanctions were imposed by the NBG on banks that were late in providing the requested information.

332. The table below indicate the number of additional requests made to banks:

Year	Number of additional requests to banks	Opened Cases
2004	37	47
2005	27	28
2006	44	38
2007	45	57
2008	18	50
2009	12	40
2010	38	26
2011	58	56

333. The requests are physically delivered to all the compliance officers of banks operating in Georgia. FMS requests information from banks that have not submitted the report but may have information that would be useful to their analysis. Banks submit the information electronically and include information retrieved from the opening documents and statements of accounts, including information of transfers and safes. This information is seen to be very useful for the analysts to improve the quality of the reports.

334. FMS has requested additional information from banks on several occasions. Such requests were never made to non-bank financial institutions and DNFBPs even though the reported person(s) conducted activities with these institutions and obtaining the information relative to these activities would be useful for the cases under analysis. According to the FMS staff, information could also be obtained from lawyers carrying out transactions for their client for the activities determined by the FATF standards. However, since lawyers are not reporting entities under the AML/CFT law and there is an explicit prohibition for sharing the information under the law on advocacy prohibiting the sharing of information, the assessment team is of the view that that such information could not be obtained. For more information, please refer to details under Recommendations 4 and 28. Furthermore, the FMS cannot request information from entities that are not obliged to report (i.e., real estate agencies, TCSPs).

Dissemination of Information (c. 26.5):

335. As indicated, the FMS is authorized to disseminate financial information when there are grounds to suspect ML or FT. In addition to the CPO, the disseminated cases are directed to the Counter Terrorism Center (CTC) at the MIA in case of FT suspicion and to the Special Operative Department (SOD) at the MIA in case of suspicion related to ML. According to the Law, the FMS is not allowed to disseminate information in response to a request for information received from another agency. FMS staff indicated that such requests were never received. FMS opened and disseminated cases to LEAs based on information gathered from the media.

336. The table below shows the number of opened and disseminated cases, and the number of CTRs and STRs involved:

Year	Opened cases	Dissemination		CTRs involved	STRs involved
		ML	FT		
2004	47	5	0	3950	152
2005	28	12	0	9145	398
2006	38	14	0	8237	402
2007	57	17	0	8639	682
2008	50	7	3	8506	664
2009	43	5	3	7463	580
2010	26	9	0	6041	416
2011	56	13	2	13668	973
Total	345	82	8	65649	4267

337. The cases are prepared by analysts and forwarded to the head of the FMS for dissemination. FMS staff indicated that the Head of the FMS always follows the suggestion of the analysts.

338. The disseminated cases include information about the suspicious persons, indicators on the suspicion, diagram about the transactions, and sometimes indication about the suspicion related to the predicate crime. According to the analysts, cases usually take between one week and two weeks to be finalized, sometimes more depending on the complexity of the case. Often, the cases are disseminated and the analysts continue their collection and analysis of information that are sent to the CPO and MIA at a later stage. For more information on the work of LEAs in conducting investigations, please refer to Recommendations 27 and 28.

339. In a limited number of cases, analysts were able to confirm suspicion about the predicate crime involved in the disseminated cases. According to the authorities, it was mostly related to tax evasion and falsification of documents committed by a group of persons and involves legal persons formed in offshore countries.

340. Since the last MONEYVAL assessment in 2007, the number of opened cases decreased from 50 in 2008 to 26 in 2010, and the number of disseminated reports went from 17 in 2007 to 7 in 2008, 5 in 2009, 9 in 2010 and up to 15 in 2012. The FMS staff indicated that this must be due to the conflict in 2008 and might be related to the financial crisis of 2008. The assessment team is of the view that conflict could create higher risks of ML and FT and that reporting and dissemination should have increased. The evidence is that several terrorist attempts took place during and after the conflict. According to the authorities, these attempts were financed through the breakaway regions. Also, conflicts usually cause turmoil and unrest that increase ML activities generated by an augmentation in the level of predicate crimes (e.g., increasing human, arms, and drugs trafficking). Another reason behind the decrease could be related to the significant decrease of staff detailed below.

341. At the time of the on-site mission in December 2011, there were around twenty pending cases that were opened after July 2011. Six FT cases were disseminated after false hits from banks with the UNSCRs 1267 and following resolutions. In these FT cases, LEAs were able to verify the true identity and closed the cases.

342. The following table shows some ratios related to the analysis and dissemination work conducted by the FMS:

Ratios		Results
Dissemination vs. opened cases	90/345	26% of opened cases are disseminated
Number of reports involved vs. Disseminated cases	(58836 CTRs+3800 STRs)/79= 793	In average, every disseminated case includes 793 STRs and CTRs
Number of STRs involved vs. Disseminated cases	3800/79= 48	In average, every disseminated case includes 48 STRs
Number of CTRs involved vs. Disseminated cases	58836/79= 745	In average, every disseminated case includes 745 CTRs
Number of reports disseminated vs. Number of reports received	(58836 CTRs + 3800 STRs) / (342551 CTRs+43804 STRs) = 16.2%	16,2% of the received STRs and CTRs were disseminated
Number of STRs disseminated vs. Number of STRs received	3800STRs / 43804 STRs = 8.6%	8.6% of received STRs were disseminated
Number of CTRs disseminated vs. Number of CTRs received	58836 CTRs /342551 CTRs= 17.1%	17.1% of received CTRs were disseminated

343. Ratios show that the number of dissemination in relation to the STRs received and opened cases are extremely low. The FMS disseminates a low number of cases that includes a very high number of STRs and CTRs. As indicated above, and in detail under the section on reporting, this is mainly due to: (i) the bad quality of reports and the confusion between the suspicious, unusual, watch zone reporting and threshold- reporting; (ii) the lack of tools and software available for data matching; (iii) the defensive reporting; and (iv) weak analysis in general and low number of staff. The issue noted with regard to the trigger of the civil responsibility for decisions taken in the case of not grounded suspicions could also explain the low number of disseminations.

344. According to the AML division at the CPO, the quality of the cases disseminated by the FMS is very good and lead to investigations under the ML offense. For more details on the disseminated report compared to investigation and prosecution, please refer to Recommendations 1, 27, and 28.

Operational Independence (c. 26.6):

Establishment of the FIU

345. As indicated above and according to the relevant laws and presidential ordinance, the FMS is granted operational independence and is not subordinated to any agency in performing its activities. It is accountable and submits annual reports on its activities to the President of Georgia. It was

established in June 2003 by Article 10 of AML Law. Article 53 to 55 of the 2009 NBG organic law emphasized the independence of the FMS and included details about its core functions, management and designation of its head. The Presidential Ordinance No. 859 of 2009 underlines its role and independence. The FMS is a legal entity of public law and, therefore, has a legal personality. The organizational structure and functions of the departments (2009) and the internal regulation of the FMS were determined by its head (June 2011). The internal regulation determines processes and procedures that govern the behavior of staff.

346. Structural departments of the Service are as follows:

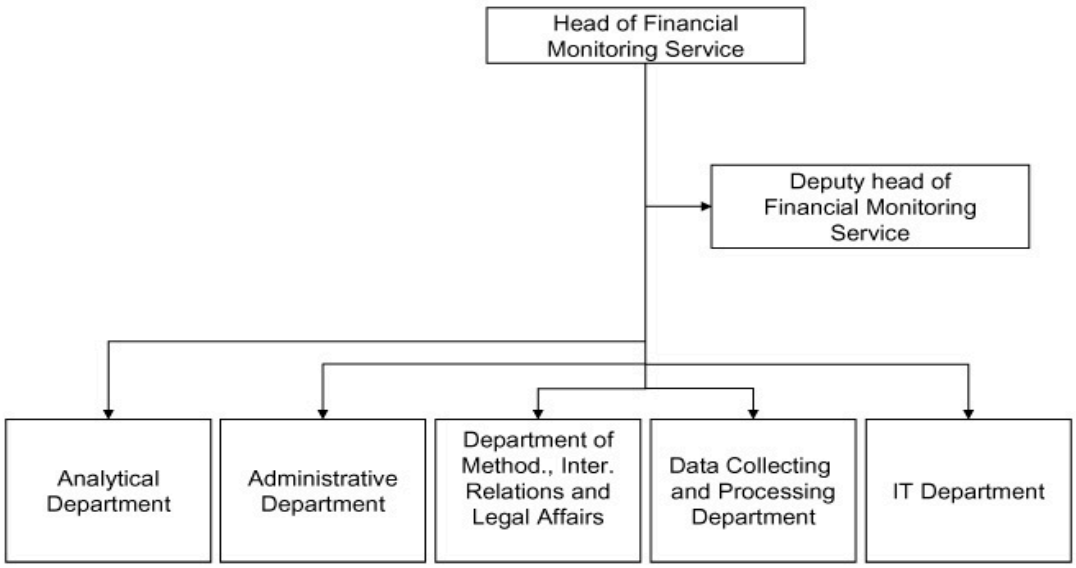
- **Data Collecting and Processing Department:** responsible for collecting and processing information received from monitoring entities. It is composed of the director, five staff, and has one vacant position.

- **Analytical Department:** responsible for collecting and analyzing the information. As necessary, it seeks additional information and submits the suspicious cases to the head of the FMS. It is also responsible for exchanging information with foreign FIUs. It is composed of the director and three analysts and has three vacant positions.

- **Department of Methodology, International Relations and Legal Affairs:** responsible for drafting (i) MOUs; and (ii) normative acts, guidelines, and recommendations for the implementation of the AML/CFT Law. Contributes to the drafting and review of relevant draft laws and decrees. It coordinates the cooperation between the FMS with international and regional organizations. It is composed of the head of department and two staff. One position is vacant.

- **Administrative Department:** responsible for logistical support, preparation of the budget, and approval of procurements. It is also responsible for maintaining records and correspondence and the physical security of the premises. It is composed of the director, two staff, and three security guards from the MOI. It has two vacant positions.

- **IT Department:** Responsible for IT and security and developing the software for the collection and analysis of information. It is composed of the director and two staff and has one vacant position.



Appointment of the Head of FIU and compensation of staff

347. As mentioned earlier, the head of the FMS is appointed by the President of Georgia based on the recommendation of the NBG Council for a term of four years. He could be dismissed by the President. Such decision could be challenged before the courts of general jurisdiction. Furthermore, in accordance with Article 54 of the NBG organic law, the Head of the FMS could be dismissed for the following reasons: (i) based on his request; (ii) committal of considerable misdemeanor at work; (iii) failure to discharge his/her duties due to health or due to incapacity or limited capacity as found by the court; (iv) termination of Georgian citizenship; and (v) upon entry into effect of a sentence of conviction of a crime.

348. The head of the FMS has to declare his assets and that of his family annually at the bureau of data on public official's financial disclosure that is accessible online by the public.

349. Staff are recruited by the head of the FMS. The background check of the staff with LEAs is conducted when they are recruited or based on a request from the head of the FMS. They should declare their tax that is available to the FMS. Pursuant to Article 64 of the law on public servants, they are not authorized to: (i) occupy other positions or conduct other remunerated activity in other state or self-governmental institution; and (ii) be member of a representative or a legislative body of any level, if it is not provided otherwise under the legislation.

350. According to Articles 55.2 and 55.3 of the Organic Law of Georgia on the NBG, the recruitment of staff and amount of official wages of employees of the Monitoring Service should be approved by the President of Georgia upon submission of the Head of Service which has been followed in practice. The amount of remuneration of employees is commensurate with the level of remuneration of the Georgian banking system. The amount of remuneration of part-time employees is set on the basis of the contract. The Head of the Service, based on a recommendation from the head of departments, can offer bonuses to staff of up to eight additional monthly salaries.

Funding and budget allocation

351. Following Article 10.7 of the AML/CFT Law, the management, structure, representation, accountability, and control of the FMS are determined by the Presidential Decree. Additionally and according to Article 55.4 of the NBG Organic Law, the NBG should ensure the FMS with necessary budget, buildings, facilities, funds, and other property to properly perform its functions. According to the same law (Article 55.5), the FMS budget is approved annually by the Council of the NBG based on the suggestion of the head of the FMS. The Council cannot reduce the budget of the FMS; it should be at least equal to the previous year. Reduction of the budget compared to the previous year could only be made based on the prior consent of the head of the FMS. If the Council of the National Bank does not approve the budget of the Service (which has never happened in practice), the Service shall be financed in the amount approved for the previous year.

352. The FMS budgets were as follows:

Year	Budget in GEL	Rate of exchange	Budget in USD
2007	1 632 770.00	1.7135	952 886
2008	2 334 894.00	1.5916	1 467 011
2009	1 900 000.00	1.6680	1 139 089
2010	2 125 500.00	1.6929	1 255 538
2011	2 125 500.00	1.7736	1 198 410

353. As of December 2011, the detailed budget in Lari for 2011 was divided into salaries (803,760), bonuses (334,900), office and travel expenses (686,840), and IT equipment and software (300,000). Total expenditures were GEL 1,825,500 from a total budget of GEL 2,215,500. It is important to mention that the annual inflation rate in Georgia has been around 10 percent on average over the period, and, therefore, a more substantial increase of the budget would have been expected with regard to the increased workload.

354. The head of the FMS approves the expenditures. He also authorizes travels as needed. The Audit department of the NBG conducts annual control on the FMS expenditures. The President of Georgia oversees the functioning of the FMS by receiving an annual report about its main activities. According to the authorities, the "oversight" of the President does not include issuing recommendations or instructions to the FMS based on the annual report, and are limited to receiving it for informational purposes. There is no evidence of undue influence from the President in the FMS functioning.

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

355. FMS staff is required to maintain the confidentiality of the information by virtue of Article 12.3 of the AML Law: "the FMS, the supervisory and LEAs, their management and employees, shall ensure protection of the information obtained pursuant to this Law that includes personal, banking, commercial or professional secrets, and disclose such information in accordance

with the applicable Georgian legislation." Pursuant to Article 12.5. of the AML Law: "The material damage inflicted to individuals and legal entities as a result of violation of the obligation to observe confidentiality of information by the officials and employees of the Financial Monitoring Service of Georgia, monitoring entities, supervisory and law-enforcement bodies in cases set under this Law, and related to the protection of confidentiality of information obtained in accord with the set Law, shall be compensated by the damaging entity—correspondingly by the Financial Monitoring Service of Georgia, monitoring entity, supervisory body or law enforcement body at the amount set under the court decision." Accordingly, the FMS budget might be jeopardized if monitoring entities were entitled to financial damages in case of breach of confidentiality caused by the FMS.

356. Article 12 of the FMS internal regulation also include requirement for the staff to ensure the confidentiality of information obtained in conformity with the AML Law, which includes personal, banking, commercial or professional secret. In the event of violation of the obligation, liability will be determined in accordance with the procedure set under the effective legislation. Article 202.1 of the CCG of Georgia criminalizes the breach of confidentiality. Please refer to Recommendation 14 for additional information.

357. The new system of reporting available for monitoring entities appears to be secure. The messages are encrypted and can only be accessed by the collection and analysis departments of the FMS. The server room is always locked and only authorized personnel are allowed to enter. Two independent and completely isolated Local Area Networks (LANs) have been set up within the FMS. One of them is connected to the Internet to receive encrypted STRs and CTRs from reporting entities. Once STRs or CTRs are received, an authorized person from the IT department transfers it to a flash drive, deleting it from the external network, to be integrated into the internal network where the STR and CTR is decrypted and processed. The internal network of FMS has no external connections. There is a log history to record all the queries made by the analysts.

358. Access to the internal network within the FIU is restricted to certain FMS staff members as designated by the head of the FMS. Electronic IDs are used to access the building and codes to enter the rooms. The FMS premises are shared with the employees of the NBG that are not allowed to enter the collection and analysis departments. FMS premises that are located in separate floors of the building is guarded by four security agents, have security alarm, and secured doors that limit the access to FIU staff only. Surveillance cameras are also in place.

Publication of Annual Reports (c. 26.8):

359. The FMS has not yet released any trends analysis, and/or typologies developed from its activities. It manages its own website,[61] which contains information on AML/CFT legislation, decrees, and guidance.

360. Annual reports are only submitted to the President of Georgia on May 1st of every year, and available upon request. The first annual report has been published in January 2012; it contains information about the activity of the service and some statistics.

[61] www.fms.gov.ge.

Membership of Egmont Group (c. 26.9):

361. The FMS was accepted as an Egmont Group member in June 2004.

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

362. Pursuant to Article 13.2 AML/CFT Law, FMS is authorized to conclude MOUs concerning ML and FT information with counterparts. The MOUs concluded with foreign counterparts, as well as the mechanism of exchanging information, is fully in line with the Egmont Group Statement of Purpose and its Principles for Information Exchange between Financial Intelligence Units for Money Laundering Cases.

363. Moreover, Article 13.3 of the same Law allows the exchange of ML and FT information with authorized agencies of other countries and international organizations.

364. According to the authorities, FMS takes the Egmont principles into account when it exchanges information with its counterparts and responds within the determined timelines and in all confidentiality. In a few instances, the response to foreign requests took several weeks beyond the deadlines fixed under the Egmont Principles. The FMS can exchange information with foreign FIUs without signing an MOU. Such requests were never made nor received in practice. For more details, please refer to Recommendation 40 and SR.V.

Adequacy of Resources—FIU (R. 30)

365. According to the Presidential Ordinance, the FMS has a staff plan with 31 positions. At present, the FMS is staffed with 23 employees including four analysts[62] and two contractual agents. The employees of the FMS have previous experience in working for the NBG or the banking system as well as in various governmental institutions. According to the authorities, the number of staff is quite sufficient to properly perform the FMS functions. There are no plans to recruit more staff and fill the vacant positions in the near future and that will depend on the load of future work.

366. There is a low turnover of personnel. Also, the FMS is planning during the coming year to purchase a new analysis and visualization software to strengthen tactical and operational analysis. Such development will probably increase the capacity of assessing the risks of cases, linking the reported transactions and persons together and, therefore, opening a higher number of cases that need to be analyzed which might necessitate more human resources.

367. Article 15 of same law specify the conditions to become a public servant: (i) a person who has relevant knowledge and experience; (ii) has reached the age of 21; (iii) knows the state language of Georgia; and (iv) is a capable citizen. Upon entry to the service and annually thereafter, the servant (candidate) presents a declaration of his/her income and property and income and property of his/her family members to the relevant service of the Ministry of Finance of Georgia. In such case, "property includes bank deposits, securities, dividends, and movable and immovable property, which belongs

[62] There were five analysts before the on-site mission. One left for the private sector.

and co-belongs to the above mentioned persons." According to the authorities, FMS employees submit the required information to the Revenue Service annually.

368. Article 17 and 18 determine the category of persons that are not authorized to be admitted into the Civil Service and requirement after the recruitment, if he/she: (i) has been convicted for a crime committed on purpose and conviction has not expired yet; (ii) is under preliminary investigation or arrested; (iii) has been declared incapable or with limited capacity by a decision of the court; (iv) has been deprived of the right to occupy a certain position by the court; (v) does not satisfy health requirements of the position according to the conclusion of medical examination; and (vi) is a candidate for citizenship of another country except the exceptions covered by law or an international treaty.

369. The Head of the Civil Service is authorized to request the person to present a certificate of medical examination or medical certificate if it is provided under the Georgian legislation.

370. Staff of the FMS received training from international organizations and foreign counterparts:

• June 16-20, 2008–The Training Workshop on Typologies of Anti–Money Laundering and Countering the Financing of Terrorism–IMF • November 17-21, 2008–Bulk Cash Smuggling Training and Workshop–U.S. Department of Justice; • June, 2009–International Monetary Fund (IMF) and International institute of Higher Studies in Criminal Sciences (Siracusa, Italy)–"Workshop on Typologies of Money Laundering and Financing of Terrorism and Risk Assessment"; • September 21–24, 2009–ML Course- French Embassy. • MONEYVAL 8th Meeting Typologies–Limassol CY November 10–12, 2009, MONEYVAL/ Typologies project on internet gambling; • November 10–12, 2009, 8th Experts' Meeting on Money Laundering and Terrorist Financing Typologies–MONEYVAL; • November 30–December 3, 2009–Financial Analysis Techniques Course–U.S. Treasury.	• January 25–February 5, 2010–Financial Investigative Techniques Course–U.S. Treasury. • March, 2010–Cooperation between FIUs and LEAs in AML and recovering illicit assets–IMF and Basel Institute of Governance. • October 25-29, 2010–AML/CFT Workshop on Information Technology for FIUs–IMF. • December 6–9, 2010–Tactical Analysis Course;" "Train the Trainer Course"–World Bank and the Egmont Group. • March 4–7, 2011–Advanced Financial Analysis Techniques Course"–U.S. Treasury. • October 31–November 2, 2011, 10th Experts' Meeting on Money Laundering and Terrorist Financing Typologies–MONEYVAL

Statistics (R.32)

371. The statistics were provided by the FMS and included under the relevant sections.

372. STRs have been mainly received from banks as shown in the table below:

Reporting Entity	2007	2008		2009		2010	2011	Total
STRs	**ML**	**ML**	**FT**	**ML**	**FT**	**ML**	**ML**	**ML/FT**
Commercial banks	4591	7340	3	6277	3	13212	19708	51039
Micro Finance	0	0	0	7	0	264	874	1145
Broker companies	24	6	0	114	0	192	80	426
Money remittance	0	0	0	0	0	194	189	260
Securities' Registrar	16	10	0	4	0	4	7	41
Notaries	19	7	0	1	0	1	36	64
Currency exchange	18	2	0	0	0	0	0	20
Insurance companies	0	1	0	1	0	0	0	2
Non bank depository inst.	0	0	0	0	0	0	0	0
Total STRs	4668	7366	3	6404	3	13867	20894	52997

373. The vast majority of STRs are received from banks. Only six reports related to FT were filed; these were false matches with the list of terrorist issued under the UNSCR 1267. As mentioned above and described in detail under section 3 on reporting, declaration related to natural and legal persons from the watch zone countries are often reported by banks automatically as suspicious transactions or CTRs. For more information on the level and quality of reporting by entity, please refer to Recommendations 13, 16, and SR.IV.

374. CTRs have been received from the following private and public entities:

Reporting entity	2007	2008	2009	2010	2011	Total
Commercial banks	48570	43166	40595	47937	57045	237313
Insurance companies	382	222	176	187	157	1124
Currency exchange	990	1655	2541	5216	7811	18213
Broker companies	1165	141	13	92	48	1459
Securities' Registrar	310	233	258	202	247	1250
Micro Finance	0	0	1387	3778	6273	11437
Money remittance	0	0	4	73	69	265
Non bank depository inst.	0	0	0	9	29	38
Notaries	8574	9586	5994	8455	6344	38953
Customs	57	147	293	304	657	1311
Lotteries & games	0	0	19	25	16	60
Casino	0	0	2	11	23	36
NAPR	0	0	0	47393	23483	70876
Total CTRs	60048	55150	51282	113682	102202	382335

375. Table showing the number of cases disseminated vs. investigations:

Year	Cases disseminated by the FMS	Investigations
2004	5	
2005	12	**16**
2006	14	**10**
2007	17	**9**
2008	10	**9**
2009	8	**9**
2010	9	**22**
2011	15	**40**

376. Also, please refer to the information provided above on the number of dissemination.

Implementation:

377. Although accountants were included as monitoring entities in the amended AML/CFT Law of 2010, the FMS has not received STRs from this sector. Other independent legal professions and trust and company service providers (TCSPs) and real estate agents are not considered as monitoring entities and, thus, not reporting. The FMS usually obtains additional information directly from banks. It has never requested information from other nonbank financial institutions and DNFBPs.

378. While the FMS has issued decrees and recommendations on the manner of reporting, and as mentioned under the Recommendations 11, 21, and 13, reporting entities still need additional guidance and clear reporting forms clearly distinguishing and making the difference between unusual transactions, suspicious transactions, watch zone related persons, and threshold reporting. The FMS did not provide guidelines to assist reporting entities in detecting and reporting FT suspicious transactions.

Analysis of Effectiveness:

379. The FMS became operational in 2004 and started receiving STRs and CTRs. The Governor of the NBG headed the FMS until 2008 and the current head was appointed immediately after. It disseminated several reports to LEAs and became an Egmont Group member and exchanged information with several foreign FIUs. Overall, it has appropriate level of administrative and law enforcement databases. Furthermore, the majority of the reports disseminated by the FMS to the CPO have generated successful investigations that have led to convictions in several instances. The level of dissemination to the CPO compared to the reports received is very low.

380. Nonbank depository institutions never reported suspicious transactions. Furthermore, real estate agents, TCSPs, and lawyers are not considered monitoring entities and, therefore, not required to report. The bureaux de change, leasing companies, and insurance companies have reported very few STRs. 95 percent of STRs are filed by banks.

381. The FMS does not have access to some law enforcement information like the investigation, prosecution, and trial records held by the MOJ, and intelligence information. Open sources should also be used more frequently.

382. The FMS's analysis could be further enhanced, particularly with a more proactive analysis of the data, which should be aimed at generating more intelligence and increasing the number of reports disseminated to LEAs. Despite the high number of reports (both CTRs and STRs) received from monitoring entities and the relatively improved quality of such reports over the years, only a low number of reports are actually disseminated. Although it is noted that the vast majority of the disseminated reports by the FMS to the CPO has generated successful investigations that have led to convictions in several instances.

383. Once the incoming reports are registered in the FMS database, the Analytical Department "filters" the reports based on a set of red flags including, inter alia, size of transaction, location and citizenship of customer, and involvement of "offshore" centers. The "filtered" reports are manually matched against existing entries in the FMS database that consists of an MS Excel format that includes the list of public officials, those registered as employees of currency exchange offices, and persons and entities reported in previous cases. The analysts use custom-developed software for their analysis,[63] which is not integrated with the governmental databases to which the FMS has access. The current software does not feature data or relationship visualization nor does it allow organizing the collected data in a structured manner.

384. The main focus of analysis is on incoming flows of proceeds of crimes committed outside of Georgia targeted at watch zones and jurisdictions. There is less experience with regard to domestic ML since opening the case is subject to the analysts' appreciation that focus on financial flows generated by predicate crimes committed abroad, and mistakenly consider that these crimes are limited inside Georgia which is not the case. The main predicate offenses were seen in the areas of tax evasion and offshore companies. More in-depth analysis need to be conducted, with the assistance of foreign FIUs, to identify the beneficial owners of legal persons and the source of funds. It is worth noting that few requests for information related to these cases were sent to foreign FIUs; therefore, the FMS is not using the ESW effectively.

385. The decision of dissemination is based on a subjective judgment of all elements gathered during the analysis of the case, the size of the amounts involved, and on past experience of the FMS. LEAs are not entitled to request information from the FMS unless such information is related to the entities which are the subject matter of an investigation initiated upon receipt of the STR. Most reports disseminated by the FMS have elements of an international character whereby the predicate offense occurs abroad in watch zones and the proceeds of crime are laundered in Georgia.

386. Despite the FMS's perceived increase in the quality of the reports and the rising number of reports received from the monitoring entities, only a few cases have been disseminated to LEAs. The low number of disseminated reports could be explained by the reductions on the FMS's staff and the

[63] According to the authorities, a new software is under development to increase the analyst's capacity of matching the data.

absence of analytical tools, or as explained above, due to the possible civil responsibility triggered by the lack of suspicious grounds.

387. The FMS currently has 31 positions (down from 40 in 2006—over 20 percent), of which only 23 staff (including 2 temporary employees) are currently occupied. The total number of reports submitted to the FMS has further increased in the last years. The number of analysts currently operating within the FMS (four) is particularly low to deal with the increasing flow of information.

388. FMS published one annual report about its activities that also contains some statistics in January 2012. It did not publish periodically annual reports, typologies, and trends of money laundering and terrorist financing and comprehensive statistics since it became operational in 2003. Such information would have helped the reporting entities to have better ML and FT typologies and trends and to increase the transparency about the work of the FMS. No periodic review of the AML/CFT system's effectiveness has been conducted to date. Finally, in-depth training on operational and strategic analysis is still needed for analysts.

389. More generally, and as discussed under Section 3 on reporting, the quality of reporting of suspicious transactions is poor and CTRs are sent to the FMS in an inconsistent manner. Monitoring entities are confused about the different requirements of reporting. Some bank manuals were not clear to determine the different types of reports that should be submitted to the FMS. However, meetings with Georgia 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. Overall, the recently-adopted framework is not effective at requiring financial institutions to give special attention to unusual transactions and those from countries which do not or insufficiently apply the FATF recommendations. FIs are filing such transactions as STRs treated manually by the analysts that create an extra burden and distraction from focusing on analysis of STRs.

390. On threats, and knowing that offshore accounts are frequently used in Georgian banks, and taking into consideration that which is described under section 1 of the report, the FMS was not proactive enough in requesting information from foreign counterparts. Also, it has disseminated a low number of reports related to tax evasion and fraud crimes or serious crimes in general.

2.5.2. Recommendations and Comments

391. The authorities are recommended to:

- Amend the AML/CFT Law to require the real estate agents, lawyers, TCSPs, and electronic money institutions to report suspicious transactions that will enhance the receipt function of the FMS and allow it to request additional information from these sectors.

392. The FMS is recommended to:

- Publish periodic annual reports with comprehensive statistics, typologies, and trends of money laundering and terrorist financing as well as information regarding its activities.

- Provide reporting entities with comprehensive guidance on the manner of reporting including clear reporting forms.

- Ensure that FMS asks nonbank financial institutions and DNFBPs for additional information when the information is correlated to another received information.

- Ensure that FMS have access to other law enforcement information like the investigation, prosecution, and trial records held by the MOJ. Open sources should also be used frequently.

- Ensure that FMS strengthens the quality of its STRs and other information analysis, in particular, by undertaking more in-depth operational and strategic analysis that could lead to improving the quality and quantity of disseminated reports. This could be achieved by, among other things (i) introducing an automated filtering system in order to allow pre-screening of information flow and generation of red flags and treating STRs differently from other received information; (ii) integrating the FMS database with the databases the FMS can access to allow matching information and identifying patterns; (iii) introducing analytical software to visualize complex schemes, and (iv) increasing the number of analysts.

Recommendation 30:

- Ensure that FMS provides additional specialized and practical in-depth training to its employees. This training should cover, for example, predicate offenses to money laundering, operational and strategic analysis and investigation techniques and familiarization with money laundering and terrorist financing typologies, and risks and vulnerabilities.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• Only one annual report is available online (published in January 2012), and it does not include ML/FT typologies and trends. **Implementation:** • Lack of guidance on the manner of reporting including with respect to reporting forms which are complicated and confusing to reporting entities. • No requests for additional/follow-up information have been addressed to nonbank financial institutions and DNFBPs. **Effectiveness:** • Lack of effectiveness in the receipt of STRs regarding potential terrorist financing and ML/FT STRs from several sectors (i.e., bureaux de change). • Effectiveness has not been established regarding some new reporting entities (e.g., leasing companies and accountants). • Lack of use of the FMS powers to access some law enforcement information (i.e., investigation, prosecution, and trial records).

		• Poor quality of analysis of STRs and other information mostly due to lack of analytical tools and weak quality of reporting. • Low level of dissemination to PO and MIA (between 5 to 15 cases a year). • Increase in the workload without a corresponding increase in the budget. The limited financial resources and decrease in human resources (around 40 percent since 2007) combined with increased level of reporting affect the effectiveness of the core functions of the FMS, mainly the analysis and dissemination of reports.

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

Recommendation 27 (Rated PC in Moneyval's third round MER)
Recommendation 28 (Rated C in Moneyval's third round MER)

Legal Framework:

393. The Criminal Procedure Code (CPC) of 2009; the Law on operative search activity of 1999; and the AML Law. The CPC was amended and adopted in 2009; it has very comprehensive powers that can be used by the Law Enforcement Agencies (LEAs).

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

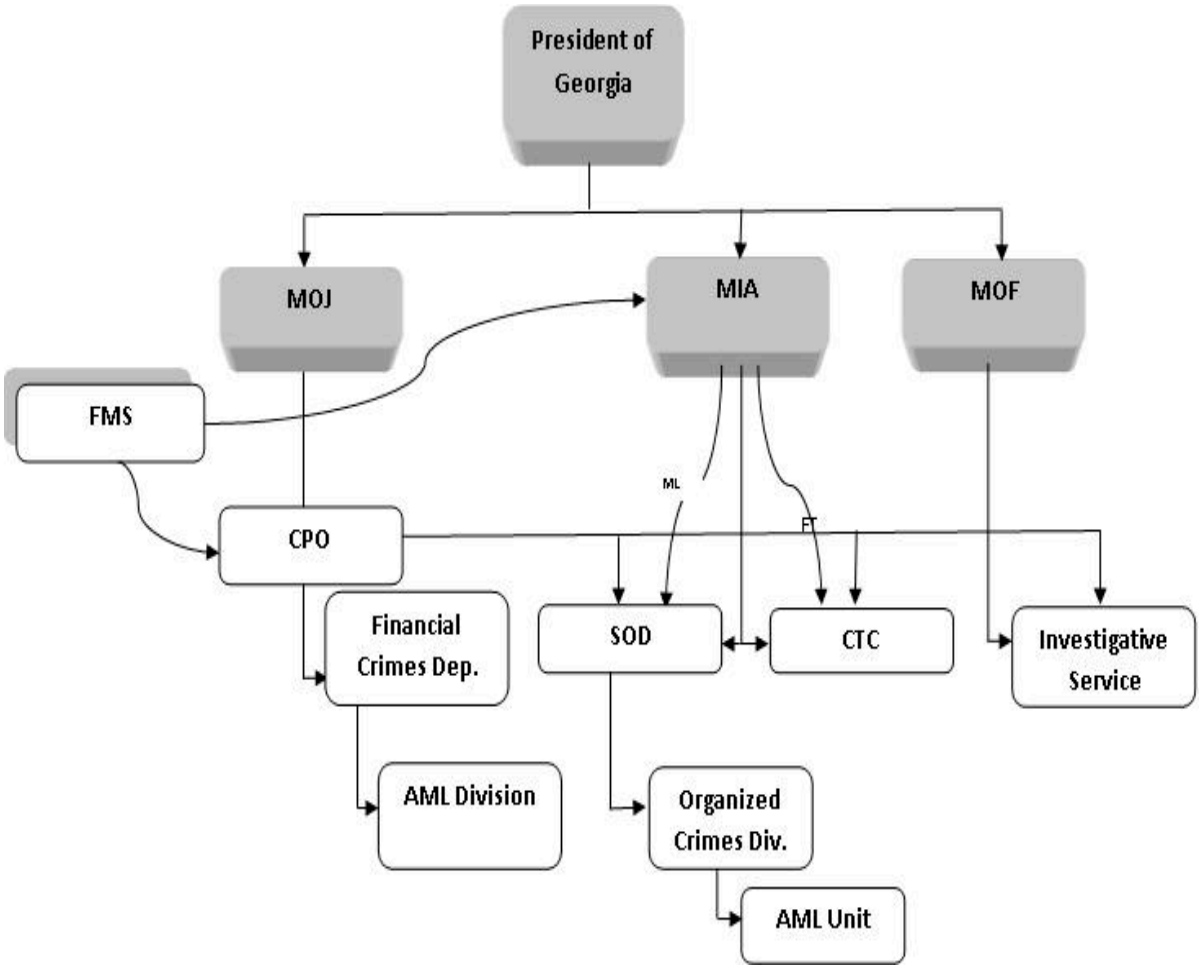
394. The LEAs designated to investigate ML and FT offenses in Georgia are :

- **The Chief Prosecutor's Office (CPO)**–several departments at the CPO are involved in fighting financial crimes in general and could be involved in investigating and prosecuting ML and FT offenses. The AML division within the Financial Crimes Department was formed to assist and conduct investigations and prosecutions of ML cases. FT cases are investigated and prosecuted by or under the supervision of the Procedural Unit at the CPO;

- **The Ministry of Internal Affairs (MIA)**–Special Operative Department (SOD) is entrusted with detecting and investigating organized crime, trafficking of human beings, arms, and drugs, and money laundering, etc. Counter Terrorism Center (CTC) conducts operations and investigations in terrorism crimes including FT. Both SOD and CTC conduct investigations under the supervision of the CPO; and

- **The Ministry of Finance**–Investigative Service have competence to investigate certain financial crimes that are not conducted by the SOD including ML.

395. In addition to disseminating information to the CPO, the FMS sends a copy to the MIA that are directed to SOD in case of ML suspicion and CTC in FT suspicion. The diagram below shows the competent LEAs authorities and hierarchies.



Chief Prosecutor's Office

396. The CPO is the main authority responsible for investigating and prosecuting ML and FT cases. It undertakes criminal prosecution, procedural oversight over investigation, and participates as a party at criminal hearings and supports public prosecution. In October 2008, the Prosecutor Service was merged with the Ministry of Justice.

397. The AML Division embedded within the Financial Crimes Department (FCD) is the specialized body of the CPO primarily responsible for the investigation and prosecution of money laundering cases and other predicate offenses. It was created to further strengthen that detection, investigation, and prosecution of money laundering in Georgia are carried out with most competent and due manner. The head of the AML Division is also the deputy head of the FCD. It was established at the end of 2003 and it started its work from the beginning of 2004.

398. The AML Division is composed of a head of unit, three prosecutors, and two investigators. The Division can request assistance from other prosecutors and investigators, or form a task force, if

needed. Other law enforcement agencies, such as the MoI, or other departments of the CPO can also investigate ML, mainly ML activities that emerge in the context of an investigation of other crimes.

Other relevant Departments at the CPO:

399. In these cases, the Chief Prosecutor or its Deputy must give consent to the handling of the ML investigation by any law enforcement body other than the unit. The CPO supervises such investigations. Usually, standalone investigations for ML are conducted by the special unit, while ML investigations connected to investigations of the predicate offense are conducted by the agency that has competence for the investigation of the predicate offenses. The regional offices of the CPO can also investigate and prosecute ML cases, if delegated from the CPO and if they are limited to the geographical jurisdiction of the regional office.

400. The Anti-Corruption Department (ACD) of the CPO generally investigates and prosecutes corruption-related crimes, crimes committed by public officials, and subsequent money laundering. ACD has the Head of the Department, two deputies, four senior prosecutors, two prosecutors, one senior investigator, and 12 investigators.

401. The Procedural Unit at the CPO supervises the work of the CTC at the MIA.

Ministry of Internal Affairs (MIA):

402. In February 2005, the Ministry of State Security was merged with the MIA. MIA has approximately 30,000 policemen. Two departments of the MIA are responsible for detecting and investigating ML and FT offenses.

403. The Special Operative Department (SOD) of the MIA is entrusted with the responsibility of fighting organized crimes, trafficking of drugs, arms, and human beings. In 2005, a third Division, the AML Division of the Division for Combating Organized Crimes, was created. It has six operatives and is required to provide support to the AML Division at the CPO during the investigation of money laundering cases. The Unit does not conduct investigation unless authorized by the CPO, and as such conducts operative and search activities for evidence gathering.

404. The Counter Terrorism Center (CTC) was created for fighting terrorism including FT. CTC is staffed with 50 persons, who have considerable experience in investigative work. It exchanges information with other countries and is closely exchanging information with other domestic concerned agencies.

Ministry of Finance (MOF):

405. An Investigative Service was established at the MOF to conduct investigations mainly on illicit trafficking in stolen and other goods, fraud, counterfeiting and piracy of products, illicit arms and drug trafficking, environmental crimes, smuggling, forgery, tax evasion, insider trading and market manipulation, and other illegal entrepreneurial activities.

406. Based on a recommendation issued by the CPO, he Investigative Service of the MOF was authorized to investigate money laundering when it detects proceeds generated from predicate crimes under its mandate.

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

407. There are no legislative measures that allow LEAs investigating ML cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering. In October 2007, the CPO issued a recommendation[64] to encourage investigators in using this technique.

408. According to the LEAs met during the mission, such practice is used frequently during their investigations of ML and predicate crimes in general. The table below shows the number of times such power has been used by the AML Unit of the Office of the Chief Prosecutor during 2011.

Postpone arrest		Postpone seizure	
Cases	Persons	Cases	Seizures
18	21	3	4

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

409. The CPO and other LEAs are authorized to use full range of special investigative techniques that are provided by the CPC and the Law of Georgia on Operative and Search Activities (Article 7) such as controlled delivery, phone and communications taping, infiltration, and others.

410. All these techniques are permitted at any stage of the investigation and are available for investigations of ML, FT, and predicate offenses. According to Article 7 of the Law on Operative-Searching Activities, the following special investigative techniques are carried out based on the court order: secret listening and taping of phone conversations (interception), gaining information from the channel of communication (by connecting to the means of communication, computer networks, linear communications and station apparatus), control of post-telegraph staff (except the diplomatic post); secretive audio-video taping, making of films and photos; electronic surveillance by technical means, use of which does not cause any danger to persons life, health, and environment.

411. Such court order is issued on the basis of motivated request of prosecutor to the court according to the place of investigation or the place of court decision. The request above is considered at a closed court session by a judge in no later than 24 hours from the moment of its reception with participation of the prosecutor. After discussion of the request above, materials attached to it as well as after hearing the explanation by the prosecutor, the judge makes either of the following decisions: (i) issue the order on conduction of operative-searching measures; or (ii) make a decision on waiver

[64] Body conducting investigation on the offenses envisaged by Articles 194 and 1941 of the CCG of Georgia is empowered to postpone or waive the arrest (of a person) or the seizure of a property for the purpose of identifying the persons involved in illicit income legalization and collect evidences thereto. Nowadays, the above-mentioned tool is more frequently used in all ML investigations. It is due to the fact that in recent years, the law enforcement bodies of Georgia started to pursue more proactively ML investigations and prosecutions which are also reflected in the statistical data.

of the request above. The level of evidence required to get the court order is deemed appropriate by the CPO.

412. However, another Article of the same Law adds that these special investigative techniques may be also carried out without court order on the basis of the motivated decision by a prosecutor in case of urgency, when any delay may result in the lost of actual data significant for the case or when it may prevent obtaining of such data. In such cases, the CPO has to obtain an *ex post factum* validation by a court, within 12 hours.

413. The CPC was amended in October 28, 2011 and a new Article 124.1 was introduced to allow LEAs monitoring bank accounts and transactions if there is ground for suspicion that the person is conducting a criminal act.

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

414. The special investigative techniques provided above are routinely used in the operational activities (following a court order) or when conducting investigations in ML/FT offenses and associated crimes. The authorities provided statistics indicating the number of times these techniques were used in ML and FT investigations: interception (20 cases–120 persons); visual monitoring (2 cases–8 persons); phone and communications taping (3 cases–20 persons); monitoring internet (2 cases–8 persons);and controlled delivery (1 case–12 persons).

Additional Element—Specialized Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5):

415. The permanent and temporary groups specialized in investigating the proceeds of crimes are widely used by the AML Division and Anti-Corruption Department of the Office of CPO, as well as by the Investigative Service of the MOF, and if necessary, by other relevant investigative bodies of Georgia.

416. The investigators of the AML Division work together with special agents of SOD and financial experts from the Investigative Service and Audit Departments of the MOF. The groups are focused on investigation, seizure, and freezing of the proceeds of crime. This practice is well established and used often by LEAs.

417. There are no provisions allowing the cooperative investigations with foreign counterparts and the LEAs have never used this mechanism before. Regardless of the absence of explicit legal provisions and according to the authorities, such investigations were used in practice several times. If the conduct of cooperative investigations requires special measure to be agreed in advance, the Ministry of Justice is authorized to conclude an *ad hoc* agreement with foreign counterparts under Article 2 of the MLA Law and cooperate with them in this way.

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

418. The CPO prepares ML methods, techniques, and trends that are shared internally between investigators. Two training sessions were conducted in February and March of 2011 at the Training Center of the MOJ to present the main findings. These studies were prepared based on the experience gathered respectively from all ML concerned agencies.

419. It was the first time such studies focusing on ML trends and techniques were developed and they were not shared with the FMS and other concerned agencies. FMS and other concerned authorities did not develop similar analyses based on their experience. Such analyses were not developed for the FT cases.

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

Compel production:

420. Article 17 of the Law of Georgia on Activities of Commercial Banks contemplate that banking information, including information on operations, balances, and accounts of any physical or legal persons, can be disclosed to LEAs based on a court order.

421. Article 10.2 of the Law on Microfinance Institutions contains a similar provision and stipulates that information regarding the borrower can only be submitted to the borrower, his representative, the NBG, and in cases defined under the legislation, to the FMS. Other persons are not authorized to request such information without a court order or in case of a prior written agreement by the borrower. More information is provided under Recommendation 4.

422. According to these Articles, LEAs can only compel production of certain kind on information from banks and microfinance institutions. Competent authorities responsible for ML and FT investigations rely on the power of persons and premises search to obtain information that should be available for use in investigations and prosecutions of ML, FT, and associated predicate crimes. Furthermore and as mentioned below, LEAs cannot compel production of financial documents from lawyers.

Search Persons or Premises:

423. Pursuant to Article 121 of the CPC, and if there is a probable cause, the prosecutor, investigator, or persons with authority to carry out detention, is authorized to seize an object, document, substance, or other item containing relevant information for the case, discovered on a person's clothes, on his/her belonging, in his/her vehicle, or in his/her body, by conducting a personal search. In urgent cases, the CPO can use these powers directly, but it has to obtain an *ex post factum* validation by a court, within 24 hours.

424. Under the same conditions, Article 120 allows search and seizure at the premises. On the basis of a court order or in case of urgency—on the basis of ruling—authorizing search or seizure, an investigator have the right to enter storage, dwelling, or other ownership for the discovery and seizure of an object, document, or other item containing relevant information for the case. The level of evidence required to get the court order is deemed appropriate by the CPO. The statistics provided by the authorities confirm such statement since it shows that such power is used effectively during most of the ML investigations.

425. Article 7 regarding professional secrecy in the Law on Advocacy provides that lawyers are obliged to: (i) to protect professional secrecy in spite of the time period passed; and (ii) not spread the information obtained from the client without his prior consent in the process of conducting advocate

activity. In case of violation of professional secrecy, advocate shall bear responsibility according to this Law and the Advocates' Professional Ethic Code.

426. Accordingly, LEAs can search persons and premises to obtain information related to crimes. The legal privilege of lawyers prevents them from obtaining information from this profession when conducting advocate activity. Although Article 7 of the Law on Advocacy is not very clear whether it includes only information obtained "in the process of conducting advocate activity," the bar association representatives indicated to the assessment mission that this text is strictly interpreted to include lawyers' activities of preparing and carrying out transactions for their clients. LEAs met during the mission never faced a similar situation since they never asked for any kind of information detained by lawyers.

Seize and Obtain:

427. According to paragraph 1 of Article 119 of the CPC of Georgia, search and seizure shall aim at uncovering and seizure of any object, document, substance, or other item that contains information related to the case. Article 120.4 of the CPC adds that in case of urgency, the investigator should offer the person subject to search or seizure to voluntarily turn over the object, document, or other item containing relevant information. If the item to be seized is voluntarily turned over, it shall be noted in the record; in case of refusal to turn over the requested item voluntarily or in case of its partial disclosure, the compulsory seizure shall take place. Paragraph 5 of the same Article sets that during the search, the object, document, substance, or other item containing information, which is indicated in the court order or ruling of the investigator, should be searched for and seized. Any other object containing information that might have evidentiary value on the concerned case or that might clearly indicate on other crime may also be seized.

428. In addition, pursuant to paragraph 7 of Article 120 of the CPC, the investigator should have the right during the search and seizure to open a closed storage or premise if the person to be searched refuses to do so voluntarily.

429. Accordingly, search and seizure cover objects, documents, or other items containing relevant information and any other object containing information that might have an evidentiary value on the concerned case or that might clearly indicate on other crime.

430. The authorities provided statistics about the number of cases where the AML division at the CPO, in coordination with other LEAs, used such powers:

Investigative techniques	Cases	Persons
Search	11	50
Seizure	20	128
Freezing	8	73
Access to Data held in computers (Articles 136 to 138)	1	1

431. The authorities believe that the powers provided in the CPC are very wide and allow them to obtain all necessary information. Furthermore, a court order of January 11, 2012 explicitly indicated that IS of the MOF under the supervision of the CPO are "authorized to seize the account extracts, opening documents, their further direction and all bank operations carried out on the accounts (payment orders, income and outgoing cash box orders, SWIFT extracts, deposits, transfers and other financial and legal documents), including the information and identification data obtained by banks through the process of examining clients (including information on beneficial owners) and business correspondence related to customers.

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

432. The CPO has the power to summon witnesses, hear their testimony, and discuss with them all matters related to the alleged crimes including ML and FT when this is beneficial for the investigation. These powers and the right of the witness were provided in detail under Article 94 of the CPC.

433. According to Article 371 of the CCG of Georgia there is a criminal responsibility for refusal to give testimony by a witness. The above-mentioned crime is punishable by a fine or socially useful work for a term from a 120 to 180 hours or correctional work for a term of up to one year or imprisonment for a term of up to four years. Giving a false testimony by a witness (Article 370) is also criminalized.

Statistics (R.32)

434. Statistical information was provided as shown below. The authorities did not analyze this data to assess the effectiveness of the AML/CFT regime:

Year	Cases received from FMS	Investigations	CTRs involved	STRs involved
2004	5		1200	107
2005	12	**16**	3035	156
2006	14	**10**	2706	142
2007	17	**9**	3512	184
2008	10	**9**	2863	227
2009	8	**9**	1390	92
2010	9	**22**	2406	206
2011	15	**40**	3204	273

435. From 2004 to 2010, all the ML investigation cases were initiated after receiving the information from the FMS. In January 2010, the Minister of Justice issued recommendations for the CPO raising awareness about Article 194 of the CC criminalizing ML and requiring all the departments of the office involved in investigating predicate crimes to carry out ML investigations to identify and trace the proceeds of crimes. This decision was also forwarded to the relevant departments at the MIA and MOF. As a result, LEAs initiated in few cases ML investigations in parallel with the predicate crimes investigation which justify the increase of numbers in 2010 and

2011. In 2010, nine investigations were triggered by FMS and 13 initiated by LEAs and until July 2011, 10 from FMS and 11 by LEAs.

436. The recommendation of the MOJ is a very good initiative that goes in the right direction. However, most ML cases have so far been initiated by the FMS through the provision of information received from CTRs and STRs. Only few ML cases were detected in the context of an investigation for a predicate offense in 2010. The number has increased in 2011 but not significantly. This raises questions about the extent to which law enforcement focus in their work on financial aspects of predicate crime to detect any potential money laundering activity. It appears that most of the LEAs still concentrate their investigations solely on the predicate crime and do not follow its proceeds to examine potential money laundering activity which is not enough to counter the ML risks in Georgia.

437. As indicated under Special Recommendation II, very few FT cases were investigated by the authorities. When meeting with competent authorities in fighting FT, the mission noticed generally a low level of understanding of the techniques, methods, and trends that could be used to prevent and counter FT.

438. Collection of additional statistics on whether the offense was prosecuted autonomously or together with the predicate offense will assist subsequent domestic analysis of the effectiveness of criminalization.

Adequacy of Resources—LEA (R.30)

Human Resources

439. Currently, there are 332 prosecutors and 46 investigators in the Prosecution Service of Georgia. The Prosecutor's Office is part of the Ministry of Justice. The Prosecutor's Office system consists of the Main Prosecutor's Office and the city, district, and regional prosecutor's offices, as well as the autonomous republics of Ajaria and Abkhazia, the latter of which is lcoated in Tblisi. The minister of justice is in charge of the entire system of the Prosecutor's Office and has the exclusive authority to conduct prosecution against a number of high-level officials, including the president, the chairpersons of the Supreme Court and the Constitutional Court, members of parliament, the Public Defender (Ombudsman), and the head of the Chamber of Control (the supreme audit institution). The minister of justice proposes a candidate for the position of chief prosecutor, who is appointed by the president. The chief prosecutor appoints and dismisses lower-level prosecutors and investigators and also has the exclusive authority to prosecute the minister of justice and other prosecutors.

440. There are five staff members in the AML Division, three investigators, and two prosecutors. Six additional operational staff at the AML unit of the MOI and additional investigators at the MOF can assist the AML Division if necessary.

441. The investigations can be conducted by the investigators at the Prosecutor's Office assisted by the those at the SOD or the IS at the MOF. Six investigators work for the AML Unit at the SOD. However, these investigators could be assisted by other 60 investigators working at the organized crimes division within the SOD and if necessary by a bigger group of investigators working at other divisions at the same department. The IS of the MOF has also a large number of financial investigators that can assist the prosecutor's office in conducting ML investigations

442. The legal framework for LEAs contains some robust provisions designed to ensure the independence of law enforcement bodies. LEAs are prohibited from establishing political organizations. The recruits must undergo special training either before or after joining. They are prohibited from combining their work with employment in another government agency or a commercial entity. Interference with a LEA's work is expressly prohibited.

443. Admission to the High School of Justice includes written examinations as well as interviews. Upon the completion of the course, each trainee receives evaluation in both – theoretical as well as internship modules of the course. Based on these objective evaluations, which are carried out by teachers and Independent Council of the School, trainees receive their ranking number into the Qualification List. After graduating the High School of Justice, trainees are eligible to apply for the position of judge. The High Council of Justice takes also into consideration the evaluations of the Independent Council of the School based on following criteria: decision making skills, communication skills, managerial skills, impartiality, moral reputation, interpersonal characteristics, judicial temperament, etc. Consideration of any kind of contacts or personal relationships during the selection process is strictly excluded. Only the candidates who successfully go through the above-outlined procedures and who are the best qualified can be selected for the position of a judge.

444. New mandatory judicial ethics rules were adopted in 2007. The following year, out of 1,256 complaints filed, 35 cases were brought against judges. Out of the 35 cases, 12 judges were found to have violated the ethics requirements, three judges were dismissed. The main objective of the reforms carried out in the judiciary is to secure the independence of the judiciary.

445. The law for police also lists legitimate grounds for dismissal of police officers. The law states that employees of the Prosecutor's Office are to be independent in their work and cannot be dismissed except for the cases stipulated in the law. Therefore, the formal grounds for dismissal are mostly reasonable.

Financial Resource

446. LEAs receive sufficient funding from the state budget, which has made it possible for them to improve their material and human resources considerably in recent years. According to the authorities, the Prosecutor's Office has sufficient financial and human resources to perform its duties. Salary levels are adequate and employees also receive bonuses, various benefits, and allowances.

Technical Resources

447. The LEAs have usually good IT equipment and are scheduled to move to a fully electronic system of case management. The police database is also a source which is actively used in order to obtain, on a timely basis, information on criminal records, arrests, and prosecutions. However, IT equipment do not allow for effective communication channels on suspects and associates and related information between various LEAs and between specialized departments at the same agencies.

448. All investigations are supervised and guided by the Prosecution Service. The Chief Prosecutor's Office, through its relevant departments and district offices, coordinates the investigations carried out throughout the territory. Particularly, the Chief Prosecutor's Office makes decisions on allocation of criminal cases, submissions of materials to different law enforcement bodies, etc.

449. Communication between relevant CPO administrations and other LEAs is largely informal, resulting in uneven levels of information and inconsistent timing, contributing to a sense of confusion and alienation among some departments and staff members.

Training

450. Between 2007 and 2011, investigators and prosecutors involved in AML/CFT have participated in the following trainings. In average, the sessions were for one week for 2 to 3 officials

- In 2011: OECD Anti-Corruption Network for Eastern Europe and Central Asia seminar on AML and AC investigation and prosecution; Organized Crime Seminar, U.S. DOJ; The Asset Tracing/Asset Recovery Training–Basel Institute on Governance;

- In 2010: Asset Tracing/Asset Recovery Training. Basel Institute on Governance; Training on ML investigation organized by the U.S. DOJ; Training on money laundering and financial crimes, Embassy of France; Seminar on AML/CFT for Criminal Justice Officials IMF;

- In 2009: Workshop on Typologies of ML/FT IMF; and a Training on ML investigation–Financial Police of the Kingdom of the Netherlands; and

- In 2008: Workshop on Typologies of ML/FT IMF; Seminar on Assets Forfeiture, U.S. DOJ; Regional AML/CFT training seminar–EBRD; and a Regional AML Seminar Organized by U.S. DOJ.

- In 2007: Workshop on AML Measures–U.S. DOJ.

451. The judges have been provided with a number of training seminars in respect to the criminal legislation of Georgia, especially the new CPC. The above-mentioned trainings largely covered the issues related to seizure, freezing, confiscation, etc. with respect to all offenses, including money laundering and FT. The number of training seminars related to the investigation and prosecution of money laundering and other predicate offenses is planned in the framework of GUAM.

Operational independence

452. The anti-corruption activities of the law enforcement agencies appear to have resulted in a virtual eradication of bribery in public administration. The law expressly prohibits public officials, as well as political and civil groups, from interfering with a prosecutor's activities. Prosecutors cannot be legally instructed by another authority not to prosecute a specific case.

453. The Law on Prosecutor's Office requires that appointments in the Office be made on the basis of professional criteria. Specifically, the law states that individuals need to complete at least six months of internship and pass examinations in a number of legal disciplines before they can be

appointed as prosecutors or investigators. Employees of the Office are to undergo accreditation every three years. On the negative side, the criteria for the promotion of prosecutors are not set out in the law.

454. A major concern with the law in terms of independence of the law enforcers, as pointed out by the Venice Commission,[65] is the fact that the justice minister (a political official) has direct prosecutorial powers and some of the legal provisions are open to possible interpretation that the minister can override decisions of prosecutors on individual cases. [66]

Implementation:

455. Since the decision of the Minister of Justice in 2010 recommending the initiation of ML investigations when LEAs suspect the generation of illegal proceeds, ML investigations have increased. LEAs started using better their competencies and investigative techniques.

Analysis of Effectiveness

456. Several LEAs are responsible for conducting ML and FT investigations. CPO coordinates the investigations carried out under his supervision by the MIA (SOD and CTC) and MOF-Investigative Service. However, local police authorities and district prosecutors have also been involved in high-profile ML cases, raising doubts on the proper use of resources and the capacity to allocate cases so they are properly investigated by properly-trained and resourced competent authorities. To avoid perception of politicization of prosecutions, it is of utmost importance that the authorities follow a transparent and even approach to investigations for ML and FT to send the right signal to both the public and the criminals.

457. Georgian authorities were able to successfully investigate ML. Although the number of cases disseminated from the FMS to the CPO has decreased, it is encouraging that most convictions were derived from reports of the FMS, which resulted from the analysis of Suspicious Transactions reports received from reporting entities. The MOJ recommendation had a positive impact on effective ML investigations initiated from predicate crimes investigation. However, its implementation must be monitored and reinforced through sharing of information through developed analysis tools, additional ML and FT trainings, analysis and sharing among LEAs of ML and FT trends, methods, and techniques, and collection of information from foreign counterparts.

458. LEAs do not seem to have the powers to compel the production of information held by lawyers when they conduct activities on behalf of their clients. Generally, LEAs should proactively trace through the money by accessing transactions records, identification obtained through the

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[65] http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=40&L=E - .

[66] In addition, as noted by the OECD Anti-Corruption Network, this could undermine operational independence of the Prosecutor's Office in terms of investigating corruption and ML cases, especially when high-level officials or opposition are concerned. See http://www.oecd.org/document/17/0,3746,en_36595778_36595861_37187921_1_1_1_1,00.html–Second round monitoring report, March 2010, page 42.

Customer Due Diligence (CDD) process, account files and business correspondence, or other records, documents or information, held or maintained by financial institutions and other businesses or persons to be able to identify the ultimate beneficial owner(s) in these cases. Such information is not being sufficiently analyzed to identify and trace proceeds of crime and the real beneficial owners.

459. The assessment team met with six LEAs involved in fighting financial crimes at the CPO, MIA, and MOF. Some of them were newly established. As mentioned above, coordination between the various agencies is done at the Prosecutor's Office level. According to the law on intelligence activities, the operative assistance to all investigative bodies is provided by the specialized intelligence divisions of the MIA and Investigative Service of the MOF. Investigative bodies usually obtain their information through this mechanism. However, the mechanisms and tools to coordinate various agencies to ensure effective implementation of AML/CFT measures to counter the very serious money laundering and terrorist financing threats should be developed further through appropriate technical resources and computerized databases that allow the sharing of information in ongoing investigations and related persons. Such investigations should be coordinated further and information should be shared effectively.

460. A modern personnel management system was introduced at the CPO and MIA to ensure that employees are hired exclusively on the basis of professional criteria. The system includes detailed procedures for recruitment, promotion, evaluation, and dismissal. Employees are recruited through open criteria and follow training courses before assuming office.

461. Nevertheless, the way the cases are distributed among LEAs is not clearly defined. While specialized institutions have been created to deal with high-profile money laundering, major predicate offenses, and organized crime both at the prosecutorial and investigative levels, during the on-site mission, a major ML investigation was conducted by a district prosecutor with the support of the local police of Tbilisi. The assessors had difficulties understanding why a case involving a commercial bank suspected of money laundering, owned by a PEP, and where millions of dollars have been seized by the authorities, has been investigated by a police force not specialized in ML nor in high-profile crime. This allocation of resources did not seem to be effective and it seems there is discretion on the way the investigative/prosecutorial authorities are assigned to criminal cases.

462. The ML and FT cases that have been considered limited taking into consideration the risks of ML and FT described in detail under Section 1. There may be several reasons for this, notably the following:

- Low level of coordination and cooperation between LEAs and absence of coordinated policies to fight money laundering and the financing of terrorism mainly due to ineffectual communication channels. Communication between relevant CPO administrations and other LEAs is largely informal, resulting in uneven levels of information and inconsistent timing, contributing to a sense of confusion and alienation among some departments and staff members;

- It appears that most of the LEAs concentrate their investigations solely on the predicate crime and do not follow its proceeds to examine potential money laundering activity;

- Lack of utilization of sophisticated financial investigation and adequate tools and databases to effectively share the information that would allow to trace the origin of the illegal funds, create patterns between suspects and associates of ML or FT crimes and perpetrators of associated predicate crimes, and identify the ultimate beneficial owners of legal persons, accounts, and transactions;

- Although all law enforcement entities have received training on money laundering typologies, and taking into consideration the threats described under Section 1, there is a common belief among the law enforcement authorities that Georgia is not vulnerable to money laundering operations;

- There is a high turnover in personnel at various LEAs. Excessive personnel changes inhibit an organization's momentum by precluding institutional memory, interrupting continuity, and requiring repeated training. Additionally, vacancies persist at almost all levels of the LEAs, contributing to the excessive workload of many staff; and

- There is a very low number of FT investigations cases that is mainly due to limited knowledge of LEAs of methods, trends, and techniques to detect FT more precisely by monitoring cash couriers and implementing the SR.IV requirement, protecting alternative remittance systems from abuse, and ensuring that NPOs are not abused for TF.

2.6.2. Recommendations and Comments

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

- Provide LEAs with the power to compel the production of documents detained by Lawyers when they prepare for or carry out business transactions for their clients.

- Implement more systematically the 2010 Recommendation of the CPO in order to investigate more proactively and regularly the money laundering and or terrorist financing offenses as a standalone crime irrespective of whether the source of information emanates from the FMS or any other source. Also, use ML and FT investigations proactively through specialized financial investigators; such investigations should be standard operating procedure to initiate financial investigation when investigating profit-generating crime or terrorism to determine the proceeds of crimes (type and amount) and determine the properties that can be frozen, seized, and ultimately confiscated.

- Use more frequently financial analysis and investigation techniques to trace the origin of the illegal funds, create patterns between suspects and associates, and identify the ultimate beneficial owners of legal persons, accounts, and transactions and share this information between various LEAs.

- Provide AML/CFT training to all investigative agencies at all levels.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**LC**	**Effectiveness:** • Law enforcement investigation and prosecution of money laundering and terrorist financing is not fully effective, in particular, in respect to standalone investigations into money laundering and autonomous money laundering cases related to predicate crimes committed abroad.
R.28	**LC**	• Lack of powers of LEAs to access the information detained by lawyers when conducting financial activities on behalf of their clients. **Effectiveness:** • Lack of effectiveness in ML and FT investigations, more precisely, limited use of the powers to compel production of financial information from lawyers and lack of sharing of information between concerned agencies in order to properly investigate the ML and associated predicate crimes and FT.

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

2.7.1. Description and Analysis

Special Recommendation IX (Rated NC in Moneyval's third round MER)

Legal Framework:

464. Georgia Revenue Service is Tax and Customs Administration of Georgia. Customs Border Protection Department of the Georgia Revenue Service is in charge of BCPs. The Customs Service is a Department under the Ministry of Finance (MOF). The basic regulation of cross-border transportation of goods (including cash and securities) is regulated under the Georgian Tax Code that was adopted in September 2010. The FMS Decree on "on Receiving, Systemizing and Processing the Information by the Revenue Service and Forwarding to the FMS" was adopted in November 2004, and amended in February 2011. Article 214 of the CCG, and Order 993 of the Minister of Finance on "Approval of an Instruction on Movement and Clearance of Goods across the Economic Territory of Georgia" (December 31, 2010)–hereafter referred to as the MOF Order for the control of goods.

465. Pursuant to Article 5.3 of the AML Law amended in November 2010, "the import into and export from Georgia of cash and securities exceeding GEL 30,000 (around US$18,300) (or its equivalent in other currencies) should be subject to monitoring by the Customs Agencies." Article 3 of the AML Law considers the Revenue Service as monitoring entity and, therefore, required to implement the requirement of Article 5.3 stated above.

466. According to Article 209 of the Tax Code of 2010 on status of goods, "for the purposes of crossing Georgia's customs border, goods shall be tangible property, including money, securities, electric and thermal energy, gas, and water." However, for the purposes of the implementation of trade policy activities and procedures, a status of Georgian goods or foreign goods shall be assigned to goods." Therefore, the case is treated like goods and can only be seized if it is being smuggled.

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

467. According to Article 21.3.d of the MOF order for the control of goods, cash (national or foreign currencies), checks and other securities with more than total nominal value of GEL 30,000 or its equivalent in other currencies should be declared while crossing Georgia's customs border.

468. Article 38.1 of the MOF order for the control of goods (Order 993 of the Minister of Finance on "Approval of an Instruction on Movement and Clearance of Goods across the Customs Territory of Georgia" (December 31, 2010): "Imported goods, with value less than GEL 30,000 by a natural person can be declared by the natural person's commodity declaration (Annex IX-03). Natural person's commodity declaration is filled in border check point (BCP) or at Customs Clearance Zone (Customs Clearance Office). Type, quantity, and value of goods is declared orally by the natural person, and authorized person of BCP or Customs Clearance Zone fills natural person's commodity declaration, which is then signed by natural person. Authorized person of Tax Authority registers declaration by assigning a number from which first five digits are the code of tax authority, and the following digits, sequence numbers. Declaration is filled in two copies. One copy remains in the customs clearance office and the other is given to the natural person. This requirement to declare goods and commodities applies to natural persons only and do not extend to legal persons. Moreover, currency and securities are considered goods that need to be declared.

469. The regime put in place in Georgia requires that all natural persons making a physical cross-border transportation of currency and securities to make a disclosure to the designated competent authorities for the amounts above the specified threshold. The authorities can, in case of non-declaration, ask the passenger to declare the currency or securities he is holding. Both voluntary and involuntary declarations are made available to the FMS as CTRs with a distinction of declared (for voluntary) and non-declared (for involuntary).

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

470. The Customs authorities do not have the authority/power to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use upon discovery of a false declaration or a failure to disclose. The BCP employees are authorized, as mentioned below, to inspect the personal and hand luggage when they suspect trafficking.

471. The customs rely on their powers to inspect the passenger as stated in Article 33 of Order 2724 of the Director General of the Revenue Service on "Entry/Removal of Goods to/from the Economic Territory of Georgia and Implementation of Procedures related to the Declaration:" the

passenger is inspected according to the decision of the authorized person of the BCP if there is reasonable suspicion that the passenger crossing the border hides things subject to state control.[67]

472. In addition, if there is reasonable suspicion that the person, prescribed under Article 219 of the Tax Code of Georgia, or/and his/her personal luggage contains items that are prohibited to bring in or carry out, or is regulated under the quarantine rules of Georgia, the process of inspecting is provided in the presence of the person with diplomatic immunity or other authorized representative.

Restraint of Currency (c. IX.3):

473. Pursuant to Article 34 inspection of the Personal Luggage of the Passenger (Order #2724 of the Director General of the Revenue Service on "Entry/Removal of Goods to/from the Customs Territory of Georgia and Implementation of Procedures related to the Declaration"): Customs authorities are allowed to inspect items in the passenger's luggage and hand luggage in the presence of the person who owns or disposes the items or in the presence of the representative. If the owner of luggage and hand luggage is not identified, or he/she refuses to be present, the process of inspecting is provided without the presence of the passenger or his/her representative, in the presence of attendants. Before starting the process of inspecting the luggage and/or hand luggage of the passenger, personnel of the tax authority should offer to the passenger to submit voluntarily the hidden/prohibited items. In case of resistance, personnel of the tax authority should act in accordance with the Criminal Procedure Code of Georgia.

474. According to the authorities, pursuant to Article 271.7 of the Tax Code, if the signs of an offense are identified (offense here refers to trafficking and not suspicion of ML and FT), the materials shall promptly be sent to a relevant investigative body according to jurisdiction and the matter of imposing a sanction on a person for offense envisaged under Article 289 of the Tax Code should be determined after an investigative body or court takes a relevant decision with regard to the case. Such powers are related to trafficking and are not related to the suspicion of ML and FT or in the case of false declaration.

475. The designated authorities do not have the power to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or FT may be found: (i) where there is a suspicion of ML or FT; or (ii) where there is a false declaration. They can only search and, in case of resistance, arrest the person when he is hiding things.

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

476. Specific provisions are included in paras. 3 and 11 of Article 7 of the FMS Decree on Receiving, Systematizing and Processing the Information by the Revenue Service and Forwarding to

[67] In addition, PIRS program mentioned below has been developed to determine parameters and provide the BCP officer with encrypted information to help him screen the person.

the Financial Monitoring Service (Order #1 of the Head of the FMS of February 8, 2011) according to which:

- If a physical person is included in the list of terrorists or persons supporting terrorism or there exists a supposition or a preliminary information that the physical person is related with terrorists or persons supporting terrorism, or cash or/and checks or/and other securities carried by such person may be related with or used for terrorism, terrorist acts or by terrorists or persons financing terrorism—the report shall be sent (or submitted) on the same date the information is received. In addition, all respective materials and documents available to the responsible employee of the Revenue Service shall be provided to the Service along with the reporting form. Besides, other measures provided for in the legislation shall be undertaken. (Article 7(3) of the Regulation on the Revenue Service); and

- If there is no sufficient space for writing full information available, additional electronic sheet/s with detailed information shall be attached to the form, where detailed information can be provided (including information on the person who by avoiding customs control or secretly from it exported or imported cash and/or checks and/or other securities subject to monitoring through the Georgian customs border). On the top of each sheet shall be indicated form and box numbers, to which the information should be attached. On each sheet, the first and last names of the person responsible for making the final decision under the internal Regulation should be indicated. (Article 7(11) of the Regulation for the Revenue Service).

477. According to Article 6 of the Regulation for the Revenue Service, the Service shall retain the "natural person's declaration" filled by persons carrying cash, checks, and other securities for not less than six years from the time of crossing the customs border by such persons.

478. Such requirements do not extend to all kinds of bearer negotiable instruments declared or otherwise detected, or the identification data of the bearer for use by the appropriate authorities in instances when: (i) a declaration exceeds the prescribed threshold; (ii) there is a false declaration; or (iii) there is a suspicion of ML or FT.

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

479. According to the AML/CFT Law of Georgia and the AML/CFT Regulation on the Revenue Service CTRs are submitted electronically to the FMS by the Revenue Service. Information is sent automatically to the FMS that register in its database as CTRs. A new updated program for reporting, described under Recommendation 26, is in place.

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

480. On the domestic level, coordination of competent authorities on issues related to the implementation of SR.IX is provided under the Common Order #985- N1187 of December 31, 2010 of the Minister of Finance of Georgia and the Minister of Internal Affairs of Georgia on "Approving Rules for Providing Appropriate Indications in Travel Documents while Crossing the Customs Border of Georgia and for Reflecting Information in the Automated Database of the Ministry of Internal Affairs of Georgia".

481. A risk management system has also been set in place. Risk criteria are implemented in the Personal Identification and Recognition System (PIRS) Program of Patrol Police. On the basis of the advanced parameters, the program allows to determine and deliver encrypted information to the officer of the BCP on necessary control measures. Information received from different sources in analyzed for establishing risk criteria (Database of the Revenue Service, Database of "PIRS" Program, international experience, etc). Also, on the basis of preliminary parameters, program PIRS defines and gives encrypted information about measures to be taken by the BCP officer (authorized person). The patrol police are always present at the BCP and can assist the Customs authorities in arresting travelers, if necessary.

482. Coordination between the Customs and Immigration authorities seems to be adequate in general. Such coordination does not exist in relation to issues related to the implementation of SR.IX. There is no MOU between the 2 agencies. Furthermore, the Patrol Police does not have the powers in line with SRIX. Proper procedures to implement the SRIX requirements has not been developed or put in place. The police might deal with these cases as smuggling of goods but not transportation of cash which is not in line with the SRIX requirements.

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

483. Georgia has signed Agreements on Cooperation on Customs Matters with numerous countries. For example, "Agreement between the Republic of Georgia and the Republic of Turkey on Cooperation and Mutual Assistance on Customs Matters" entered into force on May 16, 1994. Pursuant to Article 6.a of the above-mentioned Agreement, due to the request of one signatory party, the other party may observe persons, who are suspected in violation of customs rules of the requesting party.

484. When asked, the authorities were not able to provide statistics on the number of requests received and made from Customs and Immigration authorities in Georgia and their foreign counterparts.

Contracting state	Name (Agreement)	Entry into force
Armenia	On mutual administrative assistance in customs matters	19.02.08
Azerbaijan	On cooperation in customs work	10.07.95
China	On cooperation and mutual assistance	03.06.93
Estonia	On co-operation and mutual assistance in customs matters	16.06.05
Greece	On co-operation and mutual assistance in customs matters	14.01.99
Iran	On co-operation in customs matters	03.11.96
Israel	On mutual assistance in customs matters	09.09.98
Kyrgyz Republic	On co-operation in customs matters	22.04.97
Latvia	On co-operation and mutual assistance in customs matters	16.06.05
Lithuania	On co-operation and mutual assistance in customs work	12.11.00
Turkey	On co-operation and mutual assistance in	16.05.94

	customs matters	
Turkmenistan	On co-operation and mutual assistance in customs matters	17.08.93
Ukraine	On co-operation in customs matters	14.02.97
Uzbekistan	On co-operation and mutual assistance in customs matters	28.05.96

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

485. Sanctions for a false declaration or disclosure are defined under the Tax Code of Georgia (Article 289) while the CCG of Georgia establishes criminal liability of persons in case of violation of rules on movement of goods across the Customs Border of Georgia. The sanctions can also be imposed on natural persons.

486. The Customs officers do not have arrest powers and get the assistance from the patrol police to detain carrier(s) of trafficked goods, precious goods, or currency. The investigation is carried out by the investigative unit of the Revenue Service.

487. These powers do not extend to persons who make false declaration contrary to the obligations of SR.IX but only to cases of trafficking. Therefore, no sanction has been imposed in accordance with SR.IX in case of a false declaration.

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):

488. According to Article 7(3) of the AML/CFT Regulation for the Revenue Service, if a physical person is included in the list of terrorists or persons supporting terrorism or there exists a supposition or a preliminary information that the physical person is related with terrorists or persons supporting terrorism, or cash or/and checks or/and other securities carried by such person may be related with or used for terrorism, terrorist acts or by terrorists or persons financing terrorism—the report shall be sent (or submitted) on the same date the information is received. In addition, all respective materials and documents available to the responsible employee of the Revenue Service shall be provided to the Service along with the reporting form. Besides, other measures provided for in the legislation shall be undertaken.

489. These persons are not sanctioned; only a report on their transit is filed to the FMS. Therefore, there are no dissuasive and persuasive criminal, administrative, and civil sanctions on their behalf.

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

490. According to the authorities, Article 289.12 of the Tax Code of Georgia allows the confiscation of goods including currency. Pursuant to this Article, bringing in/carrying out cash and securities with a value from GEL 30,000 to GEL 50,000 (or its equivalent in other currencies) by way of evading control or secretly thereof is subject to fine in the amount of GEL 1,000 or confiscation of goods. However, this sanction is not related to ML or FT and only applies to cases of smuggling of currency and securities. Therefore, there are no provisional powers or confiscation measures available

to competent authorities in relation to persons who are carrying out a physical transportation of currency and bearer negotiable instruments that are related to terrorist financing or money laundering.

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

491. Terrorist lists are received by the patrol police and inspected against travelers who can be arrested. The Revenue Service also has access to a terrorist list and, accordingly, can refer the case to the patrol in case of positive match with the UNSCR lists. The police have never had cases of confiscation pursuant to UNSCRs.

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

492. Special control of gold, precious metals, or precious stones is not provided in the Tax Code.

493. There are no mechanisms to cooperate with foreign counterparts in order to establish their source, destination, and purpose of the movement of such items toward taking the appropriate action.

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

494. Based on requirements of the AML Law and FMS for the Revenue Service, the Revenue Service is obliged to define procedure for submission of reporting forms to the FMS on the basis of information received from regional centers to the Service. It should also appoint an employee (structural unit) in charge of monitoring. Information received by the Revenue Service is to be sent to the FMS in reporting form as an encoded file.

495. In practice, the premises of the Revenue Service have proper and strict safeguards to ensure that the data is recorded.

496. Article 39 of the Tax Code provides also for proper safeguards of information and includes sanctions in case of breach.

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

497. Employees of the Revenue Service have participated in following trainings:

- Training on “Anti-Money Laundering and Combating Financing of Terrorism” organized by the Ministry of Foreign Affairs and the Ministry of Finance of Republic of Poland on April 11–15, 2011 in Poland;

- Training on “Combating Illegal Trade of Narcotics, Psychotropic Substances and Precursors” organized with support of the Ministry of Finance of Republic of Poland on June 13–17, 2011;

- Training for Employees of Customs Authorities on “Combating Legalization of Illegal Incomes (Money Laundering)” in November 2008.

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

498. The authorities have not given consideration to the implementation of the measures set out in FATF's International Best Practices.

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

499. The reports are maintained in a computerized database at the Customs. Copies are filed with the FMS as CTRs.

Adequacy of Resources—Customs (R.30)

500. The Revenue Service of the Ministry of Finance of Georgia unifies Tax and Customs Administrations. Main functions of the Revenue Service are the following: administration of taxes/duties and appropriate fees; providing tax audits, state control, and state supervision related to the crossing of customs border of Georgia and to the clearance of goods; state phyto-sanitary border quarantine, veterinary border quarantine, sanitary quarantine control, non-tariff measures; and within its competence, making decisions on issuing, changing, and cancellation of licenses and permits according to the Law of Georgia on "Licenses and Permits" and controlling of compliance with the license/permit terms.

501. The structure of the Revenue Service: Central Apparatus (over 300 employees); Special structural units; and Customs Clearance Department. The Department is responsible for issues related to commodity operations—monitoring, control, analysis, expertise, issuance of certificates of origin, and various permits connected with the subject; it is composed of 360 employees.

502. Structure of the Customs Clearance Department: Administration; Analyses and Monitoring Division; Customs Clearance Zone–"Tbilisi;" Customs Clearance Zone–"Poti;" and Customs Clearance Zone–"Batumi."

503. Customs Border Protection Department is responsible for the customs border protection, import/export and over sanitary control, as well as control over commodity and transport which are under the state supervision. The Department is also responsible for identification of traffickers, of illegal cash flows, checks and other securities which are subject to monitoring; the Department is composed of 631 employees.

504. Structure of the Customs Border Protection Department: Logistics Division; Analyses and Methodology Division; Operational Management and Video monitoring Division; Sanitary, Phyto-sanitary and Non-tariff Agreements Division; and BCPs (Sadakhlo; Tsiteli Khidi; Akhkepi; Gardabani; Guguti; Lagodekhi; Samtatskaro; Kazbeghi; Vale; NinoTsminda; Sarpi; Mtkvari; Kutaisi and Senaki Airports; Batumi Airport; Batumi Port; Poti and Kulevi Ports; Poti Free Industry Zone; Kutaisi Free Industry Zone; Tbilisi Airport.

505. All responsibilities of customs authorities are divided between the special structural units of the Revenue Service. BCPs are equipped with mobile, portative, and hand luggage x-ray machines, radiation, stationary, and portable equipment, radiation pagers and other technical devices (metal detector, density measurement devices, busters, etc.).

506. "Rules for Recruiting New Employees (including recruiting through competition) at the Revenue Service–Legal Entity of Public Law and Certification (approved under the Order N257 of March 31, 2010 of the Minister of Finance of Georgia) set standards for hiring new staff within the Revenue Service. The required skills and qualification for each position are defined due to the nature of the job.

507. According to the aforementioned Instruction, capable citizen of Georgia may be hired at the Revenue Service if he/she has appropriate knowledge and experience and speaks state language. When hiring an employee, the relevant act is signed that includes name and surname of a person to be hired; name of structural unit; date of hiring; period of hiring/internship (if it exists). Before hiring a new employee, he/she has to present several documents (e.g., CV, Certificate of Conviction; Medical Certificate, Medical Examination, etc.). The competition is provided for hiring new staff.

Implementation:

508. In total, the Customs are controlling 18 border crossing points as follows: **Airports:** Tbilisi–Batumi; **Ports:** Poti and Kulevi–Batumi–Kutaisi and Senaki; **Land:** Sadakhlo–Tsiteli Khidi–Akhkepi–Gardabani–Guguti–Lagodekhi–Samtatskaro–Kazbeghi–Vale–NinoTsminda–Sarpi–Mtkvari; **Free Zones:** Poti Free Industry Zone–Kutaisi Free Industry Zone.

509. The number of submitted reports from Customs to the FMS on cross-border transportation of cash exceeding GEL 30,000 and the volume of currency declared are relatively low, given that Georgia is still, to a large degree, a cash-based economy with a large community of Georgians living abroad and growing commercial relationships with foreign companies and businesses.

510. The mission noted that reports have steadily increased since 2007—57 in 2007, 147 in 2008, and 293 in 2009—but also noted that the gross value of the declarations at Tbilisi airport for 2010 (GEL 2.38 million) is very high, which suggests that the overall number of reports to the FMS from Customs is still low.

511. The implementation of SR.IX is based on mechanisms that are inconsistent and incomplete. The requirements of the FMS Decree have been implemented. Some passengers are declaring and these declaration forms are being retained by the Revenue Service. The Revenue Service is in accordance with the Tax Code using the powers available in case of trafficking. Cash is considered goods, and travelers are stopped only when they are suspected to hide cash to be able to "traffic" in or out of the country.

Statistics (R.32)

Statistics on declared and non-declared amounts:	
Time Period	**Declared Amount**
2007	GEL 56, 581, 282
2008	GEL 18,232,735
2009	GEL 27,030,660

2010	GEL 35,092,918
2011 (6 months)	GEL 31,094,790
Time Period	**Non-declared amount**
2007	US$138,928
2008	US$125,000 and GEL 175,805
2009	US$190,711 and GEL 39,358, €17.760 EUR, 145 TL, 150 BHD and 20.210 PKR
2010	US$723,380, 79.400 TL, €19.850, and GEL 300

512. According to the authorities, declared amounts are those declared by carriers voluntarily, and non-declared is when a passenger is asked by Customs to fill the declaration form after detecting the currency.

Customs	Declarations	Suspicious
2007	57	0
2008	147	0
2009	293	0
2010	304	0
2011	337	0

Analysis of Effectiveness

513. The AML Law covers only the declaration of threshold amounts of currency, gold, and other precious materials. Customs and/or other competent authorities do not have the power to stop and investigate the inbound or outbound movement of cash and bearer negotiable instruments, unless the Customs consider this kind of transportation as smuggling. Only a small percentage of inbound and outbound transportation of currency and bearer negotiable instruments is actually declared. Without the additional powers required under SR.IX, the efforts to monitor the cross-border movement of illegal proceeds will be hampered.

514. Because smuggling activities are a widespread form of crime in the country, it is most probable that any investigation of such crimes will lead also to significant ML or FT cases. Neighboring countries with significant Georgian organized crimes can easily transport cash or currency negotiable instruments to Georgia. The current measures do not allow the competent authorities to use the powers detailed under SR.IX to detect them, and stop or restrain if they are suspected to be related to terrorist financing or money laundering or that are falsely declared.

2.7.2.Recommendations and Comments

The authorities are recommended to:

- Amend the requirements so that they extend to the shipment of currency and bearer negotiable instruments through cargo containers and the mail.

- Define clearly the term "bearer negotiable instruments" to include monetary instruments in bearer form such as: travelers cheques; negotiable instruments (including cheques, promissory notes, and money orders) that are either in bearer form, endorsed without restriction made out to a fictitious payee, or otherwise in such a form that title can pass upon delivery; and incomplete instruments (including cheques, promissory notes, and money orders) signed, but with the payee's name omitted.

- Take legislative steps to align the cross-border cash and bearer negotiable instruments powers to Customs to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of ML or TF and the temporary restraint measures, and the adequate and uniform level of sanctions.

- Provide competent authorities present at the BCPs with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or FT may be found, where there is a suspicion of ML or FT; or where there is a false declaration.

- Once this system is established, Customs should be training on the best practices paper for SR.IX.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to S.2.7 underlying overall rating
SR.IX	**NC**	• Lack of clear powers to request and obtain further information from the carrier with regard to the origin of the currency or the bearer negotiable instruments and their intended use. • Lack of powers to be able to stop or restrain currency and bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or FT may be found. • Lack of proportionate sanctions for false disclosure, failure to disclose, or cross-border transportation for ML and FT purposes. • The requirement for the retention of records does not extend to all kind of bearer negotiable instruments declared or otherwise detected, or the identification data of the bearer. • Absence of clear definition of "bearer negotiable instruments." • Weak implementation of the system transportation of currency and bearer negotiable instruments across all BCPs.

		• Insufficient statistics on number of declarations from various BCPs to assess the effectiveness of the measures in place. • Lack of training on the best practice of implementing the requirement of SR.IX. **Effectiveness:** • In a cash-based society, the declaration system is not being implemented effectively to detect the transportation of cash and negotiable instruments that could be transported by launderers or terrorist financiers.

3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

Regulatory framework (law, regulations and other enforceable means)

515. Georgia adopted its AML/CFT Law in 2003, coming into force on January 1, 2004. After the Third Round Evaluation by MONEYVAL, new amendments have been introduced and recent amendments to the AML/CFT Law of Georgia were adopted on December 20, 2011 and came into force on January 1, 2012. Assessors have taken those amendments into account for the legal framework analysis, including not only the AML law amendments but the new regulation (FMS decrees) issued in January 2012.

516. According to Article 10.4.c of the AML/CFT Law, the FMS is empowered to issue normative acts (hereafter called Decree) to monitoring entities on "the conditions and procedures for receiving, systemizing, processing and forwarding the relevant information and identification of the person." Article 10.4.c of the AML/CFT Law was amended in December 2011 to enable the FMS to adopt (issue) normative acts within its competence for the purpose of implementation of the AML/CFT Law. These Decrees are secondary legislation issued by the FMS based on the authorization by the Parliament through the Law on Normative Acts and which impose mandatory requirements with sanctions for noncompliance.

517. Under Article 2.m of the AML/CFT law, natural and legal persons that are subject to AML/CFT requirements are defined as "monitoring entities." Those entities are obliged to fulfill the AML/CFT requirements regarding identification of the persons involved in transactions, registration, and systemization of information of the transaction and report this information to the FMS.

518. With the December 2011 amendments of the AML Law, monitoring entity is defined under Article 2(m) of the AML/CFT law as an entity which, for the purpose of facilitating the prevention of legalization of illicit income, is required to undertake actions prescribed by the legislation; on its side, Article 3 of the AML/CFT Law gives the list of monitoring entities.

519. AML/CFT supervision of activities of financial "monitoring entities" is conducted by the National Bank of Georgia as a supervisory body for the FIs (Articles 11, para. 1, and 4. a)) including commercial banks, currency exchange bureaus, non-bank depository institutions, microfinance organizations, entities performing money remittance services, brokerage companies and securities registrars, and insurance companies and non-state pension scheme founders. These entities are subject to AML measures, including CDD, record-keeping, and reposting requirements. At present, leasing activities have also been included in the legislation with the December 2011 amendments, but factoring and credits services (credit cards) are not yet to AML obligations. However, there are currently no credit companies and factoring companies providing services separately from banks and credit unions[68].

[68] Credit cards for its members.

520. The legislative framework establishing AML obligations of the financial institution has undergone some structural changes since 2007. These changes were designed to strengthen the financial system through enhanced identification and management of ML/FT risks in the system.

521. The AML Law has been complemented by eight FMS decrees, which elaborate on the requirements of the AML Law for each category of financial institution.[69]

Scope

522. The main categories of financial institutions as defined in the FATF Glossary are covered in the AML Law (see section 1.3 for more information):

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity[70]	Prudential regulator & supervisor	AML/CFT
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks 2. Credit unions	NBG	NBG
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Credit card companies 3. Factoring and finance/ consumer credit	1. NBG	NBG Factoring not covered[71]
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks 2. Leasing companies	1. NBG 2. MOF	Financial leasing activities are not permitted for commercial banks. Only operational leasing: NBG
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	1. Banks 2. Money remitters	NBG	NBG (pay box services no regulated/ supervised.

[69] Commercial banks, credit unions, microfinance institutions, exchange bureaus, money remittance entities, brokerage companies, registrars, and insurance companies.

[70] Please see Article 3 of the AML Law for a list of monitoring entities ("MEs") and Article 4(a) of that law for a list of MEs supervised by the NBG.

[71] Factoring activities are currently only provided by banks.

solely with message or other support systems for transmitting funds)			
5. Issuing and managing means of payment (e.g., credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks 2. Credit cards companies 3. Electronic money institutions	1. NBG (draft Law)	There are no Credit Card Companies as separated legal entities. Not regulated as an activity yet. The draft law on payments services providers will regulate this activity as part of payment service under NBG. Debit card are considered as forms of deposits.
6. Financial guarantees and commitments	1. Banks	NBG	
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	1. Banks 2. Investment companies	NBG	NBG
8. Participation in securities issues and the provision of financial services related to such issues	1. Banks 2. Investment companies	NBG	NBG
9. Individual and collective portfolio management	1. Banks 2. Investment companies as separate legal entities do not exist is Georgia and such activities are conducted by securities brokerage companies. 3. Investment associations-	NBG .	NBG

	authorities affirmed that as securities market is not so developed, there are no companies offering such services.		
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks 2. Investment companies 3. Investment management companies.	NBG	Investment management companies no obliged by the AML Law
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks 2. Brokerage companies	NBG	No specifically mentioned in the AML Law. Authorities affirmed that no fund is yet registered
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance companies 2. Lateral pension funds 3. Life insurance agents and brokers Note: in Georgia agents and brokers undertake both classes of life and non-life insurance business due to the fact that on a legislative basis these lines of business are no required to be separated and market participants can operate both classes of insurance with no restrictions.	NBG	NBG
13. Money and currency changing	1. Banks 2. Foreign exchange offices	NBG	NBG

523. New AML/CFT Law (as amended on December 20, 2011) includes leasing companies as monitoring entities. There is, however, no reference to AML regulation/supervision to factoring

activities, credit card companies,[72] pay box, and investment funds.[73] As mentioned above, there are currently no factoring or credit card companies operating as separate legal entities.

Customer Due Diligence and Record Keeping

3.1. Risk of Money Laundering or Terrorist Financing

524. The Georgian legal framework makes no provision for excluding or exempting financial institutions from due diligence measures based on risk.

3.2. Customer Due Diligence, Including Enhanced or Reduced Measures (R.5 to 8)

Recommendation 5 (Rated PC in MONEYVAL's third round MER)

3.2.1. Description and Analysis

Legal Framework:

525. Main preventive measure provisions are spread across the AML/CFT Law Articles 6^1 and the following FMS Decrees: Before the December amendments to the AML/CFT Law (during the on-site visit); Commercial banks–FMS Decree No. 95; Insurance organizations and non-state pension schemes–FMS Decree No. 100; Brokerage Companies–FMS Decree No. 6; Microfinance Organizations–FMS Decree No. 10; Credit unions–FMS Decree No. 104; Securities Registrars–FMS Decree No. 7; Currency Exchange Bureaus–FMS Decree No. 96; and Money Remittance Services–FMS Decree No.1.

526. After the amendments to the AML/CFT Law, the following FMS Decrees were updated in January 2012: Commercial Banks: No. 4; Insurance organization and non-state pension schemes: No. 3; Brokerage companies : No. 6; Microfinance institutions: No. 7; Credit unions: No. 2; Insurance : No. 3; Securities Registrars: No. 5; Currency exchange bureaus: No. 1; and Money Remittance Services: No. 8.

527. Additionally, the NBG also issued to commercial banks NBG Instruction 24/04 on requirement for opening an account[74] (thereinafter Instruction 24) and has issued a guideline for

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[72] Credit card companies are not regulated; thus, AML obligations do not apply to them. Authorities declared that at present, only banks have issued credit and debit cards. The NBG is drafting a law to regulate the activity.

[73] Authorities informed that there is no investment fund registered in Georgia. In relation to the stock exchange, the members are brokerage companies or registrars which are under AML obligations. Assessors met with Stock Exchange and confirmed the lower level of the activity. At the present, there are only nine active members. During December 2011, there have been five transactions (two bank shares) and the amount traded was GEL 20,042.

[74] Instruction issued in 1998 ad amended as the present in 2011.

"Financial institutions on identification on beneficial owners of customers and verification of their identity" in January 2012.

Scope

528. For the purpose of this assessment, the following financial institutions are covered:

- commercial banks, credit unions, microfinance institutions, money remittances, exchange bureaus;
- securities registrars and securities brokerage companies;
- insurance organizations and non- state pension schemes; and
- leasing companies.

Prohibition of Anonymous Accounts (c. 5.1):

529. Article 6.9 of the amended AML/CFT Law states that financial institutions "shall be prohibited from opening or maintaining anonymous accounts or accounts in fictitious names".[75] The same provision is included in Article 6.10 of FMS Decree No. 95, now FMS Decree No. 4.

530. Numbered accounts described as bank accounts in which the owner is identified by a number instead of a name, are neither prohibited nor regulated.

Implementation:

531. The Authorities and the representatives of the private sector stated that no anonymous account or accounts in fictitious names are permitted due to a clear prohibition and the CDD obligations when opening an account under the NBG instruction N.24.

532. Regarding the use of numbered accounts, at least two banks affirmed that numbered accounts are quite commonly used in private banking to protect the privacy of business line customers. In reference to the use of numbered accounts, financial institutions consulted indicated that CDD requirements similar to other accounts apply. One bank explained that the information to link the account number and the customer name is locked in a protected file, and senior managers and private banking staff have access to that information.

533. However, during the interviews with the representatives of the banking sector, the private banking business line seemed to be an independent activity from the rest of the financial institution's operations and not so well integrated into the core AML function. In theory, the new AML/CFT Law (as amended on December 20, 2011) includes "the position of the employee in charge of monitoring" (Article 8 AML Law) in a senior management level, granting access to the customers' data for AML

[75] Prior to 2003 passbooks were allowed also in bearer form. However, an amendment to Article 875 of the Civil Code now requires that deposits are only taken in nominal form(including saving accounts).

purposes. Whether proper CDD is applied within private banking department in relation to these accounts remains unclear to the assessors.

534. Additionally, FIs interviewed affirmed that the use of bearer checks is possible and they have seen them in circulation, although the use of checks, in general, and the bearer checks, in particular, is not widespread in Georgia.

When CDD is required (c. 5.2):

535. New AML/CFT Law (as amended on December 20, 2011) includes the definition of the client as "any person who addresses to the monitoring entity for the service defined by Georgian legislation as the principal activity of the latter /or uses such service." The AML/CFT Law also includes a definition of "person" that covers natural persons (resident and nonresident) and legal entity having business relation with the entity. The new definition also mentions legal arrangements as "organizational formations not representing a legal entity" as it is defined in the Georgian legislation (Article 2q-1 AML/CFT Law).

536. Pursuant to amendments to Article 6 of the new AML/CFT Law (as amended on December 20, 2011), financial institutions shall perform CDD measures in the following circumstances:

- the amount of the transaction (operation) exceeds GEL 3,000 (or its equivalent in another currency);
- the client aims to carry out domestic and/or cross-border wire transfers that exceed GEL 1,500 (or its equivalent in another currency);
- doubts arise regarding the veracity or adequacy of previously-obtained client identification data; and
- the transaction is suspicious according to the AML Law provisions.

537. The GEL 3,000 threshold below, if it applies to business relations, is a deficiency.

538. CDD obligations are mirrored in FMS Decrees [76]for commercial banks, microfinance organizations, brokerage companies, securities registrars, insurance companies, credit unions, money remittance services, and currency exchange bureaus. The amendments to the FMS Decrees require identification if the transaction is suspicious, and if doubts arise regarding the veracity and/or adequacy of previously-obtained customer identification data. Assessors would like to emphasize the

[76] Similar provisions are included in Regulation for:
- Microfinance Organizations - Article 6(15);
- Brokerage Companies – Article 5(12);
- Microfinance Organizations – Article 6(14);
- Securities Registrars – Article 5(16);
- Money Remittance Entities – Article 6(14);
- Credit Unions – Article 6(10); and
- Currency Exchange Bureaus – Article 6(11).

importance of separating the obligation to identify the customer and apply CDD from the obligation to report suspicious operations of a customer as a consequence of applying ongoing due diligence and analyzing customer data, profile, and operations.

539. While these amendments constitute a progress, in this Article, the deficiency related to the monetary threshold established in GEL 3,000[77] to identify, remains.

Implementation:

540. Most of the banking financial entities met with the assessors apply the thresholds established by the AML Law, although some of them declared to follow international standards and apply CCD to all the customers when establishing business relations, as a consequence of the group internal procedures. Non-banking financial institutions appear to identify customers only above the threshold of GEL 3,000.

541. Above the threshold, FIs identify the customers, making copies of the ID presented and verify the identity using the Civil Registry database for natural persons if the FI has a contract to access it. CDD was focused on identification and verification.

542. Among non-banking financial institutions, the volume of business in the securities sector has declined since the 2008 crisis. In this context, market participants, such as securities registrars, have augmented the pressure on a shrinking securities market competing in an environment of declining trading volumes and low intermediation (profit) margins. This situation can create adverse pressures for low compliance with CDD requirements and related cost, potentially making the securities sector more vulnerable to ML/FT. Institutions interviewed indicated, on the one hand the need to remain profitable to keep operating and, on the other hand, the scarcity of resources (in comparison with banking financial institutions) to comply with the AML Law's CDD measures. Within the securities intermediaries, assessors have special concerns about the implementation of the AML measures in securities registrars, due to the fast increase in the trading business market quota, focused in non-public companies (OTC or grey market) where the level of the awareness of ML risk is lower.

Identification measures and verification sources (c. 5.3)

543. Pursuant to Article 6.2 of the AML Law, financial institutions are required to identify all customers when the transaction amount exceeds GEL 3,000 or GEL 1,500 if it is processed through a payment network system. After the December amendments, the term "customer" was replaced by "client." The new definition of client includes "any person who addresses to the monitoring entity for the service defined by Georgian legislation as the principal activity of the latter/or uses such service." Even If it is not explicit, authorities' point of view is that the new term now also covers occasional customers. However, as noted under c. 5.2, the GEL 3,000 threshold for business relations is a deficiency.

544. Article 6.1 of the new AML/CFT Law (as amended on December 20, 2011) requires financial institutions to identify their client, its representative, or/and proxy. When a transaction is concluded in

[77] Aprox.1,812 US Dollars.

favor of the third person, such third person should also be identified. The amended AML Law also requires from the monitoring entity to take reasonable measures to "verify clients' identity by means of reliable and independent source of information."

545. In addition, Article 6.7 of the AML Law indicates that financial institutions "shall by themselves determine the procedures (except for account opening procedures) that are necessary for identification of a person. They shall be authorized to require any other information and/or documents related to the transaction (operation)." Article 6.8 requires that monitoring entities ensure "verification of identification details, at a minimum on the basis of national identification documents (ID) or passport (of foreign) or a document having equal legal force under the Georgian legislation, while in case of a legal entity they shall ensure examination of identification details on the basis of document issued by the state, which confirms foundation of the legal entity and authority of its representative(s)."

546. With regard to the procedures that are necessary for identification of a person, the NBG and FMS have developed implementing regulations for banks. According to Article 6 of the NBG Instruction 24/04 for banks, it is required that non-business individuals submit an identification document including a sample of signature, and that legal persons submit an extract of their inscription from the registry.

547. Pursuant to Article 6.12 FMS Decree No. 95 (now No. 4, January 2012) on commercial banks, an individual should provide the following identification information: the national ID, or a passport (for foreigners), or any other official document, which contains the relevant information or its equivalent under the Georgian legislation. When a client is an individual businessman as a sole proprietor, she/he should present a document confirming registration of the business. If the individual is a foreign citizen, he/she should present a passport issued by the corresponding authority of the relevant state or any other official document, which contains the relevant identification information and is similar to that required under the Georgian legislation.

548. In the case of a Georgian legal entity (corporate) (or any other legal arrangement defined as organizational formation which does not represent a legal entity[78])–it should provide a resolution that established the legal entity, or an extract from a Registry of Entrepreneurs (or other relevant registry) and document evidencing the authority of the person authorized to act on behalf of the legal entity. Finally, in case of a nonresident or foreign legal entity–documents proving "the foundation (establishment) and registration" of such entity customers issued by respective bodies in the country of origin, as well as a document certifying authority of persons legally representing such clients.

549. Similar provisions are contained in FMS Decrees for microfinance institution, credit unions, insurance companies, and securities brokers. For currency exchange bureaus FMS Decree No. 1 requires the same data for a physical person and in the case of a legal entity, the details related to the identification of its representative. For money remittances, FMS Decree No. 8 only includes requirements for conducting business with physical persons (Georgian or foreign citizens). While this

[78] Authorities had included in the new AML/CFT Law (as amended on December 20, 2011) that this term is referred to other legal arrangements.

Decree does not address the need to identify customers that are representatives of a legal entity or doing business on behalf of a company, Art.2 (a) NBG Decree No. 26/04 on "regulation and registration of money remittance services" does not allow money remittance services to conduct transactions for legal entities.

550. Article 6.5 addresses transactions carried out by a brokerage company for its client through a bank. In such cases, it is the responsibility of the broker but not the bank to identify its client.

551. The "Guideline for financial institutions on identification of beneficial owners of the customers and verification their entity" (UBO guideline) provides a list of sources considered reliable to verify beneficial owner identity. Regarding individuals, the authorities consider the Civil Registry Agency for individuals a reliable source for verification purposes.

Implementation:

552. Banks met by the assessors indicate that they comply with the legal requirements regarding the identification and verification of individuals. For transactions above the designated thresholds, they stated that they keep photocopies or scanned copies of the passports or other ID documents. The Georgian ID card includes all the elements required in FMS Decree No. 95 (now No. 4, amended on January 2012). Article.6.14, except for the marital status and the address, may not be current and need to be separately obtained in order to be updated.

553. In relation to Georgian individuals, financial institutions met affirmed that they verify the identity of the clients mainly through their access to the civil registry database. Permission to access this database is apparently included in a general clause to all contracts. The direct access to the civil registry appears to ensure reliable identification of Georgian individuals but requires a US$12,000 annual fee which may be too high for some FIs, particularly money remitters and exchange bureaus firms. Regarding foreign customers, one financial institution indicated that they have trained employees to detect possible forgery of passports, and another indicated that it searches on the internet to verify that the zip code provided is coherent with the address submitted.

554. Regarding legal entities, financial institutions verify identification through the access to the National Public Registry (NAPR) database. Regarding foreign companies, they generally do not verify identity, and sometimes rely on public sources such as internet searches when it is only possible to obtain information on the company name or services provided but not any reliable information on the owners, legal representative, or company group structure/affiliates when applicable. None of the private entities visited have mentioned the UBO guidelines as a reference to guide the verification of legal persons' identity.

555. Money remittances are not identifying natural persons using their services on behalf of a legal entity though, in fact, their services are currently used by representatives of legal persons.

556. Some financial institutions rely on their representative offices abroad [79] to perform

[79] Normally, representative offices are only allowed to provide information and some commercial services which do not include any type of financial intermediation.

due-diligence to perform due-diligence requirements. According to the financial institutions met, a copy of the documentation is sent to their headquarters in Georgia where the current account is opened. In most of the cases, customers belong to corporate or private banking business lines (see discussion above with respect to private banking business activities arrangements and accounts). Out of 18 operating banks, two have representative offices in the United Kingdom and Israel. Assessors are unclear on CDD measures applied for customers that are introduced through representatives' offices, but it is assumed that they would adhere to all the procedures and requirements for foreign customers, both individuals and legal entities and arrangements, if applicable.

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

557. The new AML/CFT Law (as amended on December 20, 2011) introduces the definition of "client" as any person having business with the entity (Article 2.y) and also defines "person" (Article 2.q-1) as any resident as well as nonresident natural person or legal entity, and an organizational formation, provided for in Georgia legislation not representing a legal entity. Pursuant to Article 6.1 of the new AML/CFT Law, monitoring entities shall identify its client, its representative, and proxy when the type or amount of the transaction fall into the cases mentioned in the same article. Monitoring entities are also obliged by Article 6.6.e of the AML Law to record/retain information (documents) "necessary for the identification of the person by whom the transaction is being concluded or undertaken on the basis of the order of third or other person."

558. With respect to the verification of the identity of legal persons, Article 6.8 of the new AML/CFT Law (as amended on December 20, 2011) states that monitoring entities "shall ensure examination of identification details on the basis of document issued by the state, which confirms foundation of the legal entity and authority of its representative(s)."

559. Finally, Article, 6.7 leaves the possibility to the FI to determine the procedures to identify a customer (except in the case of opening an account) and requests additional information.

560. Following December 2011's amendments, FMS Decrees and the AML Law include identification and verification requirements for legal arrangements which are defined in the Georgian legislation as "an organizational formation not representing a legal entity." Thus, pursuant to Article 6 para. 13 (c)of the FMS decree for banks, the following documents are required to identify an "organizational entity not legal entity:"

- full name and legal address;
- legal act or other documents based on which this entity is created;
- tax payer identification number; and
- identification data of the person authorized to manage or represent the arrangement or entity and who represents it in a specific bank transaction subject to monitoring.

561. With reference to trusts, Article 1 (n) and 20, of Commercial Banks Law indicate that trust services can be provided by banks. However, the Georgian legislation does not provide specific CDD measures for either conducting business as trustees for clients or providing banking services to other

trustees, whether local or foreign. Authorities have indicated that trust services are limited to the service to manage investments on behalf of the customers (fiduciary capacity). Nevertheless, there is no prohibition for foreign trust to do business in Georgia.

562. Additionally, pursuant to Article 6. 5 of the AML Law, when brokerage companies operate for its clients through commercial banks, the broker company has the responsibility to identify and keep the client identification documents, and banks are not required to identify the broker's company clients (beneficial owners). This exception is related to the existence of omnibus accounts regulated in Article 2 of "Instruction N24/04." It allows for opening a "Nominee Omnibus Account" described as "an account of a securities market intermediary or a notary, which is used for joint registration of the monetary resources of its clients given the nominal ownership and/or registered ownership (owners), defined by the law and agreement/notary act."

Implementation:

563. Financial institutions met by the assessors indicated that they use the business registry provided by the NAPR to verify the legal status of the legal persons.

564. In relation to CDD measures applied to foreign companies, financial institutions rely on documents presented by the representative without performing further verification, which may be a shortcoming in cases where the country of incorporation is not known to have a reliable system of documentation and registration. More challenging even is if the legal entity is registered in an offshore territory. The supervisor considers that foreign legal persons should be identified by a document issued by the foreign state where they are registered, either through Apostille, in the case that the legal person belong to a country signatory of the "Apostille convention"[80] or notarized in Georgia or in the country of origin. There is also no requirement to obtain a certificate of good standing on the company from the country's corporate registrar or similar agency.

565. It is worth mentioning that all banks met stated that they are facing difficulties in identifying the owners and those who control exchange bureaus who carry out exchange activities as individuals. They normally do not declare their business and opens a current account as regular individual customer (even if it is required under instruction 24), and banks only detect them based on the high cash turnover and the patterns of operation. It was common across the sector that banks are trying to avoid entering into business relationship with exchange bureaus as they were perceived by the banking sector as high-risk customers. This is mainly due to the difficulties related to the identification of their beneficial owners and those who control them, and the fact that their business is of a cash-intensive nature where it is difficult to check the origin of the funds.

566. Furthermore, FIs stated the difficulty to identify and monitor companies providing financial services such as loans without authorization from the Central Bank. In addition, FIs consider that these unregulated companies create an 'unfair competition'. As they are only legal companies but not

[80] Apostille treaty is an international treaty drafted by the Hague Conference on Private International Law. It specifies the modalities through which a document issued in one of the signatory countries can be certified for legal purposes in all the other signatory states. Such a certification is called an **apostille** (*certification*). It is an international certification comparable to a **notarization** in domestic law.

registered as financial services providers, they are not under prudential or AML/CFT requirements, even though it seems that the informal credit sector is common across Georgia.

Identification and verification of Beneficial Owners (c. 5.5; 5.5.1* and 5.5.2):

567. The concept of beneficial owner is defined in Article 2.q AML Law as "a natural person(s) representing an ultimate owner(s) or controlling persons (of a person) and/or a person on whose behalf the transaction (operation) is being conducted; beneficial owner of a business legal entity (as well as of an organizational formation ("arrangement") not representing a legal entity, provided for in the Georgian legislation) shall be the direct or indirect ultimate owner, holder or/ and controlling natural person(s) owning 25 percent or more of such entity's share or voting stock, or natural person(s) otherwise exercising control over the governance of the business legal entity."

568. Pursuant to Article 6.10 of the AML Law, "monitoring entities shall identify[81] the beneficial owner of the client and take reasonable measures to identify his/her identity by means of reliable and independent source of documents and be satisfied that it knows who the beneficial owner of the client is." There are mirrored requirements in the FMS Decrees,[82] and in addition, the NBG had issued guidelines on identification and verification of beneficial owners, including the obligation for FIs to take reasonable measures to understand the ownership and control structures of the customer.

569. The December amendments have improved the legal framework in introducing the definition the "natural person (s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted" and, in addition, incorporating those persons who exercise ultimate effective control over a legal person or arrangement and the requirement that the financial institution determine whether the customer is acting on behalf of another person.

570. Despite that, the definition of the beneficial owner is narrower than the standards. As it refers to a 25 percent[83] threshold, the legal framework also includes the obligation to know natural person(s) exercising control over the governance of the business legal entity regardless of the percentage of shares held.

571. With respect to foreign trusts clients, there are no specific provisions requiring FIs to identify the settler, persons who exercise the ultimate effective control of the trust, and the beneficiaries.

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[81]The December amendments to the AML/CFT Law had substituted the term " identify" by " verify'.

[82] FMS Decrees:
- Commercial banks–Article 6.3;
- Brokerage Companies–Article 5.2;
- Insurance Companies–Article 6.2;
- Microfinance Organizations–Article 6.2;
- Money Remittance–Article 6.2;
- Registrars–Article 5.2;
- Credit Unions–Article 6.2;
- Exchange Bureaus–Article 5.2.

[83] This threshold for identification is in line with the threshold established by the third UE Directive on AML.

Implementation:

572. Financial institutions interviewed stated that they generally request information on the beneficial owner of a legal person, but do not take measures to verify the identity of such persons. FIs were aware of the obligations related to the beneficial owner in the Law, but the practice was to have a copy of the legal person's deed of incorporation and no further steps or clarifications or details were required. Overall, they expressed the need for a definition of the concept of "reasonable" measures to identify and verify the beneficial owner. It appears that they do not specifically request information on the account opening documentation concerning the capacity under which the customer is acting, e.g., self, agent, representative, proxy, or trustee for others.

573. Banks interviewed confirmed that use of omnibus accounts by brokerage companies is common in Georgia. Identification of the beneficiary customers is the responsibility of the brokerage companies and the banks only identify the brokers (which are subject to similar AML/CFT requirements as banks). It could not be established whether the banks adhere to the requirements and criteria set out in the 2001 Basel CDD paper that sets the basis for allowing banks to rely on the CDD conducted by brokers on the beneficial owners of omnibus accounts. In addition, the authorities have not issued any guidelines on this matter and at the moment of the on-site visit, no brokerage company has been inspected for AML compliance purposes. Consequently, the risk exists that banks are not identifying beneficial owners of such accounts in circumstances when they should.

574. There are no specific CDD provisions or regulations with respect to trust services provided by banks even though they are allowed to perform trust services for their clients (either to act as a trustee or opening an account for a trustee). This raises uncertainty about the adequacy of CDD for such services. Authorities have explained that the trust services are fiduciary capacity contract.

575. They generally do not try to determine whether the customer is acting on behalf of another person as they are focused of the identification of the client itself and rely on the information that is provided by the customer.

576. None of the financial institutions met identify the ultimate beneficial owner under the 25 percent threshold. The ultimate effective control was linked to the idea of control structure in terms of voting rights or percentage of stocks ownership. Entities declared that they find challenging the process of obtaining enough information to fully understand the ownership and control of the customer. NAPR limitations described in Rec. 33 also make it difficult to know the person who ultimately owns or controls the legal arrangement.

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

577. The AML/CFT Law does not require FIs to obtain information on the purpose and nature of the business relationship. This requirement is contained in the FMS Decrees.[84]

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[84]
- Commercial Banks–Article 6.10;
- Insurance Companies–Article 6.9;
- Credit Union–Article 6.6;
- Currency Exchange Bureaus–Article 5.9;

(continued)

Implementation:

578. Banks and insurance companies interviewed indicated that they include a request to obtain information on the purpose and intended nature of the business relationship in their KYC form, although they indicated that they only rely on the information provided by the customer, when provided, without making further inquiries if it is missing, or verify the information obtained.

579. Other non-banking financial institutions met by the assessors do not appear to implement this requirement.

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

580. Pursuant to amended Article 6.15 of the new AML/CFT Law (as amended on December 20, 2011), monitoring entities are required to exercise "permanent monitoring of business relationships with their clients." The monitoring process includes "maintaining current information and records relating to the client and its beneficial owner; updating periodically existing identification data and ensuring their conformity with current norms; scrutiny of transactions in order to establish that the conducted transactions is consistent with the knowledge of the client, client's business and personal activity or risk profile and where necessary the source of property (including funds)." All the new FMS Decrees[85] reiterate the obligation to perform ongoing scrutiny of relations on existing customers. Additionally, amended Article 21 of the Law on "the activity of commercial banks requires banks to "maintain constant monitoring of business relationship with a client."

581. At the time of the on-site visit, the legal framework did not meet the standards' requirement to ensure that documents, data, or information collected under the CDD process was not only kept up-to-date, but that such include reviews of existing records, particularly for higher-risk categories of customers or business relationships.

- Microfinance Organizations–Article 6.10;
- Securities Registrars–Article 5.8;
- Money Remittances–Article 6.6;
- Brokerage Companies–Article 5(9);
- -Accountants and Auditors–Article 5(6).

[85]
- Insurance and Non-State Pension Schemes – Article 6(7)
- Insurance and Non-State Pension Schemes–Article 6(7);
- Microfinance Organizations–Article 6(8);
- Securities' Registrars–Article 5(17);
- Money Remittance Entities–Article 6(15);
- Brokerage Companies–Article 5 (15).

Implementation:

582. Overall, the financial institutions met by the assessors consider that ongoing due diligence on the business relationship consists in updating customer identification documentation.[86]

583. Assessors could not assess the level of implementation of the new requirements related to ongoing due diligence as they were only introduced in December 2011/January 2012.

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

584. Pursuant to amended Article 6.13 of the AML Law, "monitoring entities are required to have in place the appropriate risk management systems for identification of such client whose activity may pose a high risk of legalization of illicit income and FT and shall exercise enhanced identification, verification, and enhanced monitoring procedures with respect to them. Identification and verification procedure shall be conducted on a risk-sensitive basis depending on the type and nature of the client, business relationship, products/service risk or the transactions or otherwise as it is prescribed by the normative act of the Financial Monitoring Service classified as higher-risk customers, and these requirements should be applied to all monitoring entities including banks, credit unions, exchange bureaus, and money remitters. The former FMS decrees did not have a risk-based approach, as such an assessment of the implementation of the new decrees be cannot be assessed. New FMS decrees include the risk-based CDD obligation related to high-risk category customers.[87]

585. The AML Law, FMS, or any guidelines or instruments do not provide examples of higher-risk categories,[88] such as provided under c.5.8 of the methodology except for PEPs, from whom special requirements are covered in Article 6.1 of the new AML/CFT Law (as amended on December 20, 2011).

Implementation:

586. As the amendments to the AML Law (December 20, 2011) were introduced after the assessors on-site visit, it has not been feasible to assess the implementation of the new AML

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[86] At the time of the on-site visit, the applicable legal framework, as: i) it only focused on identification data and their record; ii) except for banks, to some extent, there was no requirement that this ongoing due diligence and scrutiny of transactions be conducted in a manner consistent with the institution's knowledge of the customer, its business and risk profile, and where necessary, the source of funds; and iii) there was no requirement that financial institutions are required to ensure that documents, data, or information collected under the CDD process was kept up-to-date and relevant by undertaking reviews of existing records, particularly, for higher-risk categories of customers or business relationships. As a consequence, the few institutions performing additional steps beyond updating customer identification did not apply proper ongoing CDD.

[87] Article 6(22) of the Regulation for Banks;
Article 5(17) of the Regulation for Currency Exchange Bureaus;
Article 6(17) of the Regulation for Money Remitters;- Article 5(!7) of the Regulation for Brokerage Companies;
Article 5(17) of the Regulation for Securities Registrars; and
Article 5(17) of the Regulation for Credit Unions.

[88] Basel CDD paper.

requirements. While the legal framework has improved, at the time of the mission, the FI's interviewed had not developed a risk-based approach to compliance, especially non- banking entities as bureaux de change, money remitters, brokerage companies, and securities registrars.

587. Almost all of the private sector representatives interviewed were very confident on the soundness of their clientele and saw no ML/FT risks arising from any particular economic sector, product, service, or customer. The only concern expressed by banks was in relation to the difficulty to understand the cash-intensive89 nature of business conducted by exchange bureaus operated by individual entrepreneurs.

588. Some of the financial institutions met have identified in their internal procedures transactions and customers which are more at risk of ML or FT, such as PEPs, NGOs, casinos, gambling halls, arms dealers, and exchange bureaus. However, that classification was more based on international standards than on an analysis to the Georgian situation.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):

589. Article 6.13 of the amended AML Law states that "identification and verification procedure shall be conducted on a risk-sensitive basis depending on the type and nature of the client, business relationship, products/service risk or the transactions or otherwise as it is prescribed by the normative act of the Financial Monitoring service of Georgia." It may, therefore, be assumed that simplified CDD are addressed under this law, even if not explicitly stating that simplified measures may be applied. In February 2010, the NBG also issued the Guidance on the Risk-Based Approach to Combat Illicit Income Legalization. Pursuant to the FMS Decrees effective at the time of the on-site visit, for commercial banks, insurance, securities brokers, securities registrars, and microfinance institutions, monitoring entities could apply simplified procedures for identification and verification of identification data (see former Article 6.2. FMS Decree for commercial banks). However, as no circumstances or examples have been identified where the risk of ML and FT is lower, it is not certain when FIs are allowed to apply simplified or reduced measures.

590. One exception to the previous paragraphs is in Article 9 of the NBG Instruction No. 24/04 "Instruction on Opening of Accounts and Foreign Currency Operations." This article allows banks to open accounts based on verified and legalized copies of the documents received via postal, if the customer is either a natural person (individuals) or legal entities having accounts in banks operating in OECD countries or natural persons that already hold accounts in other commercial banks in Georgia. Instruction 24 requires making the first payment from the existing identified account. All other customers are required to be physically present in order to open an account.

591. The wording of the legislation leads to compare both situations at the same level of risk. FIs interviewed shared this understanding. Assessors would like to point out that, on the one hand, some of the countries listed by FATF through the ICRG process as "countries with strategic AML/CFT deficiencies" are OECD members, and, which should require a reconsideration of the basis for allowing simplified procedures for OECD countries appearing in the ICRG's list.

Risk—Simplification/Reduction of CDD Measures relating to overseas residents (c. 5.10):

592. There are no provisions to allow simplified CDD only for customers from countries that effectively apply the FATF Recommendations. The presence of OECD countries in the ICRG list suggests that the authorities should consider disallowing simplified CDD measures for such and other similarly listed countries.

Risk—Simplified/Reduced CDD Measures Not to apply when Suspicions of ML/TF or other high-risk scenarios exist (c. 5.11):

593. There is no prohibition to apply simplified customer due-diligence measures when there is suspicion on money laundering, terrorist financing, or in cases where higher risk applies.

Risk-Based Application of CDD to be Consistent with Guidelines (c. 5.12):

594. In February 2010, the NBG issued the Guidance on the Risk-Based Approach to Combat Illicit Income Legalization for financial institutions being under its supervision. Guidance provides some recommendations for the assessment of risks related to money laundering and FT. According to this document, when establishing a business relationship, a financial institution is advised to determine the initial risk associated with the customer by assessing the following risk categories: country risk, customer risk, and product/services risk.

595. However, the guidelines are of limited application to the FIs as they do not assist in determining the extent of the CDD measures on a risk-sensitive basis, except for the situation described above with respect to lower-risk scenarios—pursuant to Article 9 of the NBG Instruction N24/04 "instructions on opening Accounts and Foreign Currency Operations." No examples are given when and how simplified measures could be applied.

Implementation:

596. Some of the financial institutions met by the assessors indicated that they have started to develop internal risk-based CDD procedures to apply to their clients.

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

597. Pursuant to Article 5.7 AML Law (at the time of the on-site visit), "if it is impossible to identify a person intending to set business relations with a monitoring entity, as well as in the case described in subparagraph "a" of para. 2 of Article 6-1, when there is no permission from the management, monitoring entity shall refuse such person to carry out the transaction (to service the client)." Article 6-1. 2.a refers to the requirement to obtain permission from management to establish business with a PEP.

598. This provision was not compliant with the standards as: i) it only referred to the requirement to identify the customer, and did not consider the identification of the beneficial owner and the verification of both the customer and the beneficial owner; ii) it did not consider the situation of occasional customers.

599. The amended AML/CFT Law (as of December 20, 2011) defines timing of identification and verification of each client and its beneficial owner. According to Article 6(14) of the AML/CFT Law: "The identification and verification of each client as well as its beneficial owner and obtaining of other information, shall take place before carrying out of a transaction or opening of an account or establishing of another type of a business relationship, as well as prior further continuation of the business relationship if legalization of illicit income or FT is suspected or if doubts exist about the veracity or adequacy of previously-obtained client identification data." The FMS of Georgia is authorised to define the circumstances in which the verification of identity of the client and its beneficial owner may be completed after the establishment of the business relationship.

600. Concerning the occasional customers, definition of "client"[89] was added to the AML/CFT law under the amendments of December 20, 2011 that it may also cover occasional customer. However, no specific reference to occasional customers is made across the new text.

Implementation:

601. During the on-site visit, the assessment team noted that in general, FI's common understanding is that they are not allowed to perform any transaction or to establish any business relationship without prior identification and verification of the identity of the customer above the threshold established.

Timing of Verification of Identity—Treatment of Exceptional Circumstances (c. 5.14 and 5.14.1):

602. Pursuant to Article 6.14 of the amended AML Law (December 20, 2011), the monitoring entities should identify and verify the identity of each client and its beneficial owner, plus obtain other information mentioned in the AML Law before carrying out a transaction or opening an account or establishing other types of business relationship. Legal framework establishes that the FMS is authorized to define the circumstances in which the verification of the identity of the client and of the beneficial owner may be completed after the establishment of the business relationship with the exception of the cases mentioned in Article 5.7 such as the impossibility to identify the customer, or no permission obtained from the managers with respect to a PEP.

603. FMS has not yet defined the time when the identification has to be completed in the cases where the information is delayed or incomplete, nor specified scenarios where the verification of the identity may be postponed.[90]

604. Additionally, in case of delaying the verification of the client's identity, the AML aw does not require FIs to effectively manage ML/FT risks. However, Article 9 NBG Instruction 24/04 authorizes banks to open an account based on electronic submission of documents when the customer,

[89] According to Article 2 (y) of the AML/CFT Law: "Client [is] any person who addresses to the monitoring entity for the service defined by the Georgian legislation as the principal activity of the latter or/and uses such service".

[90] Authorities noted that relevant legislation drafting is in process.

natural or legal person, is registered in an OECD member country, has an account in an OECD member country, or is a natural person who has already an account in another commercial bank licensed in Georgia. According to NBG Instruction 24/04, the placement of funds is permitted before the client presents original or notarized approved copies of the documents required. In this case, the identification and verification is made after establishing the business relationship, so it seems to be an exception to the general rule where the verification of the identity is carried out before the opening of the account.

Implementation:

605. FIs interviewed were aware of the obligation to identify and verify customers' identity prior to establishing a business relationship. In the case of customers' individuals, the verification was immediate through the request of valid identification documents of which photocopies were made, if the amount of the operation exceeds the threshold. FIs expressed the difficulty related to cases of legal persons, especially foreign entities and the verification of the beneficial owner. In the aforementioned cases, verification procedures take more time. Some FIs have included in their internal procedures clauses prohibiting operations until the main documents are presented. In the case of request for additional documents, FIs affirmed that generally, it takes time to obtain more information on the customer and that it is quite normal to need to send several reminders and contact the customer until complete and updated information is obtained.

606. With regards to the exception provided by Instruction 24/04 on opening an account, from the operational point of view, the risk is mitigated due to the fact that operationally, it seems that the customer's operations are limited till the documentation arrives. However, it does not appear from this provision that the money laundering risks are sufficiently managed. NBG Instruction 24/04 does not put in place specific AML/CFT risk management procedures (e.g. classifying the operations subject to CDD).

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

607. There is no requirement in the AML/CFT framework to prohibit a financial institution to open an account, commence business relations, or perform transactions if it is unable to comply with all CDD requirements described in criteria c. 5.3. to c. 5.5. The only case where a financial institution is prohibited to commence business relations is related to the impossibility to identify the customer (Article 5.7 AML Law); so in this case, the provision is narrower as only cover identification and not full CDD.

608. Pursuant to Article 9.1 of the new AML Law[91] (as amended December 20, 2011) and requirements specified in updated FMS Decrees (January 2012), monitoring entities are obliged to immediately notify the FMS using the respective form (STR) if the there are doubts regarding the authenticity of the identification data or identification of the client is not possible before establishing the relationship.[92]

[91] The AML Law enforced following the on-site mission also included similar provisions.

[92] Recent FMS Decrees:

(continued)

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

609. There is no specific requirement in the AML/CFT framework to terminate the business relationship where the financial institution has already commenced the business relationship and is unable to comply with CDD requirements described in criteria c. 5.3. to c. 5.5. In addition to the elements discussed under c. 5.15, there are no such requirements: i) in case an account is opened following the procedure of Article 9 NBG Instruction 24/04 and the institution is unable to comply with CDD requirements that is in the case where the documents should be received by post; or ii) in cases where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data as the provision only refers to not carrying out the transaction but nothing is said on ending the relationship; and iii) in cases where financial institutions are not able to apply CDD requirements to existing customers.

Implementation:

610. None of the financial institutions met declared that they have ever interrupted a relationship due to the lack of compliance with CDD measures.

Existing Customers—CDD Requirements (c. 5.17):

611. There is no specific provision to require that FIs apply CDD requirements to existing customers on the basis materiality and risk. Nevertheless, the new requirements on ongoing CDD (Article 6.15) should infer CDD measures applied to all customers once FIs apply AML Law's new provision appropriately. In addition, Article 15.5-1 on transitional provisions requires that FIs ensure the extension of requirements of Article 6, by December 2012, for clients and beneficial owners with whom the relationship existed as of January 1, 2012.

612. Assessors consider that it is not the same to review client's accounts prior to the enactment of the new Law (December 2011) and subsequent amendments to the FMS decrees that review of customer's data prior the first AML measures were implemented. A look back at CDD procedures according to the new AML/CFT Law should also focus on the more important business lines, clients, and risks.

Implementation:

613. At the time of the on-site visit, the legal framework did not include any specific provisions on existing customers. Article 6.11of the former AML Law required financial institutions "to update

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- Commercial Banks–Article 6 (12);
- Insurance Companies–Article 6(11);
- Microfinance Organizations–Article 6(12);
- Securities Registrars–Article 5(11);
- Brokerage Companies–Article 5(11);
- Credit Unions–Article 6(8);
- Money Remittance Services–Article 6(14);
- Currency Exchange Bureaus–Article 5(11).

regularly existing identification data and bring those into compliance with the AML/CFT law requirements". However, this requirement only referred to the narrow concept of "identification data" rather than "CDD requirements;" there was no reference to the necessity to apply this requirement to existing customers at the date new requirements are brought into force on the basis of materiality and risk, which makes it practically difficult to implement for all at once .It was not possible for the mission to assess implementation of any applicable provision of the new law as it was put into effect after the mission.

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

614. The existence of anonymous accounts has been prohibited in Georgia since 2008, and Article 6.7-1 AML Law prohibits " to open or maintain anonymous accounts." Nonetheless, the law did not require FIs to perform CDD measures on any such accounts that existed prior to the passage of the 2008 and the new 2011 AML/CFT Law.

Implementation:

615. Even if new anonymous accounts have only been prohibited in 2008, financial institutions met by the assessors have indicated that this type of account was not commonly used in Georgia before that date.

616. In addition, the NBG has declared that no anonymous accounts were present in the banking sector and that neither on-site inspections nor the information presented by banks confirmed the existence of such accounts.

Effectiveness:

617. The December amendments to the AML Law have improved the legal framework for CDD measures, The widespread view that ML/FT risks are absent in the financial sector, together with the existing gap between the legal framework and FIs practices, makes the CDD regime generally ineffective at preventing major ML/FT risks, especially in relation to CDD applied to legal persons, legal arrangements, and the identification of the beneficial ownership.

618. This view of vulnerabilities related to implementation deficiencies contrasts with the widespread degree of confidence across the financial institutions that there are no (or very low levels of) risks of ML or FT, in spite of: i) existence of customers which are offshore companies and whose beneficial owners are not verified; ii) nonresident deposits currently growing fast; iii) the development of private banking activities including a clientele of foreign PEPs; iv) the existence of large Georgian-led criminal organizations abroad which are known for having transferred proceeds to Georgia in recent years; v) the stated existence of a terrorist threat in relation to Abkhazia and Tskhinvali Region/South Ossetia; and vi) domestic statistics demonstrating the existence of major proceeds generating crimes such as corruption, tax evasion, drug, and human trafficking.

619. The limited implementation of the CDD regime creates a significant gap between the present legal framework and its implementation, and creates a systemic weakness in the AML/CFT architecture of the country, explaining in part the poor quality of reports transmitted to the FMS, and subsequently, the low number of convictions of major ML cases and the low level of confiscation. If

the FIs or authorities maintain that there is low or no ML and FT risks in Georgia, then it does not explain the relatively high number of STRs. And if such STRs are of low quality, then it points to systemic compliance vulnerabilities which would also reflect inherent high levels of risk in the financial system.

3.2.2. Recommendations and Comments

Authorities are recommended to:

- Regulate under the AML/CFT Law factoring activities, companies issuing meaning of payments such as credit and debit cards,[93] and electronic money institutions.
- Issue regulations (FMS decrees) for leasing activities.
- Pass legislation on the issuing of bearer instruments (e.g., bearer checks).
- Either regulate or prohibit the use of numbered accounts.
- Ensure that in the case of numbered accounts, full CDD compliance is applied.
- Remove the identification threshold for customers in order to ensure all customers are identified and verified when establishing business relationships.
- Ensure that representatives of the legal entities are identified and CDD measures applied when these entities engage in business with money remittance and money exchange services providers.
- Ensure that full CDD measures are equally applied to all bank financial groups' customers, including those from the representative's offices. Ensure that the legal status of foreign legal entities is adequately verified.
- Introduce a requirement in the AML/CFT law for FIs to understand the ownership and control structure of the customer in line with the UBO guidelines.
- Introduce a requirement in the AML/CFT Law to terminate the business relationship where the financial institution has commenced the business relationship and is unable to comply with CDD requirements described in criteria c.5.3. to c. 5.5 of the common assessment methodology.
- Amend the guidelines to make clearer distinction between riskier financial products, services or customers and what is the operative that should be detected as a "red flag' and as a consequence analyzed closely.

[93] As factoring and credit card activities are not performed independently, these shortcomings are not reflected in the factors underlying the rating.

- Amend the AML/CFT Law explicitly stating when simplified measures may be applied. Such measures should only be allowed for countries that effectively apply FAFT recommendations.

- Amend the AML/CFT Law to prohibit applying simplified CDD measures when there is a suspicion of ML/FT or in cases of high risks.

- Ensure that FIs look back at all existing customers and apply CDD procedures according to the new AML/CFT Law focused on the more important business lines and clients, and risks.

- With respect to trusts services and foreign trust customers, ensure that trustee clients and the settlers and persons who exercise the ultimate effective control of the trust and beneficiaries are identified.

- Ensure that all providers of financial services are identified and CDD applied when operating with banks.

- Ensure that FIs identify and verify and have an understanding of the ownership and control structure of the customer in all circumstances regardless of amount of transaction or ownership control.

- Ensure that the new provisions of the AML/CFT law with regard to the identification and verification of the beneficial owner are applied and that all monitoring entities, specially:

    - Ensure that FIs determine whether the customer is acting on behalf of another person; and

    - Ensure that FIs incorporate those persons who exercise ultimate effective control over a legal person or arrangement.

- Ensure effective implementation of the measures on information of purpose and nature of business.

- Ensure that full CDD measures are applied to all existing customers.

- Regulate the cases where FIs may complete the verification of the identity of the customers and beneficial owner after the establishment of the relationship.

620. Authorities should also consider to:

- Include the prohibition of anonymous accounts in all FMS regulations, such as the ones for insurance or securities companies.

- Clarify to FIs the applicability for CDD with respect to business relations and occasional transactions.

- Review the legal framework to ensure that legal person's representatives are always identified no matter which type of financial entity provides the service.
- Create systems in place to recognize foreign trust doing business in Georgia.
- Grant free access to the data in the Civil Registry.
- Assist FIs to extend CDD measures on a risk-sensitive basis.
- Guide FIs to elaborate risk profiles on customers and products customized to Georgian economy and financial system characteristics.

3.2.3. Compliance with Recommendations 5

	Rating	Summary of factors underlying rating
R.5	**PC**	• Electronic money institutions not covered. • No regulation developed for leasing companies (FMS decrees). • Numbered accounts neither regulated nor prohibited • Existence of a minimum threshold for customer identification and verification. • No requirement to terminate the business relationship where the financial institution has commenced the business relationship and is unable to comply with CDD requirements. • No specific prohibition to apply simplified CDD or regulation developed when it applies. • No specific prohibition to apply simplified CDD in cases of suspicion of ML/FT or high-risk scenarios. • Exception in the time of verification of customer's identity not regulated. • No requirement to apply CDD measures to existing customers on the basis of materiality and risk, and to conduct CDD on such relationship at appropriate times. **Implementation:** • Limited scope of implementation of ongoing due diligence measures. • Concerns about the identification and verification of legal persons due to the deficiencies identified in Recommendation 33 and NAPR.

		• Poor compliance with the obligation to understand the ownership and control structure of the customer in all circumstances regardless of the amount of transaction or ownership control. • Banks applying simplified CDD in some cases of opening current accounts, including with countries not compliant with FATF standards. • Poor implementation of enhanced due-diligence requirements to risky customers. • Very poor implementation of measures applied to identify legal arrangements. • Poor implementation of the measures on information of purpose and nature of business. • Poor compliance with the provision established for the timing of verification of the legal person's identity. • Concerns on the CDD applied on brokerage and other intermediaries 'companies' customers operating through banks with omnibus accounts. • Impossible to assess implementation of the new AML/CFT framework (as amended on December 20, 2011), especially related to: o requirement to determine whether the customer is acting on behalf of another person; o requirement to incorporate those persons who exercise ultimate effective control over a legal person or arrangement; o ongoing due diligence; o timing on verification after starting the business relationship; o identification and verification of CDD procedures on a risk-sensitive basis; and o application of the new requirement to the existing customers. • Concerns on the adequacy of CDD measures when it is performed in banks' offices of representation. • No identification carried out when legal entity representatives operate with money remittance companies.

Recommendation 6

(Rated NC in MONEYVAL's third round MER)

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

621. Article 6, para. 1 of the AML/CFT Law requires financial institutions to identify whether clients or their beneficial owner belong to the category of Politically-Exposed Persons (PEPs). A similar provision is included in the regulations issued by the updated FMS Decrees for commercial banks (Article 7.1), credit unions (Article 7.1), microfinance organizations (Article 7.1), money remittance organizations (Article 7.1), currency exchange bureaus (Article 6.1), securities registrars (Article 6.1), brokerage companies (Article 6.1), and insurance and non-state pensions schemes (Article 7.1).

622. The definition of a PEP is given by Article 2.v of the AML/CFT Law. "Politically Exposed Person (PEP): foreign citizen, who has been entrusted with prominent public functions in a respective country and carries out significant public and political activities. They are: head of State or of government, member of government, their deputies, senior official of government institution, member of parliament, member of the supreme courts and constitutions court, high ranking military official, member of the central (national) bank's council, ambassador, senior executive of state owned corporation, political party (union) official and member of executive body of the political party (union), other prominent politician, their family members as well as person having close business relations with them; a person shall be considered as politically exposed during a year following his/her resignation from the foreign position."

623. AML Law Article 2.w and FMS decrees define "family member and close business associates." A family member is "a spouse of a person, his / her parents, siblings, children (including step – children) and their spouses.", and a person having a close business relationship with the politically exposed person (PEP) is "a natural person who owns or/and controls a share or voting stock of that legal entity, in which a share or voting stock is owned or/and controlled by the Politically Exposed Person (PEP); also, a person having other types of a close business relationship with the Politically Exposed Person (PEP)."

624. The scope of the definition is broad and covers the requirements of the standards. The amendments introduced in December 2011 to the AML Law include a definition of the customer or client which includes not only existing customers but potential ones. This applies also to PEP's identification. However, the definition of close business relationship with the PEPs does not seem to cover legal arrangements.

625. The amended AML Law also substitutes the obligation to perform "permanent monitoring" for "enhance monitoring." No guidelines of what enhance monitoring involves has been provided yet.

626. In terms of the timeframe, it should be noted that the FATF plenary has concluded, in the context of EU Member States' mutual evaluations, that the one-year limit threshold is not a material deficiency when there is a general obligation to apply enhanced due diligence to customers (including PEPs) who still present a higher risk of ML or FT, regardless of any timeframe.

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

627. Pursuant to Article 6-1. para. 2 AML/CFT Law, if a monitoring entity is having a business relationship with a customer classified as a PEP (or his/her beneficial owner), it is required to "obtain permission from the management to establish a business relationship with such person."

628. In addition, the AML /CFT Law also includes a new provision in relation to the existing customers. If an existing customer (or his/her beneficial owner) becomes a PEP after the business relationship is established, Article 6, para. 3 requires the FI to follow the same steps described for new customers categorized as PEPs, including with respect to management approval.

629. FMS Decrees complements the AML/CFT Law by requiring FIs to define specific procedures, based on which the financial institution shall seek the respective information from the client in order to identify and check PEPs[94]

630. It has to be noted that the AML/CFT Law only require approval at management level, not from senior management level. However, authorities explained that according to the Law on Entrepreneurs (Article 9), persons authorized as management (directors) of a legal entity are defined as senior management. In addition, authorities also pointed out that the term used in the Georgian version of the AML/CFT Law[95] could be translated as "under leadership guide" so it points to a senior management level.

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

631. Amended Article 6-1, para. 2.b of the AML Law requires monitoring entities "to take reasonable measures to establish the source of wealth (including funds) of PEPs and their beneficial owners.

632. Similar provisions are included in the regulation for securities registrars (Article 6.2.b) of the FMS Decree No. 5), microfinance institutions (Article7.2.b) of the FMS Decree No. 7), exchange bureaus (Article 6.2.b) of the FMS Decree No.1), credit unions (Article 7.2.b), FMS Decree No. 2), brokerage companies (Article 6.2.b) of the FMS Decree No. 6), money remittances (Article 7.2.b) of FMS Decree No. 8), and the insurance sector (Article 7.2.b) of the FMS Decree No. 3).

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[94] Recent FMS Decrees:

- Commercial Banks–Article 7 (4);
- Insurance Companies–Article 7(4);
- Microfinance Organizations–Article 7(4);
- Securities Registrars–Article 6(4);
- Brokerage Companies–Article 6(4);
- Credit Unions–Article 7(4);
- Money Remittance Services–Article 7(4);
- Currency Exchange Bureaus–Article 6(4).

[95] The term used in Georgian is "ხელმძღვანელობა".

Foreign PEPs—Ongoing Monitoring (c. 6.4):

633. Pursuant to amended Article 6-1, para. 2.c AML Law, financial institutions should perform enhanced monitoring over its business relationship with such persons.

634. Similar provisions are included in the 2012 updated regulations for commercial banks (FMS Decree No. 4 Article 7), for securities registrars (Article 6 of the FMS Decree No. 5), microfinance institutions (Article 7 of the FMS Decree No. 7), exchange bureaus (Article 6 of the FMS Decree No. 1), credit unions (Article 7, FMS Decree No. 2), brokerage companies (Article 6 of FMS Decree No. 6), insurance and non-state pensions schemes (Article7 of the FMS Decree No. 3), and money remittance (Article 7, FMS Decree No. 8).

635. However in the absence of a definition of "enhanced monitoring," it is difficult to assess the effective implementation of such requirement.

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

636. Domestic PEPs are not covered by the AML Law.

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

637. The Parliament of Georgia ratified the 2003 UN Convention against Corruption on October 10, 2008 under the Resolution 337-H." (For further details on implementation, see Recommendation 31).

Implementation:

638. Although there exists a legal framework requesting that most financial institutions identify whether a client or his/her beneficial owner belong to the PEP category, the lack of implementation from financial institutions of appropriate risk management systems to determine whether the customer is a PEP, and the limited scope of the enhanced monitoring, creates room for improvement in the implementation of the Law and the management of the PEPs risks.

639. Overall, the financial institutions rely on the information provided by the customer itself. Some of the banks met by the assessors use IT solutions in order to verify customers against international lists of PEPs. Smaller banks and other nonbank financial institutions only check using web browsers on the internet, sometimes occasionally. Implementation is almost nonexistent concerning money remitters and currency exchange bureau.

640. The financial institutions met by the assessors indicated that, in the absence of a definition of "permanent monitoring," it is difficult to clearly understand their obligations. Please note that at the time of the on-site mission, the AML Law wording referred to "permanent monitoring" instead of "enhanced monitoring."

641. Financial institutions appear to mainly focus on the identification of the individual PEP and do not consider situations where a PEP may be the ultimate beneficial owner or in the verification of the origin of wealth and funds. The identification of a PEP as a shareholder of a legal entity is not

common. Some of the financial institutions have established internal procedures to more frequently monitor the transactions carried out by these customers (in most cases, manually).

642. The verification of the origin of the funds is almost nonexistent. All institutions affirmed that they rely on customer information to obtain the source of the funds, while some additionally expressed a difficulty in apprehending the concept of "reasonable measures."

643. Managers approving the relation with PEPs were not always at senior managerial level.

Some of the FIs met declared to have established internal procedures to monitor more frequently the transactions carried out by PEPs customers. The monitoring was done manually. FI's poor understanding of "enforced monitoring" scope along with the limited awareness of the FIs on the procedures to apply after the identification is made (mainly focused on increasing monitoring periodicity of that customer's transactions without further analyzing whether the operative and the rationale of this or of the funds transfers correspond to the customer profile), along withthe one-year limit timeframe to identify PEPs, restrict Georgian financial institutions effective management of the ML/FT risks related to that segment of customers.

Effectiveness:

644. While nonresident customers are targeted by some Georgian banks, the current legal framework and its poor implementation pose a significant risk of misuse of the Georgian financial system by foreign PEPs, including laundering the proceeds of corruption. One Georgian bank has a subsidiary in Belarus, and two banks have representative offices in Israel which are dedicated to attracting nonresident clients to conduct business in Georgia. Nonresident deposits have increased sharply during the past years,[96] and particularly from Israel. In addition, one of the banks met by the assessors indicated that its wealth management department counts customers from more than 50 countries, some of them identified as PEPs. Overall, there appear to be a business-minded approach to nonresident customers which relies on the individual customers themselves to disclose their status as PEPs. This would often be verified using international PEP databases, but without clear implications in terms of risk profiling of these profit customers.

Recommendation 7

(Rated PC in MONEYVAL's third round MER)

Cross-Border Correspondent Accounts and Similar Relationships—Introduction

645. According to NBG instructions for opening an account, a correspondent account is an account which is opened by one bank for another and which is used for settlements between banks (Article 2 NBG Instruction 24), and have to be opened in headquarter banks.

[96] From 6.2 percent in December 2008 to 11.8 percent in 2011.

646. Recently adopted Regulation for commercial banks (FMS Decree No. 4) includes Article 8 "On establishing correspondent relations by the bank."

647. The weaknesses identified under R.5 apply to the identification and the verification of respondent institutions.

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

648. During the on-site visit, Article 6.6 of the FMS Decree No. 95 for commercial banks required Georgian banks to obtain, before establishing the correspondent relation, information, from public sources, on the reputation of the respondent bank, the level of supervision, and the ML/FT risk that the agreement might imply for the financial institution.

649. Additionally, NBG Instruction 24/04 Article 8 defines, for domestic cross-respondent relationship, that for opening a correspondent account, a resident bank shall submit to the bank: a) an application on opening an account signed by the authorized person; b) an extract from the registry; and c) identification document and a sample of the signature, along with a copy of the banking license.

650. Further on, the NBG Instruction in para. 4 of Article 8 states that for opening a correspondent account a nonresident bank shall submit to the bank: a) an application, identification document, and sample signature; b) documentation that reflects the policy of the bank against ML/FT; and c) other documentation in accordance with the internal procedure of the bank.

651. Under the amendments to the FMS decree for commercial banks (N4) extends the provision related to correspondent relationship, thus, new Article 8.1 requires banks seek information from public sources regarding respondent bank's reputation. The authorities indicated that the term "reputation" includes information related to investigation or regulatory action on AML/CFT. However, there is no specific clarification or definition in the AML/CFT Law, FMS decrees, or guidelines issued.

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

652. Article 6.6 of the FMS Decree requires Georgian banks to request from respondent banks information on internal controls, with respect to ML/FT risks**.** New FMS Decree No. 4 maintains the requirement in Article 8, including the obligation to request information regarding the degree of internal controls applied to ML/FT risks.

653. Pursuant to Article 8.4.c) of NBG Instruction 24,in order to open a cross-border correspondent account, it is necessary to provide "documentation that reflects the policy of the bank against the legalization of illicit income and financing terrorism, and a standard questionnaire will be developed by the bank where the account is being opened."

654. It should be noted that in the AML/CFT Law, there is no requirement to assess that the respondent institution's AML/CFT controls are adequate and effective. However, amended FMS decree on commercial banks includes a direct requirement in Article 8.1 to request from the correspondent bank information on the degree of internal control towards illicit income legalization and issues associated with combating the financing of terrorism, and assess the level of such control.

Approval of Establishing Correspondent Relationships (c. 7.3):

655. Article 6.7 of the FMS Decree No. 95 and now Article 8.2 of the new FMS Decree No. 4 for commercial banks require the "authorization of the bank directorate (curator director) of a bank to establish a correspondent relationship," and Article 8.6 of the Instruction 24 NBG contains a similar provision, but in this case also includes the "authorized manager."

656. The provisions applicable might appear inconsistent as the curator director may not be the same person and level as the authorized manager. However, the authorities have explained that it is a translation issue as in the Georgian version of the legislation; the term used is the same for both laws.

Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):

Neither the FMS Decree No. 4 nor Instruction 24 requires documenting the respective AML responsibilities of each institution.

Payable-Through Accounts (c. 7.5):

657. Pursuant to Article 8.5 of Instruction 24 NBG, correspondent account may be opened only to banks, and the operation of "payable-through accounts" is not envisaged as they cannot be used directly by third parties. Authorities confirmed that PTAs does not exist in Georgian banks.

Implementation:

658. Banks met by the assessors have developed a KYC questionnaire that they send to their prospective respondent bank before establishing the correspondent relationship. The questionnaire requires information on the management of the respondent institution, its business, and a section on AML/CFT controls and procedures, but only one financial entity confirmed that it requested information on possible investigation of AML/CFT.

659. The AML Law does not specifically require correspondent banks to check on whether the respondent has been the subject of an ML/FT investigation, and this issue was rarely included in the KYC questionnaire for cross-border correspondent relationships.

660. In relation to the approval of the establishment of a correspondent relationship, banks met by the assessment team explained to the assessment team that, from their point of view, the curator may be anyone responsible for the area related to international payments or international operations, but there is no guarantee that the curator is of senior management level of responsibility. Authorities informed assessor team that curator is always a member of the Board.

Effectiveness:

661. As the Georgian financial system is relatively small, few banks opened correspondent accounts to foreign financial institutions; Georgian respondent banks have correspondent relationship with an international banking group.

662. Below are the statistics on correspondent accounts.

Country	Number of Banks having Loro Accounts in Georgian banks
Armenia	8
Azerbaijan	5
Belarus	1
Great Britain	1
Iceland	1
Kazakhstan	1
Russia	3
Ukraine	2
Total	**22**

Source: NBG

663. Georgian banks are aware of the need to check internal controls before establishing a correspondent relationship. The general practice is to check the existence of AML/CFT compliance program. After having established the correspondent relationship, the information on AML/CFT status of the respondent bank is not updated and none of the Georgian banks have interrupted or considered reviewing the relationship, even though some respondent banks have been involved in ML investigations.

Recommendation 8

(Rated NC in MONEYVAL's third round MER)

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

664. Pursuant to Article 6.24 FMS Decree No. 95 on Commercial Banks, banks were required to have policies and procedures in place to control the risk of ML/FT arising from new technology. The December 2011 amendments to the AML Law extend the requirements related to misuse of new technology to all monitoring entities and obliged them "to pay special attention to any threats that may arise from new technologies, products and service that might favor anonymity during the service." It also requires them to take measures, to prevent the use of the new technology "in legalization of illicit income and terrorist financing." This provision is also mirrored in the updated FMS Decrees.[97] There is no guidance to assist financial institutions to implement this requirement.[98]

[97] Commercial banks–Article 6.23
- Brokerage Companies–Article 5.18;
- Insurance Companies–Article 6.22;
- Microfinance Organizations–Article 6.22;
- Money Remittance–Article 6.21;
- Registrars–Article 5.18;
- Credit Unions–Article 5.14;
- Exchange Bureaus–Article 5.18.

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

665. Amended Article 6.16 AML Law also requires monitoring entities to have in place identification and verification procedures to reduce the risks associated with non-face-to face services "under the Georgian legislation"[99] and apply them before and after establishing the business relationship. Article 6.23 of FMS Decree on banks adds the requirements, for banks, to apply policies and procedures that reduce the risks associated with non-face-to-face service and apply them when establishing a business relationship and when conducting permanent monitoring."

666. As there is a new provision introduced after the on-site mission, assessors are unclear about what type of policies and background checks should be applied and to what extent.

Implementation:

667. As the amendments to the AML Law were introduced after the assessors' on-site visit, assessors cannot ascertain the implementation of the new legal framework. The effective AML/CFT regulation on new technologies was very general and vague at the time of the on-site mission.

668. Regarding new technology risks, the main Georgian banks' websites offer e-banking services. All financial institutions offering these services who met with the assessor team affirmed that this is an additional service offered to existing customers and not widespread in the Georgian financial services—only between 7 to11 percent of bank customers utilize it. Generally, there is no limitation on operations through this channel. FIs have not developed special procedures to mitigate the potential risks that may arise.

669. In day-to- day banking operations, a case of a non-face- to- face operation could be considered as the exception regulated in Article 9.1 of the Instruction on Opening of Account and Foreign Currency Operation. Pursuant to this article "banks can open accounts based on the verified[100] and legalized copies of the documents received via postal mail, if the customer is either a person or legal entity having accounts in banks operating in OECD countries or natural persons that already hold accounts in other commercial banks in Georgia." Instruction 24 requires making the first payment from the existing identified account. Entities do not apply special measures in relation to that case, on the contrary, as the account already exists in OECD countries, it is considered as less risky as mentioned in criterion 5.9. Assessors would like to remind that some of the countries listed by FATF as "countries with strategic AML/CFT deficiencies" are OECD members.

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[98] Authorities have informed that the provision on misuse of new technology has been included only recently to the AML/CFT Law of Georgia. This fact is the main reason for the absence of relevant guidance.

[99] Relevant normative acts of Georgia defining rules and procedures for conducting non-face-to-face services on territory of Georgia.

[100] Verified means it can be either notarially approved or apostilled.

670. In Georgia, the use of so-called pay boxes[101] to make services payments, recharge pre-paid cards, or mobile cards is widespread and growing fast. According to private sector representatives, it might be possible to cash in up to GEL 10,000 in a pay box. Websites of the companies offering this service indicate the possibility to make cash deposits in a pay box in order to make a transfer to a Georgian bank account, to a money remitter, to e-money companies, or internet casinos. According to the NBG, there are plans to regulate this sector in the future.

671. Authorities also informed that all pay boxes have limits with respect to performing deposit on bank accounts, because banks limited this transaction. The threshold varies from GEL 1,000 to GEL 3,000 and theoretically is defined by the commercial bank themselves due to the AML/CFT law requirements. However, there are no limitations outside of the banking system. The possibility of cash placement together with the anonymity provided by the pay boxes creates an ML/FT risk.

3.2.4. Recommendations and Comments

Recommendation 6

672. Authorities are recommended to:

- Ensure that EDD apply when PEPs are beneficial owners of legal arrangements
- Ensure that financial institutions take reasonable measures to ascertain the source of wealth of the customer and their compliance with the new AML requirements for PEPs.
- Ensure that FIs apply enhanced ongoing monitoring in business relationships with PEPs.

673. Authorities should consider to:

- Clarify the definition of "reasonable measures."
- Perform targeted on-site inspections to ensure that foreign PEPs (and relevant domestic PEPs) are not misusing the Georgian financial sector.
- Provide guidance to FIs on the required "enhanced monitoring" measures to be applied to PEPs.
- Amend the AML/CFT Law in order to introduce in the article related to PEPs the specific requirement for FIs to put in place appropriate risk-management systems, as it is mentioned in the FMS decrees, or a reference that Art 6.13 applies as PEPs are considered high-risk customers.

[101] Authorities estimate that currently, pay boxes are used mainly for payment of utilities. With respect to the electronic money institutions, the volume per month of one of the biggest institution is GEL 177,000.

Recommendation 7

674. Authorities are recommended to :

- Require that financial institutions that engage in correspondent banking activities document the respective responsibilities of each institution.

- Ensure that correspondent relationships are approved by senior management.

- Ensure that financial institutions periodically monitor their correspondent banking relationships with respect to AML/CFT issues and assess the possible reputational risks arising from those relationships.

675. Authorities should consider to:

- Clarify that, when determining the reputation of a respondent institution, financial institutions should also determine from publicly available information if the respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action.

Recommendation 8

676. Authorities are recommended to:

- Ensure that entities have in place identification and verification procedures and develop enhanced measures to control and mitigate non-face-to-face business relationships and the use of new technology risks for all FIs.

- Ensure that entities apply adequate ongoing CDD to non-face-to-face customers.

- Clarify and issue guidelines on the use of non-face-to-face channels.

- Ensure that AML/CFT provisions cover the operations regulated in the Instruction on Opening of an Account and Foreign Currency Operation which allows under certain circumstances to open a current account without physical presence and send the documentation by postal mail.

- Ensure that AML/CFT provisions cover all electronic payment systems, including electronic payment points and electronic money institutions.[102]

[102] June 2012: Authorities informed that the draft Law on Payment systems has recently been adopted by the Parliament.

3.2.5. Compliance with Recommendations 6 to 8

	Rating	Summary of factors underlying rating
R.6	**LC**	• The definition of close business relationship with PEPs does not cover legal arrangements. **Implementation:** • Concerns about the risk procedures applied for the identification of PEPS in medium/small banks and in non-banking financial entities. • Poor implementation on the approval by a senior management. • Poor verification of funds and wealth. • The absence of enhanced ongoing due diligence measures applied to PEPs, in conjunction with the time-frame constriction of the AML/CFT Law, restrict Georgian financial institutions effective management of the ML/FT risks related to that segment of customers. Impossible to assess implementation of the measures introduced by the AML law amendments to apply to PEPs potential customers and PEPs as beneficial owners.
R.7	**PC**	• No requirement to document the respective AML responsibilities of each institution. **Implementation:** • Poor implementation for a correspondent relationship to be approved by a senior manager. • Poor assessment that the respondent institution's AML/CFT controls are adequate and effective. • No information about whether the institution has been subject to an ML/FT investigation, prior the establishment of the correspondent relationship. • In the case of a respondent bank involved in a ML/FT investigation no actions taken by the correspondent institution. • Concerns whether banks ascertain ML/FT risks in correspondent relationships.

R.8	**PC**	• Electronic payment system no covered by the AML/CFT Law, including pay box and electronic money institutions. **Implementation:** • Non existence of special procedures applied by FIs to manage the risk of new technologies and of non-face to face transactions. • Possibility to open a non-face to face account, de facto, in the case of pre existence of an account in Georgia or in an OECD country. • Concerns about the implementation and the scope of ongoing CDD measures. • Concerns about the possible misuse of some electronic payment systems that are no under NBG supervision.

3.3. Recommendation 9–Third Parties and Introduced Business

(Rated NA in MONEYVAL's third round MER)

3.3.1. Description and Analysis

Legal Framework:

677. In Georgia, it is permitted for FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business relations (Article 6.11 of the AML law amended in December 2011).

Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):

678. Pursuant to Article 6.11 of the AML/CFT Law in the course of identification and/or verification of client and its beneficial owner, the monitoring entities may rely on a third person/intermediary, who carries out identification and verification of a person, maintain documents (their copies), and is subject to the respective AML/CFT supervision and regulation.

679. The AML Law does not include a specific requirement related to immediately obtaining the necessary customer's information as an Article 6.11 has a narrower scope than the standards, requiring immediate access to information on identification.

Availability of Identification Data from Third Parties (c. 9.2):

680. Article 6.11 requires that "for ensuring immediate access to information (documents or copies thereof) required for identification of the client monitoring entities shall take respective action. In such case the monitoring entities shall bear the responsibility."

681. The AML Law only mentions access to the client (and not the beneficial owner) identification data documents, while the standards also include other relevant documents relating to CDD.

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

682. Article 6.11 of the AML generally establishes that the third person or intermediary shall be subjected to AML/CFT supervision. It does not require that financial institutions are satisfied that the third party has measures in place to comply with the CDD requirements set out in R.5 and R.10.

Adequacy of Application of FATF Recommendations (c. 9.4):

683. There is no requirement that competent authorities take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.

Ultimate Responsibility for CDD (c. 9.5):

684. Pursuant to Article 6.11 of the AML Law, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.

Implementation:

685. In the case of consolidate groups with banking, insurance, and securities activity, all FIs met by the assessors informed that these activities were separated within the group in different subsidiaries and each of them carried out CDD independently.

686. As the amendments to the AML Law were introduced after the assessors' on-site visit, assessors cannot ascertain the implementation of the new legal framework.

Effectiveness:

687. The reliance on the CDD performed by banks' representative offices staff raise concerns on the ability to effectively perform the CDD requirements. Banks have not developed special procedures with regards to this business channel.

3.3.2. Recommendations and Comments

688. Authorities are recommended to:

- Require that financial institutions are satisfied that the third party has measures in place to comply with the CDD requirements set out in R.5 and R.10.

- Amend the AML/CFT law to require financial institutions relying on third parties immediately to obtain from the third party the necessary information related to all CDD process.

- Require that financial institutions relying on third party immediately to obtain access to other relevant documents relating to CDD.

- Require that financial institutions relying on third party to obtain access to information on beneficial owner.

- Ensure that competent authorities take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• No requirement to immediately obtain from the third party necessary information related to all elements of the CDD process. • No requirement to grant access to other relevant documents relating to all elements of CDD. • No requirement to grant access to information related to beneficial owner. • No requirement that FIs are satisfied that the third party has measures in place to comply with the CDD requirements. • No requirement that competent authorities take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.

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

Legal Framework:

689. Financial institutions' secrecy provisions on prohibiting the disclosure of customer information are provided in the respective laws regulating financial activities, more precisely in Article 17 of the Law on Activities of Commercial Banks; Article 10.2 of the Law on Microfinance Organizations; Article 32(2) of the Law on Securities Markets; Article 29 of the Law on Insurance; and Article 16 of the Law on Credit Unions.

690. However, this secrecy is lifted when (i) it involves supervision by NBG (Article 17.1 of the Law on the Activities of Commercial Banks)[103] and (ii) reporting (Article 12.4 of the AML Law) and providing additional information to the FMS (Article 10.4.a of the AML Law).

3.4.1. Description and Analysis

Inhibition of Implementation of FATF Recommendations (c. 4.1):

Access to information by competent authorities

691. As indicated above, Article 17.1 of the Law on Activities of Commercial Banks provides that banks are prohibited to reveal "*confidential information about any person or to disclose, disseminate or use such information for personal gain."* The scope of this provision applies to both natural and legal persons.

692. Banking secrecy could be lifted and information provided to the:

- NBG "*within the appropriate areas of its responsibilities,*" (Article 17.1 of the same Law); and

- FMS "*in cases specified by the legislation" …"* "*information on operations, balances and accounts of any individual and legal entity"* (Article 17.2).

693. Article 10.2 of the Law on Microfinance Institutions contains similar provision and stipulates that information regarding the borrower can only be submitted to the borrower, his representative, the NBG, and in cases defined under the legislation to the FMS. Other persons are not authorized to request such information without a court order, or the prior consent of the customer.

694. In addition, and as indicated above, Article 10.4.a. of the AML Law authorizes the FMS to request and obtain for AML/CFT purposes additional information and documents (original or copy) available to them, including confidential information, on any transaction and parties to it from all monitoring entities. Moreover, under the same article, the FMS is authorized to forward questions and

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[103] Article 17 of the Law on Activities of Commercial Banks provides that:

"1. No person shall be permitted to reveal a bank's confidential information about any person or to disclose, disseminate or use such information for personal gain. Such information may be disclosed only to the National Bank within the appropriate areas of its responsibilities. (24.09.2009 N1667);

2. Information on operations, balances and accounts of any individual and legal entity may be disclosed to respective account holders and their representatives, also in cases specified by the legislation–to the Financial Monitoring Service of Georgia and Executive Authority in the course of implementing decisions provided for in *the Law of Georgia on Executive Proceedings*. Such information may be disclosed to other persons pursuant to the court's decision. (24.09.2009 N1667);

3. Judicial and investigative bodies, as well as tax authorities shall be prohibited to disclose information to any authorities, including the media, or use such information in public statements prior to making decision by the court."

obtain information from all state and local self-government bodies and agencies, as well as forwarding questions and obtaining information from any individual or legal entity, which exercises public legal authority granted by the Georgia legislation. "Other persons" is interpreted to include LEAs under a court order.

695. Article 16 of the Law on Credit Unions provides that "Information on a deposit as well as on the loan transaction of a member of the credit union, shall be confidential for those who are not members of a credit union, and shall be issued only at the pertinent decision of the court" but in order to fulfill its supervisory function, the National Bank of Georgia has the right to receive any information and document related to the activities of a credit union" (Article 16.2 of the same Law). For securities market participants, Article 32(2) of the Law on Securities Markets provides that "Information on operations, balances and accounts of any individual and legal entity may be disclosed to respective account holders and their representatives, also in cases specified by the legislation–to the National Bank of Georgia. Such information may be disclosed to other persons pursuant to the court's decision."

696. The Georgian authorities indicated that where there is a conflict between sectoral laws and the AML Law, the latter prevails when it involves AML matters based on the principle of lex specialis. Legislation of Georgia is based on the general principles of law, including the doctrine of "Lex specialis derogat legi generali." This principle is contained in the Constitution of Georgia, specifically Article 6, para. 2, which states that "the legislation of Georgia shall be in conformity with generally recognized principles and norms of international law." The principle lex specialis is contained in Article 2 of the Civil Code of Georgia which states that during the collision of norms having the same legal power, specific law prevails. At the same time, the Law on Normative Acts contains general provisions which set out how the rules of analogy as well as general principles of law shall be applied in the process of construing legislative provisions. Deriving from above, it shall be concluded, that the general principles of law, including the "lex specialis" principle is applicable in Georgia. This principle is also regularly applied in court practice. Based on the "lex specialis" principle, the Georgian authorities indicated that the AML Law overrides the sectoral laws on confidentiality and there is thus no impediment for FMS to obtain customer information from financial institutions (which are monitoring entities) for AML purposes under the AML Law.

Sharing of information between relevant authorities

697. Article 11.2 of the AML law provides that the supervisory bodies shall cooperate with each other and with the FMS in sharing information and experience. Article 11.23 further sets out that if a supervisory body reveals that the transaction is subject to monitoring and the information on this has not been forwarded to the FMS, it shall immediately inform the FMS and apply the appropriate sanction against the infringer. In the MOU signed between NBG and FMS in May 2006, it sets out the exchange of information between the two agencies where FMS will share information with NGB on information on reporting while NBG will share information on licensing/registration data, inspection findings including violations with FMS. No issues have arisen from the financial institutions' confidentiality/ secrecy provision which affect the authorities' ability to cooperate with each other domestically and with foreign counterparts internationally. Please refer to R.31 on domestic cooperation and R.40 on international cooperation.

Exchange of Information between Financial Institutions as required by R.7, R.9 and SR.VII

698. For banks, there are obligations in relation to wire transfer rules and correspondent banking relationship set out in Article 6 of the FMS Regulation and Article 6, para. 6 of the FMS Decree respectively. Obligations relating to reliance on third parties are set out in Article 6.10 of the AML Law.

Implementation:

699. NBG has been carrying out AML inspections on financial institutions without any impediment to financial records. FMS is also able to obtain information from financial institutions without any difficulty. Financial institutions are aware of their obligations to disclose information when the conditions for disclosure to NBG and FMS in the AML law and sectoral law are met and they cooperate with the authorities in providing the necessary disclosure.

700. With respect to sharing of information between financial institutions, the practice of financial institutions particularly in the case of banks, is to include a broad clause in the contract with customers which permit them to transmit the information to receiving financial institutions. In case the customer refuses to agree to the clause in the contract, the bank will not proceed with the transaction. Therefore, banks in Georgia have the ability to transmit customer information to other financial institutions for the purpose of R.9 and SR.VII. As for R.7, the Georgian authorities confirmed that payable-through accounts did not exist in Georgia (no underlying customers involved) and thus the issue concerning the ability to transmit information to other financial institutions was not applicable here.

701. For nonbank financial institutions such as microfinance organizations, securities market participants and insurance companies, R.7 and SR.VII on correspondent banking and wire transfers are not applicable. In the case of reliance on third parties, transfer of customer information is on the basis of customer consent and in the absence of consent, the nonbank financial institution will not proceed with the transaction on behalf of the customer.

Effectiveness:

702. By virtue of "lex specialis" principle, the AML Law takes precedence over the various sectoral laws which contain secrecy/confidentiality provisions. FMS indicated that it has not encountered any challenges to its power to obtain information from financial institutions designated as monitoring entities under the AML Law. Financial institutions interviewed also indicated that they did not face any legal inhibition which would prevent them from providing FMS and NBG with relevant AML/CFT information. Provision of information to judicial or investigative agencies, however, is subject to a court order.

3.4.2. Recommendations and Comments

703. The authorities are recommended to:

- Notwithstanding the "lex specialis" principle," ensure that the AML Law and the sectoral laws for all licensed financial institutions contain consistent provisions (and exceptions)

relating to confidentiality to ensure legal clarity for the FMS' access to financial institutions' records.

- Amend the sectoral laws to allow financial institutions to exchange and share information for the purpose of Recommendation 9 and Special Recommendation VII for AML purposes, even in the absence of customer consent.

3.4.3. Compliance with Recommendation 4

Rating Summary of factors underlying rating

(R. 4 rated in the 2007 MER as LC)

	Rating	Summary of factors underlying rating
R. 4	**LC**	• No specific provision allowing financial institutions to exchange and share information for the purpose of Recommendation 9 and Special Recommendation VII.

3.5. Record-Keeping and Wire Transfer Rules (R.10 & SR.VII)

Legal Framework:

- Article 6 and 7 of the AML Law;

- Law on the Activities of Commercial Banks;

- FMS Decrees: No. 95 on "Approving the Regulation on Receiving, Systemizing and processing the information by commercial banks, after December amendments to the AML/CFT Law new FMS Decree No. 4.; FMS Decree No. 10 on Approving the Regulation on Receiving, Systemizing, and Processing the Information by Microfinance Organization and Forwarding to the Financial Monitoring Service of Georgia", after December amendments to the AML/CFT Law new FMS Decree No. 7.; FMS Decree No. 1 after December amendments to the AML/CFT Law new FMS Decree No. 8, on Approving the Regulation on Receiving, Systemizing, and Processing the Information by Money Remittance Entity and Forwarding to the Financial Monitoring Service of Georgia".; FMS Decree No. 105 after December amendments to the AML/CFT Law new FMS Decree No. 2, on Approving the Regulation on Receiving, Systemizing, and Processing the Information by Credit union and Forwarding to the Financial Monitoring Service of Georgia"; Financial Supervisory Authority Decree No.17, Addendum No. 1.; NBG Order 242/01 on Determining and Imposing of Pecuniary Penalties on Commercial banks.; NBG regulation on Cash-less Operation N 166 June, 2007.

- Wire transfers and funds transfers are defined in NBG regulation on Cash-less Operation N166 June, 2007 as "operation of cash-less payment, when transfer of funds from the bank account of a payer to the payee is undertaken through banking or other settlement

technologies." The scope of the definitions covers transactions carried out by electronics means including transactions using credit and debit cards.

Recommendation 10 (Rated PC in MONEYVAL's third round MER)

3.5.1. Description and Analysis

Record Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1):

704. Article 7, para. 3 of the AML Law of Georgia requires monitoring entities to retain information (documents) on transactions as well as records related to unusual transactions and transactions from banks, insurance companies, and broker companies with watch zones and suspicious zones, regardless of whether the transactions have been executed in the name of their client or third parties, "for at least six years from the moment of concluding or implementing the transaction, if there is no request from the respective supervisory authority for retaining that information for a longer period of time."

705. Additionally, Article 6.6 of the AML Law requires monitoring entities to record information "on the content of the transaction subject to monitoring, date and place of the transaction," as well as the amount and the document used to identify the person involved in the transaction and to identify the person on whose order the transaction is concluded or undertaken. In the case of a transaction made on behalf of a third person, the monitoring entity should also keep information (documents) to identify the person by whom the transaction is being undertaken.

706. Article 7.4 of the AML Law added that the documentation should be recorded and filed "in a way where all its data fully reflect the concluded or implemented transactions and, when needed, can be submitted to the respective supervisory body in a timely manner, and in the event of criminal prosecution, is used as evidence".

707. Along with the requirement mentioned above, Article 7.4 of the AML Law and the FMS decrees[104] [105] for **banks** elaborate on this obligation, enumerating the sort of information necessary to be recorded on transactions, including:

- i) content of operation (operation.); ii) date of operation execution, as well as amount and currency in which transaction is implemented; iii) identification details of a person, based on whose order the Bank implements operation (person conducting operation), including type, number and opening date (closing date if necessary) of the bank account (accounts), which is used for implementation of the specific operation; iv) other party to the operation (if it exists) and its bank account details (e.g., in case of money transfer–name of respective banking institution, account type, number and account holder); v) identification details of the person

[104] Commercial Banks–Article 7; Insurance Companies–Article 7); Microfinance Organizations–Article 9; Securities Registrars–Article 6; Brokerage Companies–Article 7; Credit Unions–Article 6(4); Money Remittance Services–Article 7; Currency Exchange Bureaus–Article 8.

[105] The information to record keeping is also included in the new amended FMS Decrees.

who is acting on behalf of the Bank's client (representative, agent), as well as content, issuer, date of issuance and period of validity of power of attorney or procurement, person certifying power of attorney or procurement (e.g., notary), date and place of certification; vi) if transaction is implemented in favor of the third person–identification details of such person; vii) basis for operation implementation–if information exists (e.g., Transaction concluded by the bank's client, on the basis of which bank operation is being implemented, etc.)

- In the case of **Microfinance organizations**, FMS Decree No. 10 requires additional information requirement on: i) second party to the operation (if such) and its bank account details; ii) basis for operation implementation–if information exists. Additionally, also requires to keep the identify on the course of recording information on transaction between and the client, as well as on the transaction which represents the basis for implementation of transaction (operation), the Microfinance organization shall also document the following information: i) type of transaction (e.g., acquisition, usufruct, rent, lease etc.); ii) subject of transaction (specific item, property or incorporeal right, which represents a subject of transaction, or service, work that shall be performed according to the transaction); iii) form of transaction (e.g., written or verbal agreement); iv) purpose of transaction (e.g., getting profit, charity, payment of debt etc.); v) identification details of persons involved in a transaction (including their representatives and proxies); and vi) date and place of concluding transaction as well as validity period.

708. In addition to previous information required to be kept, by FMS Decree No. 2, in case of a transaction performed by a **Credit Union,** requires identification details of a partner, based on whose order the Credit Union implements transactions, if the transaction is subject to registration— name of the registering authority, registration data, place, number, and purpose of the transaction. The credit union FMS Decree obliges to keep the above-mentioned documentation both in hard and electronic copy.

709. The **Exchange bureaus** need to keep records of two additional documents:(i) the second copy of the foreign exchange receipt related to the operation subject to monitoring; and (ii) the reporting forms submitted to the FMS. These documents should be kept at least six years from the moment of the execution of the transaction.

710. The power to request an extension of the period for record-keeping obligations is attributed to the supervisory authority (NBG) only, not including the FMS or other competent authorities. Pursuant to Article 23 of the Law on Commercial banks, the NBG has extended record-keeping obligations up to 15 years in the case of the following documents supporting each of their transactions and operation with customers: (The documents should be kept in electronic format.)

- applications and all contractual documents pertaining to the transaction (including credit, guarantee and collateral agreements);

- the financial records of bank's counterparties (including borrowers and guarantors), and any other documentary evidence, on which the bank relied in approving the transaction;

- the signed written record of the bank's decision in approving the transaction; and

- other documents as the National Bank of Georgia may specify by regulation.

Record Keeping for Identification Data, Files, and Correspondence (c. 10.2):

711. Article 7 of the AML/CFT law required monitoring entities "to keep information (documents) presented for identification of a person in an electronic or paper form (submitted according to the procedure defined by para. 12, Article 6 of the present Law) for the period no less than six years from the moment of breaching–ending business relationship with such person, unless the respective supervisory authority sets a longer term for the retention of such information (documents), and to submit it to the competent authorities when the appropriate grounds exist."

712. The new Georgian AML law has introduced the record-keeping obligation for monitoring entities to include the maintenance of records of account files and business correspondence in electronic or documentary form for six years. The power to request an extension of the period is attributed to the supervisory authority (NBG) only, not including the FMS or other competent authorities.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

713. Pursuant to Article 7.4, financial institutions are required to submit the information kept on transactions and customers to the supervisory authority in a timely manner.

714. The supervisory authority mentioned in Article 7, para. 4 is the NBG. Nevertheless, Article 10.4 also empowers the FMS to request and obtain from "monitoring entities' additional information and documents, and law enforcement authorities can access the information through a court order.

Implementation:

715. At the time of the on-site visit, financial institutions met by the assessors indicated a difficulty in interpreting the former AML Law Article 7.1 and 7.2 of the AML Law and were not sure if they had to keep documentation in electronic copy, hard copy, or both. According to the FMS, as long as the information is retained, both systems are accepted and it is not necessary to keep soft and hard copies of the information. Following this line, the new AML/CFT Law (as amended on December 20, 2011) has incorporated both possibilities.

716. In practice, the financial institutions met by the assessors have indicated that they keep the data concerning customer identification for more than six years, from the time the customer started to operate with them, in all cases in both electronic format (scanned documents) and hard copy. This appeared in contradiction with the AML Law as they should keep the data more than six years following the end of the relationship. This said, banks indicated that in practice, they keep documentation beyond the period required by the AML law.

717. The assessors were not able to check the implementation of the record-keeping policies related to the maintenance of records of account files and business correspondence, as it is a requirement introduced by the new AML/CFT Law (as amended on December 20, 2011), after the on-site visit.

718. The NBG affirmed that it has never encountered any difficulty with regards to access to documents. However, inspections results had imposed administrative fines for record-keeping violations. The table below indicates examples of cases in which sanctions were imposed for AML law violations related with record-keeping obligations. (See also sanctions in Recommendation 17.)

Year 2011	**Financial Sanctions were imposed on record keeping:**	**Amount of Fines**
Banks		
Insurance companies		

2010		Amount of Fines
Banks	--	
Entities Performing Money Remittance Services		
Microfinance Organization		
	Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	5,400
Currency Exchange Bureaus		
	Violation of the record-keeping obligation	173,400
	Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	900
	Violation of the record-keeping obligation/copy of identification doc	200

2009		
Banks		Amount of Fines
	Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	40,000
Currency Exchange Bureaus		
	Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	7,450
	Violation of the record-keeping obligation/copy of identification doc	800

Effectiveness:

719. The shortcomings noted with regard to the implementation of the CDD measures, and particularly the obligation to identify and verify the ultimate beneficial owner has an impact on the effective implementation of the record-keeping requirements. The information currently available appears insufficient to permit reconstruction of individual transactions, particularly in relation to transactions and business relationships involving offshore jurisdictions.

Special Recommendation VII

Special Recommendation VII (Rated NC in MONEYVAL's third round MER)

Obtain Originator Information for Wire Transfers (applying c. 5.2 and 5.3 in R.5, c. VII.1):

720. Article 6.1.b of the new[106] AML/CFT law (as amended on December 20, 2011) obliges monitoring entities to carry out identification of all business-related persons, regardless of whether the transaction has been executed in the name of their client or third parties, if the transaction (operation) amount exceeds GEL 1,500, or its equivalent in another currency[107] in the case of transactions implemented through the Society for Worldwide Interbank Financial Telecommunications (SWIFT) or other similar network systems.

721. In the Georgian legislation, only banks, money remittances, and microcredit institutions can carry out wire transfers. Additionally, this threshold and obligation is also reflected in the amended FMS Decree No.1 for Money Remittances Entities (Article 6.1) and in Article 6.8 of the amended FMS Decree No. 4 on approving the Regulation on Receiving, Systemizing, and Processing the Information by Commercial Banks and Forwarding to the Financial Monitoring Service of Georgia. (After the December amendments FMS Decree No. 4 for banks (Article 9), amended FMS Decree No. 7 for microfinance (Article 8), amended FMS Decree No. 8 for money remittances (Article 6.8)).

722. Pursuant to FMS Decree No. 4 for banks, the following information should be recorded on the originator of the wire transfer: the name, account number, or person unique number, and address. The address could be substituted by the ID/passport number or date and place of birth and the identification number of taxpayer.

723. The same provisions are applying to money remittances (Article 6 of FMS Decree No.1) and microfinance entities (Article 7 of the FMS Decree No. 10). Regarding microfinance organizations, mentioned in Article1 of the Regulation of Entities Conducting Money Remittance, they will be covered in more detail by SR.VI.

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[106] Law amended December 10, 2011 and came into force on January 1, 2012.

[107] Approximately US$930.

Inclusion of Originator Information in Cross-Border and domestic Wire Transfers (c. VII.2 and c.VII.3):

724. As mentioned above, the Georgian legislation does not distinguish between the information required to be submitted in the case of domestic or cross-border transfers and applies the same requirements to both types of transactions, namely, the compulsory inclusion of the full originator information for both. The Georgian legislation does not cover the possibility of bundling (in batch files) several individual cross-border wire transfers from a single originator as batch files are not developed in Georgia.

Maintenance of Originator Information ("Travel Rule") (c.VII.4):

725. The updated FMS Decree No. 4 for Commercial Banks (Article 8.5) states that "Banks, which in the course of transfer perform the role of an intermediary, shall ensure transferring of the person's identification data from the paying Bank to the beneficial Bank." Similar provision is included in updated FMS Decree No. 7 for Microfinance entities and of the updated FMS Decree No. 8 for Money remittance entities. By identification, the regulations include full originator information such as name, account number, or verification code and address (it can be substituted by a personal number or place and date of birth).

726. On the other hand, the same Article also includes the obligation for the intermediary to retain payer's identification data for six years, if, due to technical reasons, it is not feasible to transmit the originator information. This provision guarantees the originator information to be conserved by the intermediary; nevertheless, it does not require that the measure should be only temporarily,during the necessary time to adapt the payment system. There is a risk of abuse of this provision by the intermediary , keeping the information without sending it.

Risk-Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):

727. There is no requirement that beneficiary institutions be required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Monitoring of Implementation (c. VII.6):

728. Pursuant to Article 4.a AML Law, the NBG is the designated supervisory authority for banks, microfinance organizations, and entities performing money remittance, with respect to ensuring the compliance of AML legislation by these entities, that extends to wire transfers requirements as it is an activity of the supervised entities.

729. The "Guidance on the risk-based approach to combating illicit income legalization" issued by the NBG for managers of financial institutions, specifically indicates wire transfer operations as an area to check during on-site inspections. The "NBG banks On Site Inspection Methodic manual concerning the Prevention of Illicit Income Legalization" includes electronic transfers as a point to be checked during the on-site inspections. Nevertheless, revision is more based on a formal compliance on SWIFTs copy records.

730. The NBG supervision staff confirmed to assessors that the wire transfer area is covered under the procedures designed for prudential inspections, (Chapter 19.b on site manual) except in the case of money remittance institutions and microfinance institutions, where as a core business activity, the transactions are reviewed in AML/CFT inspections. In relation to banks, there is still room to elaborate on and carry out specific AML/CFT inspection procedures for wire transfers.

Application of Sanctions (c. VII.7: applying c.17.1–17.4):

731. Authorities informed the assessors that sanctions imposed on CDD will also include violations in case of wire transfers but NBG does not differentiate in terms of statistics. Thus, assessors only received the general statistics on record-keeping violations without being able to differentiate if some of the sanctions imposed were related due to AML law violations related to wire transfers.

Additional Elements—Elimination of Thresholds (c. VII.8 and c. VII.9) (c. VII.8 and c. VII.9):

732. Neither the AML/CFT law nor FMS decrees establish a different threshold than the GEL 1,500 one settled by the law.

Implementation:

733. Financial institutions met by the assessors informed that they always identified the customer and keep copies of identification[108] documents for transactions above the GEL 1,500 threshold. All commercial banks are members of SWIFT and almost all have implemented the new form on cover payment. Regarding the information, they have received a few incomplete incoming transfers and they highlighted that the most common missing information was the address (sometimes missing, other times misplaced), while the account number was also mentioned. General practice is to request the missing information and settle the transfer. All affirmed that all missing information was provided once requested. No report was submitted to the FMS.

734. FIs interviewed by the mission did not appear to consider restricting or even terminating the business relationship in the case that the missing information on the originator was not provided.

735. Almost all FIs interviewed declared to use the new SWIFT form to include information on cover payments.

Effectiveness:

736. Financial institutions met by the assessors all indicated not having any major issue with the implementation of requirements on wire transfers. The "NBG banks On Site Inspection Methodic Manual concerning the Prevention of Illicit Income Legalization" includes electronic transfers as an area to be checked during the onsite inspections. Nevertheless, revision is more based on a formal compliance on SWIFTs copy records. No specific sanctions have been pronounced on the FIs visited

[108] Full originator information.

by the assessors and there were a low awareness from FIs to apply controls from AML/CFT perspective.

737. Banking institutions interviewed follow the policy related to cross-border wire transfers and, rely on their payments department for monitoring. As a consequence of this practice, cross-border transaction is only monitored when they are performed for a classified risk, comes from a country in the watch zone list or are related to a PEP customer, or when they exceed the reporting threshold. Most of the monitoring is conducted manually and transfers are said to come essentially from Russia, Turkey, the United States, the United Kingdom, and the Ukraine. These international transfers are mostly related to import and export activities. Information on remittance is included in relation to SR.VI.

3.5.2. Recommendations and Comments

Recommendation 10

738. Authorities are recommended to:

- Empower other competent authorities than the NBG to request an extension of the record keeping obligations.
- Ensure FIs implement AML requirements in an adequate way, especially regarding the time reference applied to record keeping requirements the AML Law.
- Authorities should consider clarifying the requirement regarding record keeping obligation related to how the information should be kept, and provide guidance to the FIs in relation to the key information or documents to be kept in order to facilitate the reconstruction of the transactions and provide, if necessary, evidence for prosecution of criminal activity.

Special Recommendation VII

739. Authorities are recommended to:

- Ensure that all domestic and cross-border transfers are adequately monitored and supervised in terms of ML/FT risk management.
- Amend the AML/CFT law and FMS Decrees to ensure that there is an obligation for the intermediary to transmit the originator information along the messages chain without any exception.
- Require beneficiary institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information, including the consideration to report to the FMS and to restrict or terminate the business relationship with counterpart financial institutions failing to meet SR.VII standards.
- Ensure that nonbanking institutions carrying out wire transfer are compliance with the AML/CFT Law.

- Consider developing guidelines to assist FIs in understanding the relationship of wire transfers to the monitoring process and to ensure the accuracy of the data received, with regards to the originator information from incoming transfers received by the FIs.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• No other competent authorities, apart from NBG, are empowered to request an extension of the record-keeping obligations. **Implementation:** • No proper implementation of the record keeping measures of FIs specifically related to the time reference used for retaining and kept different type of documents such identifications or transactions. • No specific guidance on "the key documents" to be kept in order to ensure the reconstruction of the cycle of transactions. • No record-keeping obligations applied to electronic money institutions. Regarding the maintenance of records of account files and business correspondence, it was no possible to check the implementation of the new provisions. **Effectiveness:** • Shortcomings noted with regard to the implementation of the CDD measures, and particularly the obligation to identify and verify the ultimate beneficial owner has an impact on the effective implementation of the record keeping requirements.
SR.VII	**PC**	• Ambiguous obligation for the intermediary to transmit the originator information. • No requirement that beneficial institutions be required to adopt effective risk-based procedures for identifying and handling missing or incomplete originator information wire transfers and to consider whether such transfer is suspicious. • No reporting obligations fulfilled for missing originator information. • No sanctions imposed for non-compliance with the reporting obligation established by the AML/CFT law in the case of missing/incomplete information.

		Implementation: • Poor FIs internal controls applied on wire transfers (national/cross-border) for AML/CFT purposes.

3.6. Monitoring of Transactions and Relationships (R.11 and 21)

3.6.1. Description and Analysis

Legal Framework:

740. The AML Law and the FMS Decrees for various monitoring entities obliged to report determine the different types of reports that should be filed to the FMS. There are four categories of transactions that should be reported to the FMS or require special attention by the "monitoring entities" under the AML law:

- Suspicious Transactions Reports (STRs) should be filed to the FMS by all monitoring entities (more information under Recommendation 13 and SR.IV);

- Threshold Transactions or Cash Reports (CTR) exceeding GEL 30,000 from all monitoring entities, including customs that have to report all cross-border transportation of cash exceeding this amount must also be sent to the FMS (more information under Recommendation 19 and SR.IX);

- Unusual Transactions Reports (UTR) from all monitoring entities require special attention to ascertain the purpose of the transaction (discussed under Recommendation 11);

- "Reporting" of certain transactions related to watch or suspicious zones from banks, insurance companies, and security brokers specified under Article 5.9 and Article 5.2 of the AML Law (discussed under Recommendation 21).

741. Financial institutions in Georgia that are subject to the preventive measures of the AML Law including reporting STRs are commercial banks, insurance and reinsurance companies, non-state pension schemes, asset management companies, securities independent registrars, securities brokerage companies, money remitters (including postal organizations to the extent they carry out wire transfers), currency exchange bureaus, microfinance organizations, and credit unions. Insurance brokers are indirectly subject to the AML/CFT requirement. However, as indicated under Section 1 and at the beginning of Section 3, electronic money institutions companies are not considered monitoring entities and, therefore, not required to report. Leasing companies were included under the list of monitoring entities in the amended AML/CFT Law of December 2011.

742. Monitoring entities as defined under Article 3 of the AML Law include in addition to the activities defined by the FATF standard: (i) the National Agency of Public Registry (NAPR); and (ii) the Revenue Service including Customs. Those legal entities of public law are counted monitoring entities and are obliged to report certain transactions. Revenue Service including customs sending declaration forms as CTRs was treated under SR.IX, and NAPR reporting treated under Section 4 on

DNFBPs (effectiveness section). These reports are received by the FMS and their quality and quantity was also analyzed under Recommendation 26 and, therefore, will not be treated under this section.

Special Attention to Complex, Unusual Large Transactions (c. 11.1):

743. Article 5.9 of the AML Law requires all monitoring entities *inter alia* "to pay special attention to **unusual transactions**, and transactions determined under paras. 2.c, 2.d, 2.1.c, and 2.2.d of Article 5, which do not have apparent or visible economic (commercial) content or lack lawful purpose, and ascertain the purpose of such transaction within the scope of their capability and register obtained results in writing." This amendment of the Law was introduced in March 2008. Paragraphs. 2.c, 2.d, 2.1.c, and 22.d are related to transactions conducted from or to watch/ suspicious zones (for more information, please refer to Recommendation 21).

744. The definition of unusual transactions was introduced in March 2008 under Article 2.h-1 of the AML Law as "complex, unusual large transaction, also types of transactions, which does not have apparent or visible economic (commercial) content or lack lawful purpose and is consistent with the ordinary business activity of the person involved therein."

745. According to this definition, the "unusual pattern of transactions" has not been covered in accordance with the standard.

746. The FMS Decrees to various financial institutions amended in March 2008 include the same requirement: FMS Decree to banks[109] (Article 3.3-1); to insurance companies (Article 3.3-1); Securities (Article 3.6); exchange companies (Article 3.4); Credit Unions (Article 3.4); Money Remittance Entities (Article 3.5); Brokerage companies (Article 3.6); and Microfinance companies Article (3.4).

747. FMS developed two forms for reporting transactions: the Threshold Reporting Form and the Suspicious Reporting Form. Both forms contain a box for reporting unusual transactions.

Examination of Complex and Unusual Transactions (c. 11.2):

748. Article 5.9 of the AML Law and FMS Decrees to banks, insurance, securities, brokerage, exchange companies, credit unions, money remittance entities, and microfinance companies amended in March and August 2011, respectively require relevant financial institutions to "ascertain the purpose of the transaction within the scope of their capability and register obtained results in writing".

749. Article 5.10 of the AML Law also requires monitoring entities to "determine themselves the principles for identifying unusual transactions of persons having business relationship with them".

[109] Banks shall focus special attention on unusual transactions and transactions determined under subparagraphs (b.c) and (b.d), Para. 1 of this Article, which lack economic (commercial) content or clear lawful purpose and within their capacity investigate purpose and basis of concluding such transaction and record findings in writing. (13.06.2008 #3).

750. Identifying unusual transactions is left to the monitoring entities' appreciation and there is no clear requirement to make such transactions available to auditors.

Record Keeping of Findings of Examination (c. 11.3):

751. As mentioned previously, monitoring entities should register obtained results in writing. According to Article 7.3 of the AML Law "monitoring entities should be required to retain information (documents) on transactions, as well as records provided for in Article 5.9. for not less than six years from the moment of concluding or implementing transaction, if there is no request from the respective supervisory authority for retaining those for a longer period or/and if longer period for retention of such information (documents) is not set under the Georgian legislation."

752. The term "records" under Article 7.3 is interpreted by the authorities to include transactions and results of ascertaining the purpose of the transactions registered in writing.

Implementation:

753. The AML Law requires monitoring entities to pay special attention to unusual transactions. However, the definition of unusual transactions does not include the unusual patterns of transactions. Monitoring entities[110] are defined under Article 3 of the AML Law.

754. No guidelines were provided to financial institutions to assist them in identifying such transactions; these principles are left to misinterpretation. Also, there is no clear requirement in the AML Law or FMS Decrees to make such transactions available to external auditors.

755. As mentioned above, the forms for suspicious and threshold reports both contain a box for unusual transactions. Therefore, FIs supposed to be required to pay special attention to such transactions are reporting them automatically instead of examining their background and purpose. Most of the FIs met during the assessment confirmed that unusual transactions are usually reported instead of being examined to verify their background and purpose which is affecting the quality of reporting. Also, they are never made available to auditors.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1):

756. Article 5.9 of the AML Law requires all monitoring entities *inter alia* "to pay special attention to unusual transactions, transactions determined under paras. 2.c, 2.d, 2.1.c, and 2.2.d of Article 5, which do not have apparent or visible economic (commercial) content or lack lawful purpose, and ascertain the purpose of such transaction within the scope of their capability and register obtained results in writing". This amendment of the Law was introduced in March 2008. Transactions

[110] Commercial banks, currency exchange bureaus, nonbank depository institutions and microfinance organizations; entities performing money remittance services; broker companies and securities' registrars; insurance companies and non-state pension scheme founders; entities, organizing lotteries and other commercial games; entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities; Customs agencies Revenue Service; entities engaged in extension of grants and charity assistance; notaries; the National Agency of Public Registry.

under paras. 2.c, 2.d, 2.1.c, and 2.2.d are related to those conducted from or to watch and suspicious zone and will be described and analyzed under Recommendation 19 below.

757. As previously noted, Article 2.e defines watch zone or non-cooperative zone as "country or a part of the territory" "identified as such on the basis of the information provided by competent international organization, or if the grounded supposition exists that in such zone weak mechanisms for controlling illicit income legalization are effective". Competent international organizations are determined under Article 2.f of the AML Law as "the Council of Europe, FATF, and other organizations recognized as such by the international community".

758. Article 5.2 requires commercial banks to monitor suspicious transactions and those that are concluded or implemented by the person and/or series of concluded or implemented transactions resulting from partition of the transaction, if its amount or the series of transactions exceeds the threshold of GEL 30,000 or its equivalent in other currency, more precisely the following transactions:

- Article 5.2.c "transfer of funds by the account holder from the bank operating or registered in watch[111] or suspicious zone[112] to the bank account in Georgia or transfer of funds from Georgia to account in the bank operating or registered in such zone".

- Article 5.2.d. "extension or receipt of loan by the person registered in watch or suspicious zone, or implementation of any other transaction (operation) by such person through banking institution operating in Georgia."

- Article 5.2.1.c. extends the same requirements to broker company regarding the "transactions implemented in securities by person residing and registered in watch or suspicious zone or/and through use of bank account operating in such zone".

- Article 5.2.2.d. extends the same requirement to insurance companies regarding "transaction implemented by person residing and registered in watch or suspicious zone or/and through use of bank account operating in such zone."

759. In general, the AML Law requires banks, broker, and insurance companies to pay special attention to limited transactions related to watch (or non-cooperative) and suspicious zones as defined above. More precisely, these requirements are related to certain transactions and/or implementation of any other transaction by such person (or in his favor) for banks, transactions conducted by a broker

[111] Watch zone or non cooperative zone is defined as "a country or a part of the territory thereof defined by the National Bank of Georgia on the basis of proposition of the Financial Monitoring Service of Georgia. The country or territory thereof shall be identified as such on the basis of the information provided by competent international organization, or if the grounded supposition exists that in such zone, weak mechanisms for controlling illicit income legalization are effective" as amended in July 2011.

[112] Suspicious zone is defined as "a country or a part of the territory thereof, identified as having weak mechanisms for controlling illicit income legalization, based on information available to the monitoring entity" as amended in March 2007.

company and insurance companies of bank accounts related to persons residing or registered in a watch or suspicious zone. Article 5.9 requires special attention to such transactions; however, these transactions determined under Article 5, paras. 2.c, 2.d, 2.1.c, and 2.2.d require the "monitoring" of such transactions or series of transactions that exceed the threshold of GEL 30,000. Furthermore, Article 2.d defines monitoring as to include submission of the information to the FMS.

760. Article 2.h. defines the suspicious transactions as follows: "a transaction (regardless of its amount and operation type) supported with reasonable grounds to suspect that it had been concluded or implemented for the purpose of legalizing illicit income or/and the property (including funds) on the basis of which the transaction had been concluded or implemented is the proceeds of criminal activity or/and the transaction had been concluded or implemented for the purpose of financing terrorism (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting terrorism, or/and is likely to be connected with them, or/and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or persons financing terrorism, or any involved person's legal or real address or place of residence is located in a non-cooperative zone and the transaction amount is transferred to or from such zone". The non-cooperative zone has not been defined. When asked, the authorities clarified that there are no countries identified as non-cooperative zone.

761. This definition has been amended in December 2011 when a new AML/CFT Law was adopted to become: "a transaction (regardless of its amount and operation type) supported with reasonable grounds to suspect that it has been concluded or implemented for the purpose of legalizing illicit income or/and the property (including funds) on the basis of which the transaction had been concluded or implemented for the purpose of FT (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting terrorism, or/and is likely to be connected with them, or/and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or terrorist organization or persons financing terrorism, or any involved person's legal address or place of residence is located in an non-cooperative zone or the transaction amount is transferred to or from such zone".

762. The different provisions of the AML Law detailed above are confusing for relevant financial institutions since they are not sure whether they need to pay special attention or report transactions related to watch and suspicious zone. Moreover, the FMS forms for reporting threshold and suspicious transactions include a breakdown of boxes that include the transactions from watch and suspicious zone.

763. The FMS Decrees to various monitoring entities included similar requirements to the AML Law: Decree to Banks (Articles 3.1.b.b.c and 3.1.b.b.d); Insurance Companies (Articles 3.1.b.b.d); Securities Registrars (Article 3.6); Microfinance (Article 3.2); Money Remittance (Article 3.3); Brokerage companies (Article 3.1.b.b.c). FMS Decrees amended in August 2011 extended the requirements of the AML Law to the microfinance and money remitters. As stated in the Law, these requirements are limited to threshold transactions banks accounts related to persons residing or registered in a watch or suspicious zone.

764. The list of watch zone countries was updated and adopted by a Presidential Decree of August 24, 2011.[113] It includes 42 countries: 1. Afghanistan; 2. Anguilla; 3. Antigua and Barbuda; 4. Barbados; 5. Guatemala; 6. Grenada; 7. Guam; 8. Dominica; 9. Iraq; 10. Vanuatu; 11. the Turks and Caicos Islands; 12. India; 13. Indonesia; 14. Iran; 15. Cape Verde; 16. Cayman Islands; 17. Columbia; 18. Republic of Korea (North Korea); 19. Cook Islands; 20. Lebanon; 21. Liberia; 22. Marshall Islands; 23. Myanmar (Burma); 24. Micronesia; 25. Montserrat; 26. Nauru; 27. Nigeria; 28. Niue; 29. Pakistan; 30. Palau; 31. Samoa; 32. Seychelles; 33. Saint-Lucia; 34. St.Vincent and the Grenadines; 35. St. Kitts and Nevis; 36. Syria; 37. Sudan; 38. Tahiti; 39. Tajikistan; 40. the Philippines; 41. Northern Mariana Islands; and 42. Djibouti. According to the Presidential Decree, the FMS should update, at least annually, the list of watch zone countries and submit it to the NBG.

765. According to the FMS, the list was created on the basis of the United States State Department list and the assessments conducted by the IMF. The Presidential Decree was published on the FMS website. According to Article 2.o of the AML/CFT Law, suspicious zones are defined by monitoring entities based on information available to them.

766. The list of countries does not include all the countries which do not or insufficiently apply the FATF Recommendation identified by the FATF under the International Cooperation Review Group. Moreover, some countries that are FATF members with no serious AML/CFT deficiencies were added (i.e., India and the French island of Tahiti), while countries identified in the FATF public statement (e.g., Turkey) are not included in the list.

Effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries (c. 21.1.1):

767. As mentioned above, FMS identifies the watch zone countries that are issued by Presidential Decree. This list is published on the FMS website but does not include specific concerns about the weaknesses in the AML/CFT systems of the 42 watch zone countries. According to the authorities, analysis of weaknesses is developed and communicated between the FMS and NBG but is not communicated to financial institutions.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

768. Article 5.9 of the AML Law and FMS Decrees to banks, insurance, securities, brokerage, and microfinance companies adopted in 2008 and amended in March and August 2011, respectively, require relevant financial institutions to "ascertain the purpose of the transaction within the scope of their capability and register obtained results in writing."

769. The requirement of examining the purpose of the transaction related to countries identified for the purposes of Recommendation 21 does not extend to examining its background. Also, there is no clear requirement to make such transactions available to auditors.

[113] Prior to this Decree, the list was determined by Governmental Resolution in June 2007.

Ability to Apply Countermeasures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

770. There is no mechanism in place in Georgia to apply appropriate counter-measures to countries that do not apply or insufficiently apply the FATF Recommendations. As discussed above, watch zone countries are determined and some FIs are required to pay special attention to some transactions related to these countries.

Implementation:

771. The requirement of paying special attention to certain transactions related to watch zone countries was introduced in the AML Law in 2008, and FMS Decrees were amended to reflect the AML Law amendment.

772. The recently-adopted provisions of the AML Law and FMS Decrees are limited to specific transactions above the threshold detailed above. The requirements are confusing regarding the procedure that should be followed when these transactions are identified. The forms for reporting are not clear and include boxes in the breakdown of threshold and suspicious transactions.

773. It was not clear for FIs met during the on-site mission whether they should report or pay special attention to such transactions. In the latter case, they do not have enough knowledge on how to examine, write findings, keep records, and share them with auditors. Furthermore, the list of countries on the watch zone is very long. It includes 42 countries that do not match with the ones identified by the FATF ICRG process, and it is considered by FIs as creating an extra burden to identify, monitor, and most of the time report transactions related to watch zone.

Analysis of effectiveness:

774. The recently-adopted requirements for unusual transactions and those related to watch zone are neither clear nor comprehensive. The STR and CTR forms developed by the FMS are confusing since they include a breakdown of unusual and watch zone transactions. No guidelines were provided to financial institutions to assist them in identifying, paying attention to unusual and watch zone transactions, examining their purpose and background, keeping in writing, and making them available to concerned authorities and auditors.

Recommendation 11

775. Unusual pattern of transactions is not covered under the current definition of unusual transactions. Although the AML Law prevails and should be implemented by all monitoring entities, the sectors mentioned above do not seem to implement the requirement since it was not included in their sectoral Decrees; these principles set in the Decrees are left to be determined by the FIs. In addition, the requirement of examining the purpose of the transaction does not extend to checking its background, and there is no clear requirement in the AML Law or FMS Decrees to make such transactions available to external auditors which minimize considerably the effectiveness of the requirement for unusual transactions.

Recommendation 21

776. The requirement to pay special attention to transaction from some countries does not extend to business relationship and transactions with persons, including companies and financial institutions from countries which do not or insufficiently apply the FATF standards. There is no mechanism in place to apply appropriate countermeasures, and the list of watch zone countries (42) does not reflect the FATF ICRG countries. It does not include some countries on the FATF ICRG list and excludes others on the FATF public list, i.e., Turkey. It is worth noting here that Turkey is a major trade and financial partner to Georgia. Accordingly, this situation creates a major vulnerability.

777. Financial institutions, mostly banks, met during the on-site mission are automatically reporting all unusual transactions and those related countries on the watch zone. These transactions are transmitted as threshold reporting (CTR) and sometimes as Suspicious Transactions (STRs). This weakness explains in part the poor quality of suspicious reports transmitted to the FMS.

778. Overall, the framework is not effective at requiring financial institutions to give special attention to: (1) unusual transactions; and (2) those from countries which do not or insufficiently apply the FATF recommendations. The framework is confusing, neither comprehensive nor properly implemented, and does not target all the relevant jurisdictions.

3.6.2. Recommendations and Comments

779. 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.

- The authorities should ensure that the legal basis for unusual and watch zone related transaction is clear and comprehensive, more precisely by:
    - Amending the definition of unusual transactions to include the unusual patterns of transactions; and
    - Extending the watch zone related transactions to all financial institutions defined by the FATF standards to include business relationship and transactions with persons, including companies and financial institutions from countries which do not or insufficiently apply the FATF standards. This requirement should go beyond specific transactions currently determined in the AML Law to include all transactions and business relationship.

Recommendation 11

- Provide FIs with guidelines on the implementation of the requirement to pay special attention to unusual and watch zone related transactions and amend the reporting forms to exclude the unusual and watch zone related transactions from the breakdown list.

Recommendation 21

- Update the watch zone list to include countries identified by FATF which do not or insufficiently apply FATF Recommendations.

- Provide for the possibility to apply counter-measures in cases where a country continues to not apply or apply insufficiently the FATF Recommendations.

3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• Unusual pattern of transactions is not covered under the current definition of unusual transactions. • No clear requirement in the AML Law or FMS Decrees to make unusual transactions available to auditors. **Effectiveness:** • Obligation to pay special attention to unusual transactions is confusing and leading to reporting which appears to be counter-productive, as it discourages to better understand these transactions.
R.21	**PC**	• 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. **Effectiveness:** • The framework is confusing, it is neither comprehensive nor properly implemented, and it does not target all the relevant jurisdictions. • Requirement to give special attention to business relationships and transactions with persons from some countries is confusing and limited to a certain number of transactions above the threshold of GEL 30,000, and should be enlarged to countries which do not or insufficiently apply the FATF recommendations. • Absence of effectiveness of the measures in place, notably because of the long list of watch zone countries and limitation to a number of transactions above threshold.

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

3.7.1. Description and Analysis

Legal Framework:

The AML/CFT Law, FMS Decrees and Article 202-1 of the CCG

Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):

780. Article 2.h of the AML/CFT Law (before its amendment in December 2011) defined the suspicious transactions as follows: "a transaction (regardless its amount and operation type) supported with a reasonable grounds to suspect that it had been concluded or implemented for the purpose of legalizing illicit income or financing terrorism (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting terrorism, or/and is likely to be connected with them, or/and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or persons financing terrorism, or any involved person's legal or real address or place of residence is located in a non-cooperative zone and the transaction amount is transferred to or from such zone."

781. This definition has been amended in December 2011 when a new AML/CFT Law was adopted to become: "a transaction (regardless its amount and operation type) supported with reasonable grounds to suspect that it has been concluded or implemented for the purpose of legalizing illicit income or/and the property (including funds) on the basis of which the transaction had been concluded or implemented for the purpose of FT (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting terrorism, or/and is likely to be connected with them, or/and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or terrorist organization or persons financing terrorism, or any involved person's legal or real address or place of residence is located in an non-cooperative zone or the transaction amount is transferred to or from such zone."

782. Article 5 of the AML Law imposes the requirement for all monitoring entities to report suspicious transactions as defined under Article 2.h. "For the purposes of this Law, transaction subject to monitoring, shall be the transaction concluded or implemented by the person and/or the series of concluded or implemented transactions aimed at the division of the transaction (its amount) (other than transactions that are implemented through commercial banks, broker and insurance companies), if one or both of the following provisions exist: (i) the amount of the transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) in case of cash, as well as non-cash settlements; (ii) the transaction is suspicious according to Article 2.h of the AML law." Additionally and as indicated above, "monitoring" according to Article 2.d includes submission of the information to the FMS.

783. The definition under Article 2.h encompasses both a general suspicion and grounds to suspect, coupled with an all crimes predicate crimes regime under Article 194 of the CCG. There were a number of concerns about the definition of suspicious transaction, since it did not include the definition of terrorist organizations and it does not encompass "funds that are proceeds of a criminal activity." The amended AML/CFT Law of 2012 broadened the definition of suspicious transactions to include both concepts and therefore became in line with the standard. The new definition is as follows: suspicious transaction {is} a transaction (regardless its amount and operation type) supported with reasonable grounds to suspect that it had been concluded or implemented for the purpose of legalizing illicit income or/and the property (including funds) on the basis of which the transaction had been concluded or implemented is the proceeds of criminal activity or/and the transaction had been concluded or implemented for the purpose of terrorism financing (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of

terrorists or persons supporting terrorism, or/and is likely to be connected with them, or/and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or terrorist organization or persons financing terrorism, or any involved person's legal or real address or place of residence is located in a non-cooperative zone or the transaction amount is transferred to or from such zone"

STRs Related to Terrorism and its Financing (c. 13.2):

784. The definition of suspicious transaction covers FT explicitly, with the deficiencies noted above relating to the absence of a reference to terrorist organizations that was amended in the AML/CFT Law of 2012. The current definition of suspicious transactions under Article 2.h of the amended Law is comprehensive and in line with the standard.

No Reporting Threshold for STRs (c. 13.3):

785. There is no reporting threshold for STRs and the absence of any such threshold is explicitly stated in the definition of suspicious transaction. This amendment was introduced in March 2007 following the recommendation of the MONEYVAL third evaluation report.

786. In addition, Article 5.4 states that "subject to monitoring shall also be an attempt to conclude or implement the transaction considered under subparagraph 1.b of this article." The FMS Decrees for various types of financial institutions also cover attempted transactions, which, according to the authorities, is a broad term that includes accounts. For example, Article 3.4 of the FMS Regulation on Securities Brokers provides language that is almost identical to that used in other FMS Regulations, as follows: "subject to monitoring also shall be attempt to conclude or implement transaction and any other fact (circumstance), which, according to the written instructions of the Service, may be related to legalization of illicit income or financing terrorism."

787. There are similar provisions in the following FMS Decrees: Article 3.3 of the Decree on Commercial Banks; Article 3.3 of the Decree on Credit Unions; Article 3.3 of the Decree on Insurance and Non-state Pensions; Article 2.1 of the Decree on Securities Registrars; Article 3.3 of the Decree on Exchange Bureaus; Article 3.4 of the Decree on Money Remitters.

Making of ML and FT STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

788. Since there is an all-crimes approach to predicate crimes, tax evasion is included under Article 194 of the CCG. There is no exclusion of tax matters from the defined term "suspicious transaction" or in the provisions found in Article 5 of the AML Law.

Additional Element - Reporting of All Criminal Acts (c. 13.5):

789. The AML Law requires FIs to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offense for money laundering domestically.

Analysis of Implementation

790. As shown below, banks are reporting the highest number of STRs among financial institutions since they represent 95 percent of the total assets of FIs.

791. The number of STRs decreased in 2009. The FMS staff indicated that this is due to the political turmoil and the financial crisis of 2008. The assessment team is of the view that a political conflict could create higher risks of ML and FT (e.g., arms trafficking) and that reporting should have increased.

792. The number of STRs more than doubled in 2010 and during the first half of 2011 after the NBG imposed fines as indicated below. The banks met during the mission confirmed that this is mainly due to defensive reporting. This might be due mainly to the introduction of a new requirement to report transactions related to watch zones coupled with the fines imposed six times following inspections conducted by NBG. As indicated under Recommendation 21, the watch zone list includes 42 countries and requires banks to report certain transaction related to persons or accounts at or from these countries. In addition to the ML reports filed to FMS, six cases of false hits with terrorist list were filed in 2008 and 2009.

Banks	2007	2008	2009	2010	2011	TOTAL
STRs (ML)	4591	7340	6277	13212	19708	51128
Sanctions			X	X	X	17 times
Regulation					√[114]	
Correlation				Yes	Yes	

793. Insurance companies represent around one percent of the total size of the FIs that are involved mainly in providing health insurance required for all citizens by the Georgian Government and few are involved in life insurance. Indicators of suspicious transactions were also issued by FMS in May 2010. Three fines were also imposed in 2011 by the NBG following inspections. However, insurance companies filed only two STRs to the FMS. There was no obvious impact of the amendment of the AML Law, new FMS Decree and on the number of STRs which could be maybe explained by weak CDD measures by these companies, and the lack of supervision and dissuasive sanctions.

[114] http://www.fatf-gafi.org/document/42/0,3746,en_32250379_32236992_48966698_1.

Insurance companies	2007	2008	2009	2010	2011	TOTAL
STRs	0	1	1	0	0	2
Sanctions					X	
Regulation					√	

794. Currency exchanges are mostly filing threshold reporting but not STRs. Fines were imposed by the NBG in 2008 and 2009. As indicated for insurance companies, fines imposed by NBG and the amendment of the FMS Decree did not have an impact on the number of STRs maybe due to: (i) lack of understanding of the risks and methods of ML and FT used to launder money through the exchange offices; (ii) weak CDD measures adopted by these companies; and/or (iii) lack of supervision and outreach to this sector and absence of dissuasive sanctions.

Currency Exchange	2007	2008	2009	2010	2011	TOTAL
STRs	18	2	0	0	0	20
Sanctions	X	X	X[115]	X[116]		
Regulation					√	
Impact of sanctions and regulation on the STR level				No	No	

795. Securities brokerage companies are reporting STRs but the number of STRs is fluctuating. No sanctions have been imposed and the FMS Decree was issued in 2008 and adopted in 2011.

Broker companies	2007	2008	2009	2010	2011	TOTAL
STRs	24	6	114	192	80	416
Regulation		√			√	
Correlation		No			No	

796. The same applies to securities registrar where the number of STRs is decreasing. There were no effects on issuing the FMS Decree was first issued in August 2004, and later amended in 2008 and 2012.

[115] Fines were imposed 67 times following 149 inspections. Total: GEL 21,750.

[116] Fines were imposed 57 times.

Securities' registrar	2007	2008	2009	2010	2011	TOTAL
STRs	16	10	4	4	7	41
Regulation		√			√	
Correlation		No				

797. Sanctions imposed on microfinance companies and FMS Decree issued in 2010 and updated in 2011 might be the reason behind the increase of the number of STRs filed to the FMS.

Micro Finance	2007	2008	2009	2010	2011	TOTAL
STRs	0	0	7	264	874	1145
Sanctions				X		
Regulation					√	
Correlation				Yes	Yes	

798. The reporting from money remittance increased after issuing the FMS Decree but the level of reporting is still relatively low.

Money remittance	2007	2008	2009	2010	2011	TOTAL
STRs	0	0	0	194	189	383
Regulation			√			
Correlation			Yes			

799. Nonbank depository institutions have not reported suspicious transactions. Furthermore, electronic money institutions are not considered monitoring entities and, therefore, not required to report.

Protection for Making STRs (c. 14.1):

800. Article 12.4 of the AML Law amended on March 19, 2008 on the responsibility for protection and disclosure of information provides that "when acting within the scope of their powers, the FMS, monitoring entities, supervisory bodies, their management and employees shall not be held liable for failure to observe the confidentiality of information considered under a normative act, or under an agreement, or/and for protection or referral of such information, except for the case when the crime considered under the CCG of Georgia is committed."

801. The AML Law does not make a distinction regarding the temporary or long-term employment of staff. According to the authorities both qualify as "employees".

802. Article 12.4 does not specify that the protection applies to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory, or administrative provision. Also, this protection is not available even if they did not know

precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

803. The authorities reiterate that the general term used in the Article 12.4 of the AML Law "is not to be liable" covers both criminal and civil liability.

Prohibition against Tipping-Off (c. 14.2):

804. Article 12.1 of the AML Law on the responsibility for protection and disclosure of information provides that "management and employees of the FMS, monitoring entities and supervisory bodies are not be authorized to inform parties to the transaction or other persons that the information on transaction has been forwarded to the relevant authority in conformance with obligations defined under this law."

805. Additionally, Article 202-1 of the CCG added in March 2008 on violating the Secrecy of a transaction Subject to Monitoring provides that "disclosure of a fact of transfer of information to competent authorities by the leadership and personnel of the FMS or about a deal subjected to monitoring, is to be punished by a fine or deprivation of the right to hold office or pursue an activity for a term of up to three years." Additionally, "the same offense that caused a significant damage is to be punished by imprisonment for a term of up to two years or deprivation of the right to hold office or pursue an activity for a term of up to three years."

806. The same requirements of the AML Law on protection and disclosure (criterion 14.1) of information are stipulated in the FMS Decrees to Commercial Banks (Article 9.19); Microfinance Organizations (Article 10.19); Credit Unions (Article 9.19); Insurance Companies (Article 9.19); Brokerage Companies (Article 8.17); Securities Registrar (Article 7.18); Money Remittance Entities (Article 9.17); and Exchange Bureaus (Article 9.17).

807. According to the authorities, there have not been any cases of known tipping-off since the monitoring entities started reporting.

Additional Element—Confidentiality of Reporting Staff (c. 14.3):

808. Pursuant to Article 12.7 of the AML Law, "in the course of fulfilment of the obligation to submit information to the FMS provided for in this Law, the identity of employees of monitoring entities shall not be disclosed."

Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1):

809. Banks are required to report transactions (according to Article 5.2 of the AML Law) concluded or implemented by the person and/or series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and by content it represents the following transaction (operation): (i) receipt of money using bank checks, in bearer form; (ii) trade of foreign currency in cash form; (iii) transfer of funds by the account holder from the bank operating or registered in watch or suspicious zone to the bank account in Georgia or transfer of funds from Georgia to account in the bank operating or registered in such zone; (iv) extension or receipt of loan by the person registered in watch or suspicious zone, or implementation of any other transaction

(operation) by such person through banking institution operating in Georgia; (v) transfer of funds from Georgia to another country to the account of an anonymous person or transfer of funds to Georgia from the bank account of an anonymous person in another country; (vi) contribution of funds into the issued capital of an enterprise other than the purchase of stocks of accountable enterprises, as defined under the Law of Georgia on Securities Market; (vi) placement of funds in the form of cash to the bank account and following transfer by an individual (non-entrepreneur) (other than transfer of funds to the budget and transfer of funds among such person's bank accounts within Georgia); (vii) extension of a loan to bearer, secured by securities; (viii) transfer of funds from or to the account of a legal entity within 90 calendar days from the date of its registration; (ix) transfer of funds from or to the account of grant or charity assistance, except for grants transferred from the state or local self-governance budget of Georgia. (Changed under Law No. 2829 of March 23, 2010); and (x) transaction (operation) implemented through participation of a suspicious financial institution.

810. Broker Companies should report (according to Article 5.2-1) transactions concluded or implemented by a person, or/and the series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and by content it represents the following transaction (operation): (i) transactions implemented through securities, in bearer form; (ii) transaction (operation) carried out through participation of a suspicious financial institution; (iii) transactions implemented in securities by person residing and registered in watch or suspicious zone or/and through use of bank account operating in such zone; and (iv) transactions implemented in cash.

811. Insurance companies report (according to Article 5.2-2) transactions concluded or implemented by a person or/and the series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and it represents the following transaction (operation): (i) returnable life insurance; (ii) annuity or pension insurance; (iii) personal insurance with the condition of returning the premium; (iv) transactions implemented by person residing and registered in watch or suspicious zone or/and through use of bank account operating in such zone; (v) insurance contract terminated by the initiative of an insurer within the first three months; (vi) transactions (operations) performed with the participation of a suspicious financial institution; and (vii) transactions implemented in cash.

812. FMS Decrees imposed a threshold reporting for the rest of monitoring entities for all operations and noncash settlement exceeding the above-mentioned threshold regardless of the typologies of the operation involved.

Implementation: The total number of CTRs filed is as follows:

Banks	**TOTAL**	**2007**	**2008**	**2009**	**2010**	**2011**
CTRs		48570	43166	40595	47937	57045

Insurance companies	**TOTAL**	**2007**	**2008**	**2009**	**2010**	**2011**
CTRs	1060	382	222	176	187	157

Currency Exchange	TOTAL	2007	2008	2009	2010	2011
CTRs	14314	990	1655	2541	5216	7811

Broker companies	TOTAL	2007	2008	2009	2010	2011
CTRs	1441	1165	141	13	92	48

Securities'registrar	TOTAL	2007	2008	2009	2010	2011
CTRs	1160	310	233	258	202	247

Micro Finance	TOTAL	2007	2008	2009	2010	2011
CTRs	8553	0	0	1387	3778	6273

Money remittance	TOTAL	2007	2008	2009	2010	2011
CTRs	262	0	0	0	73	69

Non bank depository ins	TOTAL	2007	2008	2009	2010	2011
CTRs	12	0	0	0	9	29

Total number of CTRs:

	2007	2008	2009	2010	2011	Total
Total CTRs	51417	45417	44974	57494	71679	270981

813. The FMS received a high number of threshold reporting related to the transactions determined above. As mentioned under Recommendation 26, these CTRs are treated equally as STRs, Customs declarations, unusual transactions, and those related to watch zone. Analysts at FMS go through all of them manually which affect extensively the efficiency of the suspicious overall reporting and undermine the human resources of the FMS.

Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):

814. According to the AML Law, transactions subject to monitoring are submitted in electronic form. The FMS has created a database where all incoming reports are stored and analyzed by the Analytical Department of the FMS. This database ensures systematization and confidentiality of the information. The database and the software distributed to monitoring entities are both equipped with protection mechanisms. The information is encrypted and can only be decrypted by authorized employees of the FMS.

815. Before June 1, 2010, CTRs were submitted to the FMS in written and electronic form. Since that date, they are submitted electronically. Hard copies of reporting forms should be submitted to the

FMS according to the procedure defined under the FMS Decrees to various reporting entities only if reporting forms are impossible to be sent in an electronic format (Article 9.3).

Additional Element—Proper Use of Reports of Currency Transactions above a Threshold (c. 19.3):

816. According to Article 10.5 of the AML Law, the FMS is required to create an information network, systemize and analyze obtained information, ensure creation and proper functioning of the relevant database. The staff of the Analytical Department has unlimited access to it within their competence.

817. All information on CTRs and STRs received by the FMS are subject to strict safeguards. As indicated under Recommendation 26, two independent and completely isolated Local Area Networks (LANs) have been set up within the FMS. One of them is connected to the Internet to receive encrypted STRs and CTRs from reporting entities. Once these are received, an authorized person transfers it to a flash drive, deleting it from the external network and moving it into the internal network where they are decrypted and processed. The internal network of FMS has no external connections. Access to the internal network within the FIU is restricted to certain FMS staff members as designated by the Head of the FMS.

818. During the on-site mission, the FMS activated new software for receiving and processing of reporting forms from monitoring entities.

Guidelines for FI (c.25.1)

819. Apart from the objective indicators in the Law, FMS has issued on January 27, 2010 *Guidance for Commercial Banks on Essential Indicators for Detection of Suspicious or Unusual Transactions.* Similar guidelines have been issued to insurance companies. Similar indicators have been issued by the FMS for notaries and the NAPR. Besides, Article 3(3) of the Regulation for Brokerage Companies and Article 3(3) of the Regulation for Securities Registrars include the list of indicators respectively for Brokers and Registrars. Similar guidelines and indicators were not issued for the rest of the FIs and DNFBPs.

820. FMS and NBG do not provide financial institutions with clear 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 and DNFBPs.

821. Competent authorities, and particularly the FMS, 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.

822. FMS receives according to the MOUs signed with LEAs feedback about the names of convicted persons. These names are forwarded to the director of relevant reporting entities. No additional information on investigation, prosecution and provisional measures is provided to the FMS.

Feedback and Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.2)

823. The FMS provides reporting entities (mainly banks) when necessary some general feedback about its activity. Additionally, they provide the reporting entities as a specific feedback a confirmation of receipt.

824. No additional examples were provided to the assessment team to demonstrate that feedback was provided in a regular manner through regular annual reports, information about ML/FT techniques, methods or trends or sanitized examples of actual ML cases. One annual report on the FMS activity was published in 2011. The report contains some information about the FMS activities and few statistics.

825. FIs met during the on-site mission felt discouraged from reporting since they are not receiving feedback from FMS. The feedback has not been provided regularly to all FIs and DNFBPs.

Statistics (R.32)

826. Statistics were provided by the FMS. Statistics by sector should include further breakdown to show: (i) Suspicious transactions excluding the one related to terrorist lists, unusual transactions, and those related to watch zone; and ii) threshold reporting by type of transactions as determined in the AML Law, i.e. those related to loan by banks, transfer by banks and excluding the declaration received from Customs. More importantly, the FMS should review regularly the reporting system by sector to assess its effectiveness. Analysts of the FMS should also conduct strategic analysis using these statistics.

Analysis of Effectiveness

827. Total number of STRs as shown below is increasing, and for the last year almost equaled the number of CTRs, mainly because of:

- Expansion of the list of designated categories of predicate offenses including tax matters (April 2007) and the very broad approach Georgia has adopted to determine the scope of the offense under Article 194 of the CCG, which is to apply the offense to any illegal or undocumented property;
- The defensive reporting after imposing sanctions by NBG; and
- The entering into force of the requirement to "monitor", including reporting unusual and watch zone related transactions.

828. Total number of STRs:

	2007	2008	2009	2010	2011	TOTAL
Total STRs	4668	7366	3	6404	3	13867

829. The system of reporting of suspicious transactions should be streamlined. The number of reports submitted to the FMS is very high (over 40,000 and almost the same as CTRs). This number can be explained by reliance on a system based on fixed indicators that trigger automatic reports, and also by a tendency of defensive reporting. The latter has been observed especially in the banking sector because of the penalties that were applied to certain banks for non-compliance with the reporting obligation. As mentioned above, unusual transaction in the sense used in Recommendation 11 is also reported to FMS.

830. FMS requires all monitoring entities to report suspicion. However, most of the reports received to date have come from banks.

831. Overall, the quality of reporting of suspicious transactions is poor and CTRs are sent to the FMS in an inconsistent manner which makes the reporting of suspicious transaction not very effective:

- Monitoring entities are confused about the different requirements of reporting. Some banks manuals were not clear to determine the different types of reports that should be submitted to the FMS.

- Electronic money institutions companies are not considered monitoring entities and therefore not required to report. Leasing companies became monitoring entities in December 2011 and have not started reporting yet.

- Some other sectors that are required to report never filed STRs, i.e. non Banks depository institutions, and others filed very few reports (i.e., insurance, insurance brokers and their agents). The supervision department at NBG and FMS staff considers that there are no risks in these sectors.

832. The level of reporting does not represent effective and adequate reporting across the whole of the banking sector and mostly defensive against sanctions imposed by NBG. Two attempted transactions were reported in 2010 and ten in 2011. FMS received most of the reports after the suspicious transaction had been carried out.

833. Representatives from FMS and FIs mentioned that the requirement for paying special attention on unusual transactions is leading to the filing of a high volume of suspicious reports due to confusion between this requirement and the one on filing STRs. Reporting entities always report complex, unusual large transactions automatically as required by the AML Law. Although they also report transactions related to persons in watch zones, they do not do an independent analysis of the jurisdictions that do not or insufficiently apply the FATF recommendations

834. The reporting regime for FT is not effective. In the absence of guidance and awareness of FT typologies, trends and indicators, financial institutions and DNFBPs are not capable to detect FT suspicions. In addition, there is confusion in the industry between STRs and requirements related to the UNSCRs as demonstrated by three false hits under the UNSCRs being submitted to the FMS in 2008 and three in 2009. Despite the very real threat of terrorism activity in Georgia, no reports have been received from any institution (FIs and DNFBPs) regarding terrorist financing. The threat of terrorism activity is evidenced by: i) The national threat assessment document 2010-2013 which

mentions the threat posed to Georgia by international terrorist organizations, ii) investigations on terrorism and terrorism financing conducted by Georgian law enforcement agencies, and iii) a recent (February 2012) bomb attack targeting an embassy in Tbilisi. When asked about reporting from the bank that is under investigation for money laundering and under inspection from NBG in October 2011, FMS staff specified that none of the STRs they had received from this bank were related to the ML investigation.

835. Sector specific guidance on suspicious transactions needs to be provided, and adequate and appropriate feedback needs to be given to FIs (and DNFBP) requiring to make suspicious transaction reports in line with the FATF Best Practice Guideline on Providing Feedback to Reporting Financial Institutions and Other Persons.

836. As detailed under Recommendation 26, there weres a high number of STRs based on ML and 314 cases opened by the FIU since 2004, resulting in 79 disseminations to law enforcement. This attrition rate seems to indicate that the quality of STRs is poor and the overall reporting regime may not yet be fully effective.

3.7.2. Recommendations and Comments

837. In order to comply fully with Recommendations 13, 14, and 25, the authorities are recommended to:

Recommendation 13 and 14 and SRIV:

- Require electronic money institutions companies to report STRs.
- Amend the FT offence to bring it in line with the FT convention.
- Ensure that supervisors and FMS draw up an action plan to encourage reporting across all sectors – a prioritized and phased plan based on potential ML and FT risks posed by the different sectors may be necessary, given overall resources, to effectively bring this about. Training and effective enforcement should also be implemented.
- Amend Article 12 of the AML Law to ensure that protection and tipping-off requirements extend to temporary or long term establishment situation of staff and apply to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision. Also, this protection should be available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

Recommendation 25

838. Ensure that competent authorities, and particularly FMS:

- Provide guidance to clarify the different types of reporting, i.e. suspicious and threshold.

- Assist the FIs in understanding the requirement on monitoring or paying special attention to unusual transactions and those related to watch zone.

- 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, and require treating them differently than other types of reporting.

- Strengthen the guidelines and feedback across all sectors to: (i) incorporate different examples covering sectors other than banking; and (ii) provide more Georgian examples of money laundering and terrorist financing typologies.

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

	Rating	Summary of factors underlying rating
R.13	**LC**	• ML Reporting requirements do not extend to electronic money institutions. **Effectiveness:** • Important sectors such as exchange bureaus and insurance companies are filing very low numbers of STRs. • Effectiveness was not established: weak quality of suspicious reporting with respect to money laundering as a consequence of defensive filing. Also, the scope of the STR requirement is not clear and confused with other types of reporting. • None of the STRs were related to FT cases.
R.14	**LC**	• Protection of information and tipping-off requirements do not extend to temporary or long term establishment situation of staff. • The protection against liability does not apply to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision. Also, this protection should be available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal

		activity actually occurred.
R.19	**C**	• This Recommendation is fully met.
R.25	**PC**	• Limited guidelines and feedback are only predominately orientated towards the banking and insurance sector; no account is taken of other reporting entities. **Effectiveness:** • There is no effective feedback being offered via the FMS or other competent body to reporting institutions, including general and specific or case-by-case feedback.
SR.IV	**LC**	• FT Reporting requirements do not extend to electronic money institutions companies. • Limited scope of the FT offence affects the reporting requirement. **Effectiveness:** • The definition of FT suspicious transactions is now comprehensive after it has been amended in January 2012 to include terrorist organizations; however this additional aspect has not been tested. • FIs met during the assessment are not capable of detecting FT suspicion due to the lack of guidance and awareness of FT typologies, trends and indicators. • Despite the very real threat of terrorism and TF activity in Georgia, no STRs relating to terrorist financing have been received from any financial institution.

3.8. Internal Controls, Compliance, Audit, and Foreign Branches (R.15 & 22)

3.8.1. Description and Analysis

Legal Framework:

839. The requirement for financial institutions to maintain internal controls for AML/CFT is provided in Article 8 of the amended AML/CFT Law mentioned above. This provision is further elaborated in the decrees issued by the FMS for each financial line in the form of regulation on "Approval of the Regulation on Receiving, Systemizing and Processing the Information by Commercial Banks and Forwarding to the Financial Monitoring Service of Georgia." This is provided in Article 4 of the Regulation for Commercial Banks; Article 4 of the Regulation for Microfinance Organizations; Article 4 of the Regulation for Money Remittance Entities; Article 4.3 of the Regulation for Insurance Organizations and Founders of Non-State Pension Scheme; Article 4 of the

Regulation for Brokerage Companies; Article 4 of the Regulation for Securities Registrars; Article 4 of the Regulation for Credit Unions; and Article 4 of the Regulation for Currency Exchange Bureaus.

Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 and 15.1.2):

840. The requirement for financial institutions to establish internal policies and procedures on AML is set out in Article 8 of the AML/CFT Law ("Obligations of Monitoring Entities to Implement Internal Control") and the relevant sectoral regulations according to which monitoring entities are required to develop internal regulations (internal control procedures) and to take adequate measures for their implementation. Article 8.1 of the AML/CFT Law sets out that financial institutions are required to ensure the implementation of internal control for the purpose of preventing illicit income legalization. Article 8.2 of the same Law further provides that financial institutions shall be obligated to develop the internal regulations (internal control procedures) and take adequate measures for their enforcement. Such internal regulations shall include "established rules and procedures for identification of clients and persons willing to establish business relationship, analyzing information, revealing suspicious transactions within the monitoring entity and rules and procedures for transfer of information to the Financial Monitoring Service in conformance with requirements of this Law and normative acts of the Financial Monitoring Service and with consideration of work specificity of monitoring entities". In addition, an employee, or the structural unit, responsible for revealing suspicious transactions and forwarding the information and his duties shall be identified.

841. As at the time of the on-site visit, there was no wording in Article 8 of the AML/CFT Law to address internal controls for the financing of terrorism. Sectoral regulations require financial institutions to develop rules and procedures for identification of clients, analyzing of information, revealing of suspicious transactions within the monitoring entity, record keeping and transferring of information to the Financial Monitoring Service, an employee, or the structural unit in charge of revealing suspicious transactions and ensuring internal control. The regulations establish the requirement for monitoring entities to ensure that all employees should get acquainted with the internal regulation. This is set out in the Regulation for Commercial Banks–Article 4.3; Regulation for Microfinance Organizations–Article 4.3; and Regulation for Money Remittance Entities–Article 4.3; Regulation for Securities Registrars–Article 4.3; Regulations for Insurance Companies–Article 4.3; Regulation for Credit Unions–Article 4.3 and Regulation for Currency Exchange Bureaus–Article 4.2.

842. Subsequent to the on-site visit, on December 20, 2011, the Georgian authorities amended Article 8 of the AML/CFT Law and expanded the requirement on internal controls imposed on financial institutions to include the aspect on financing of terrorism. Prior to the amendment, the requirement covered internal controls relating to AML only.

Appropriate Compliance Management Arrangements (c.15.1):

843. Article 8, paras. 2, 4, and 5 of the AML Law include a direct mandatory obligation for monitoring entities to identify and designate the relevant staff member in charge, or a structural unit responsible to control over:

a) the implementation of the internal regulation, in compliance with the procedure and frequency defined under the regulation; and

b) to submit written information on the transactions subject to monitoring to the management body of the monitoring entity, in compliance with the procedure and frequency defined under the regulation (Articles 8.4 and 8.5 of the AML Law of Georgia).

844. There is a provision in the sectoral Regulations that the AML officer of financial institutions should be designated at the senior hierarchy (management) level. This is provided in Article 5.1 of the Regulation for Commercial Banks; Article 5.1 of the Regulation for Insurance Companies and Founders of Non-State Pension Schemes; Article 4.6 of the Regulation for Brokerage Companies; Article 4.5 of the Regulation on Securities Registrars; Article 5.1 of the Regulation on Credit Unions; and Article 5.5 of the Regulation on Microfinance Organizations.

845. In the case of currency exchange bureaus, according to Article 5.b of the Regulation for Currency Exchange Bureaus, the owner of the Currency Exchange Bureau is obliged to designate an employee in charge of monitoring on the basis of appropriately legalized resolution and assign him/her to fulfill the respective functions (if the owner is a physical person, he/she may perform these functions himself/herself); similar provision is set forth in the Regulation on Money Remittance Services–Article 4.3. The assessment team recognized that a significant number of currency exchange bureaus in Georgia are sole proprietorships and that the FATF Recommendation in this area allows for a risk-based approach. However, having an explicit provision which allows the owner of currency exchange bureau and money remittance services to also act as the AML officer does not represent proper segregation of duties and proper controls and is not helpful for instituting a proper control culture in these two sectors.

Compliance Officer's Access to Relevant Information

846. Article 5.5 of the Regulation for Commercial Banks requires banks to authorize the AML officer to have access to any information necessary for fulfillment of his/her functions and the officer in turn is obliged to ensure observance of confidentiality of any information related to his/her activities. Similar provision is included in the sectoral Regulations for Microfinance Organizations–Article 5.5 and Insurance Companies and Founders of Non-State Pension Schemes–Article 5. At the time of the on-site visit, such a provision ensuring the AML officer's access to relevant information was not present in the Regulations for the following financial institutions–Securities brokers, securities registrars, credit unions, money remittance service operators and currency exchange bureaus. In January 2012, legal amendments were made to sectoral regulations to provide AML/CFT officer with access to relevant information (Regulations for Securities Registrars–Article 4.6; Regulations for broker companies–Article 4.7; and Regulations for Credit Unions–Article 5.5.

847. No amendment was made for the sectors of money remittance service operators and currency exchange bureaus. The Georgian authorities indicated that because a number of money remittance service operators and currency exchange bureaus were sole proprietorships and that the owners of such businesses were also the compliance officers, it was not necessary to include a provision to allow the compliance officers to have timely access to customer information. However, the assessors were of the view that because there were 27.4 percent (or 409 entities) of currency exchange bureaus which were non sole-proprietorships before taking into account the number for money remittance service operators, there should be a provision for these two sectors on providing compliance officers with timely access to customer information for them to discharge their duties effectively.

Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):

848. The direct obligation for financial institutions to have an adequately resourced and independent audit function to prevent ML and TF is not present in the AML Law, sectoral laws or other enforceable means.

849. The direct obligation for financial institutions to have an adequately resourced and independent audit function exists for commercial banks only. Article 16 of the Law on the Activities of Commercial Banks requires commercial banks to have an audit committee comprising independent members. While an audit committee is not the same as an internal audit function, commercial banks by logical extension are under this requirement to have an internal audit function. There is however no specific requirement that the internal audit function should cover compliance testing with AML/CFT policies, procedures and controls.The requirement for internal or external audits do not exist for other categories of financial institutions.

Ongoing Employee Training on AML Matters (c. 15.3):

850. Article 8.6 of the AML Law of Georgia requires monitoring entities to provide periodic training for employees involved in the process of detecting ML/FT. Articles 4 and 5 of the Regulation for Commercial Banks further provide that banks are required to implement a training program for their employees and that the training process shall be ongoing in order to ensure acquaintance of employees with changes introduced in the Georgian legislation, normative acts, the bank's internal instructions as well as with new techniques, methods and trends of money laundering and FT. Similar provisions are set out in the sectoral Regulations for Microfinance Organizations–Article 4.2.e; Article 5.4.c; Insurance Organizations and Founder of Non-State Pension Scheme–Article 4.2.e; Article 5.4.c.

851. At the time of the on-site visit, there was no provision in the regulations about the scope of AML training to be provided to staff for the categories of securities brokers, securities registrars, currency exchange bureaus, money remittance service operators and credit unions. Further to the on-site visit, legal amendments were made to the sectoral regulations in January 2012 which set out the requirement and scope of AML training for the categories of securities registrars, broker companies and credit unions (Regulations for Securities Registrars–Article 4.2.g; Regulations for Broker Companies–Article 4.2.g; and Regulations for Credit Unions–Article 5.4).

852. As for the categories of money remittance operators and currency exchange bureaus, the amendments have introduced the requirement for AML training. However, there is no provision on the scope of AML training to be provided. Article 4.3 of Regulations for Money Remittance Operators provides that money remittance entities shall "ensure relevant training programs for employees of the Money Remittance Entity with respect to issues of preventing illicit income legalization and FT." Similar provision is set out for currency exchange bureau in Article 4.3.f of the Regulations for Currency Exchange Bureaus.

Employee Screening Procedures (c. 15.4):

853. Sectoral Regulations on AML require financial institutions to put in place screening procedures for ensuring high standards when hiring employees for the purpose of preventing ML and

FT. Article 4.6 of the Regulation for Commercial Banks provides that banks should have a policy for "selection of the Bank's staff (including investigation of the employees' qualifications and reputation), procedures set under the internal instructions and rules shall at maximum extent facilitate prevention of feasible involvement of the Bank's employees in financing illicit income legalization and FT". Similar provisions are set out for Microfinance Organizations–Article 4.6; Insurance Companies–Article 4.6; Securities Brokers–Article 4.6; Securities Registrars–Article 4.7; and Credit Unions–Article 4.7. However, there was no such provision on employee screening for the sectors of money remittance service operators and currency exchange bureaus.

Additional Element—Independence of Compliance Officer (c. 15.5):

854. There is a provision in the sectoral regulations which requires that the AML/CFT compliance officer report only to the administrator of the financial institution. This provision is to ensure the independence of the AML/CFT compliance officer (Regulations for Commercial Banks–Article 5.6; Regulations for Credit Unions–Article 5.6; Regulations for Microfinance Organizations–Article 5.6; and Regulations for Insurance Companies–Article 5.6).

Implementation:

855. The legal requirements to establish and maintain internal controls on AML, conduct ongoing employee training and doing employee screening prior to hiring, are noted to be generally implemented by financial institutions although with varying degree of effectiveness. Compliance with these requirements is checked by NBG examiners during the supervisory cycle of on-site inspections, and inspections are carried out on a surprise basis. The institutions that the assessment team met with were able to show a copy of their internal policies and procedures on AML, and explained their procedures on performing customer due diligence and monitoring of threshold and suspicious transactions to FMS. All the institutions interviewed also had an AML officer as required by the AML Law and Regulations. The AML officers interviewed indicated that their organizations provided them with adequate access to customer identification data and other CDD information, transaction records, and other relevant information for them to discharge their duties. The institutions also indicated that they have training programs in place for staff, particularly those involved in direct contact with customers and financial transactions and human resources procedures for screening new potential hires to prevent ML or TF activities.

856. Given that at the time of the on-site visit there was no specific wording in the AML Law and the sectoral Regulations relating to internal controls on CFT, the policies and procedures developed by most of the financial institutions interviewed followed this approach and only addressed the AML and not the CFT aspect. A few institutions, however, indicated that it was understood that the provisions cover CFT and that their policies and procedures contain rules on identifying transactions which might be related to the financing of terrorism.

857. The assessment team reviewed the policies and procedures developed by the banks interviewed and were of the view that these banks have developed rather detailed instructions relating to internal controls on AML. There was limited mention of CFT arising from the absence of coverage at the time of the on-site in the Law and Regulation as mentioned earlier. The policies and procedures are approved by the board of directors and contain sections and operating instructions on prohibition of certain types of accounts such as anonymous accounts; customer identification and verification;

identifying and reporting threshold and suspicious transactions; screening customer names against the list of terrorist names; the rights and responsibilities of the AML department and officer; the responsibilities of various operational departments and branches in monitoring transactions to guard against ML or FT risks; instruction on suspending transactions due to suspicion; and record retention. During the interviews, the banks were also able to explain the implementation of these internal controls in their day-to-day operations. Compliance officers of these banks generally exhibit a certain level of knowledge and expertise of the implementation of internal controls, although some lacked an adequate level of understanding when it came to business lines dominated by business managers such as wealth management. There was very limited understanding about the issue concerning cover payments (for SWIFT payments), although the banks have implemented the new payment template to minimize the possibility of effecting transactions used to conceal the identity of underlying customers. Some compliance officers also thought some transactions used to circumvent tax issues in certain countries were justified by economic explanation of the transactions.

858. The management teams of the banks met by the assessors also receive reports and review the day-to-day activities of employees for internal control purposes. This requirement is set out in the AML law which requires the AML officer to submit information on STR and CTR to the management on a periodic basis. Banks interviewed indicated they generally submit such information to their management on a monthly or quarterly basis. Their internal audit function also performs audits on the banks and branches compliance with AML requirements. Training programs on AML have also been provided to compliance, front line and new staff involved in dealing with customers or processing customers' transactions, and tracking mechanisms are in place to identify staff that have either not attended or completed the training.

859. The less resourced sectors of securities brokerage companies, securities registrars, credit unions, microfinance organizations, money remittance service entities and currency exchange bureaus generally have less developed internal policies and procedure, taking into account the size and nature of their businesses and resources. In some cases, their internal policies and procedures were a compilation of regulatory requirements and guidance, supplemented by some in-house rules. In the case of money remittance service entities and currency exchange bureaus, the AML explicitly allows them to designate the owner to also act as the AML officer. While this practical accommodation is necessary from the fact that a significant portion of these entities are operating in the form of sole proprietorships, this arrangement of allowing the owner to also serve as the AML officer does not add value from the control point of view. For the sectors of securities brokers, securities registrars, currency exchange bureau, money remittance service operators and credit unions, it was noted that employee training was in most cases very basic and primarily focused on the topic of reporting transactions.

Effectiveness:

860. In terms of effectiveness and risk assessment, most of the financial institutions interviewed were able to identify high risk customers and high risk products and services. However, when it came to identifying risks in the Georgian economy, most had a certain level of complacency about ML risks in the country. Most were of the view that the economy was not vulnerable to ML owing to very low level of perceived "non-resident" activity. A number of the financial institutions also spent basic effort on identifying beneficial ownership and emphasized that it was a highly challenging issue for financial institutions to implement. There are also questions about the effectiveness of internal

policies/training based on the low level of STRs/absence of STRs in some sectors as discussed in R.13 and SR.IV.

861. The NBG has been determining, through on-site examinations, the adequacy of the financial institutions' policies and procedures with regard to areas such as CDD, record keeping, monitoring of accounts, reporting of suspicious transactions, and training. From the interviews with NBG and financial institutions, the team was informed that NBG examiners typically review a sample of the financial institutions' customer files, transaction records and other relevant reports to obtain an overview of the institutions' control environment and effectiveness of the measures taken to counter ML/FT. Examiners also assess whether there were recurring weaknesses and whether remedial procedures have been adequate to control the risk. In sum, Georgia has imposed requirements relating to criteria 15.1, 15.3, and 15.4 on financial institutions to maintain internal controls relating to the development of internal policies and procedures; provision of ongoing staff training on AML; and requiring the screening of staff prior to hiring. These measures are implemented by financial institutions, but with varying degree of effectiveness. Effectiveness is affected to a certain extent by a notable level of complacency about ML risks in the Georgian economy. There is no requirement relating to criterion 15.2 on maintaining an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls. There is also no provision set out on the scope of AML training under criterion 15.3 to be provided to employees for money remittance operators and currency exchange bureaus.

Recommendation 22

Application of AML Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 and 22.1.2):

Legal Framework:

862. The legal framework for commercial banks, insurance companies and securities market participants to apply AML group policy on their overseas branches and subsidiaries is set out in the respective sectoral laws. The relevant provisions are found in Article 10.1 of the law on Commercial Banks; Article 28.1 of the Law of Georgia on Insurance; and Article 21.1of the Law of Georgia on "Securities' Market", securities'' registrar and brokerage company. For banking, the legal provision is further supplemented by Article 5 of the Decree of the President of the NBG of February 22, 2010, #24/01. Only these three categories of financial institutions are envisaged to have overseas branches and subsidiaries.

863. In the case of commercial banks, this is set out in Article 10^1 of the law on Commercial Banks which specify requirements for international subsidiaries of Georgian banks on preventing ML. The requirements specify that the bank within 14 days of establishing a subsidiary abroad shall inform the NBG that its international subsidiary has adopted an AML program according to Georgian law and FATF recommendations. If the host country does not allow for the fulfillment of FATF recommendations and prevention of ML, then the bank shall: a) take an obligation in written form that the subsidiary will follow requirements on facilitation the prevention of illicit income legalization according to Georgian law and FATF recommendations; and b) the bank shall guarantee to inform the National Bank about the fact that the subsidiary's host country has restrictions regarding prevention of illicit income legalization, and accordingly the subsidiary is not able to follow the Georgian law and FATF requirements.

864. With respect to branches of banks, this requirement is provided in Article 5 of the Decree of the President of the NBG of February 22, 2010, #24/01. A commercial bank, when establishing a branch outside Georgia, is obliged to submit a statement from the Supervisory board of the financial institution stating that the branch from the moment of commencing its business operations will carry out the policy against money laundering and FT, which means implementing internal control mechanisms and setting hiring standards, appointing a compliance officer, training of staff, having an internal audit function to audit AML, and informing the NBG if the branch is unable to apply AML measures under the Georgian legislation and FATF Recommendations. The financial institution is also required to submit a full package of laws and by-laws of the AML/CFT system of the country where the branch is located.

865. Similar provisions are provided in Article 28.1. of the Law of Georgia on Insurance and Article 21^1 of the Law of Georgia on "Securities' Market," securities'' registrar and brokerage company.

866. There is no specific provision that, where the minimum AML requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that local host countries' laws and regulations permit. However, this is implied in the requirement that overseas branches and subsidiaries are required to implement AML measures according to Georgian law and FATF Recommendations.

Requirement to Inform Home Country Supervisor if Foreign Branches and Subsidiaries are Unable to Implement AML Measures (c. 22.2):

867. Article 10^1 of the Law on Commercial Banks and Article 5 of the Decree of the President of the NBG of February 22, 2010, #24/01 require banks to inform the NBG if their branches and subsidiaries are unable to implement AML measures. These provisions stipulate that if the laws and regulations in the foreign country, where the subsidiary or branch is located, do not provide the legal basis for compliance with the Georgian AML legislation and FATF recommendations by the subsidiary or branch, or measures for fighting money laundering and terrorist financing are not used, and the FATF recommendations are not or are insufficiently applied, the Supervisory board of commercial banks shall inform NBG and undertake an obligation in writing that it will ensure application by its branch of measures set for fighting illicit income legalization and terrorist financing in conformity with requirements established in Georgia for banks and the FATF recommendations.

868. Similar provisions are provided in Article 28.1. of the Law of Georgia on Insurance and Article 21^1 of the Law of Georgia on "Securities' Market", securities'' registrar and brokerage company.

Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):

869. There is no explicit provision requiring the application of consistent CDD measures at group level. However, all the banking groups interviewed informed the assessors that they follow group standards and policies.

Implementation:

870. At the time of the on-site visit, there were two bank subsidiaries belonging to Georgian financial institutions that were operating overseas in Ukraine and Belarus (subsequently after the on-site in early 2012, one bank subsidiary was disposed of with only one bank subsidiary left in Belarus). These Georgian financial institutions implemented the legal requirement to apply group-wide policy on AML by requiring the overseas operations to observe the requirements in Georgia or the host country. In addition, the supervisory councils of the financial institutions are required to provide a written statement to NBG that the overseas entities comply with AML measures. In the case of different requirements in the host country, financial institutions would notify NBG.

871. Based on the interviews conducted, relevant financial institutions indicated that they were required by the sectoral laws and NBG licensing decree to comply with AML group wide policy for their branches and subsidiaries. As a result, they had established and been applying group-wide AML policies and measures to their foreign branches or subsidiaries. To illustrate implementation, there was one case where the host country had a lower standard for the interpretation of ultimate beneficial ownership and the relevant financial institution indicated that it had sent a letter to NBG in compliance with the requirement.

872. These institutions had reporting structures for the overseas operations to report to Head Office on implementation of AML/CFT measures. Compliance was also checked by group internal auditors who audit the subsidiaries. NBG also checked on implementation by requiring a written statement from the supervisory board of banks, insurance companies and securities brokers and registrars to ensure that the requirement on applying AML group-wide policy was observed.

Effectiveness:

873. The Georgian financial sector is not yet very developed and has established only two bank subsidiaries overseas. Further to the disposal of one overseas subsidiary in early 2012, there was only one overseas bank subsidiary in Belarus.

874. Other categories of financial institutions such as credit unions, microfinance organizations, currency exchange bureaus and money remittance operators do not establish overseas operations outside of Georgia, and it is not envisaged that their business models provide scope for the setting up of overseas operations.

875. Georgia has imposed a requirement on its commercial banks, insurance and securities companies that their overseas subsidiaries and branches should comply with home country AML requirements and FATF Recommendations. However, effectiveness cannot be tested in this case as there was no evidence that NBG had covered the application of group-wide AML/CFT policies in its examination scope. There was no procedure set out in the On-site Inspection Manual that examiners should examine financial institutions' management of overseas offices.

876. Overall, the level of risk from overseas operations is limited given there was only one bank subsidiary operating outside Georgia and its asset size and revenue size constituted both one percent of its parent bank's figures.

3.8.2. Recommendations and Comments

Recommendation 15

- For money remittance operators and currency exchange bureaus, introduce a provision to ensure that the AML officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

- Introduce a provision for money remittance operators and currency exchange bureaus on employee screening procedures.

- Establish a requirement for financial institutions to have an adequately resourced and independent audit function for AML purposes.

- For money remittance operators and currency exchange bureaus, expand the provision on AML training to indicate that the training should be provided on an ongoing basis to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting.

- Consider the policy decision and appropriateness of current provisions which allow for the owner of currency exchange bureau and money remittance services to also act as the AML officer.

Recommendation 22

- In case the activity of Georgian institutions abroad further develops, the authorities should consider introducing more supervisory monitoring of financial institutions' management of overseas branches and subsidiaries.

3.8.3. Compliance with Recommendations 15 and 22

Rating Summary of factors underlying rating

(R. 15 rated as PC and R.22 as NC in the 2007 MER)

	Rating	Summary of Factors Underlying Rating
R.15	**PC**	• For money remittance operators and currency exchange bureaus, there was no provision to ensure that the AML officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • There was no provision for money remittance operators and

		currency exchange bureaus on employee screening procedures. • Lack of requirement for financial institutions to have an adequately resourced and independent audit function to test the compliance with AML/CFT policies, procedures and controls. • For money remittance operators and currency exchange bureaus, lack of specific provision on the scope of AML training to indicate that the training should be provided on an ongoing basis and to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. **Implementation:** • Wording on internal controls to cover CFT aspect was recently included and effectiveness cannot be assessed.
R.22	**C**	• This Recommendation is fully met.

3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Legal Framework:

877. The legal framework on prohibiting the establishment of shell banks in Georgia and the establishment of business relationship of Georgian financial institutions with shell banks is set out in Article 2.t and Article 11.1 of the AML Law. This is further supplemented by FMS Decrees issued to commercial banks and microfinance organizations as contained in Article 6.5 of the Regulation on Commercial Banks and Article 6.5 of the Regulation on Microfinance Organizations.

878. The definition and relevant provisions on shell banks are included in the AML Law of Georgia (Articles 2.t and 11.1) and the sector specific Regulations. According to Article 2.t of the AML Law of Georgia, a shell bank is defined as a bank, which is physically not present in the country where it is registered or licensed and which is not being controlled and supervised.

Prohibition of Establishment of Shell Banks (c. 18.1):

879. Article 11.1of the AML Law of Georgia prohibits the establishment and existence of shell banks as well as the establishment of business relations with such banks (including correspondent relations).

Prohibition of Correspondent Banking with Shell Banks (c. 18.2):

880. Banks in Georgia are prohibited from entering into or continuing correspondent banking relations with a shell bank. This is provided under Article 11.1 of the AML Law of Georgia and Article 8.5 of the Regulation for Commercial Banks. Article 11.1.2 of the AML Law of Georgia requires representatives of the financial sector to undertake reasonable measures in order to ascertain "whether the person they have business relationship with (or person with whom they are establishing business relations) belongs to the category of shell bank".

881. Similar provisions are included in Article 6.8 of the Regulation for Microfinance Organizations. Other categories of financial institutions do not maintain correspondent banking relationships.

Requirement to Satisfy Respondent Financial Institutions on Prohibition of Use of Accounts by Shell Banks (c. 18.3):

882. In addition to Article 11.1.1 of the AML Law which prohibits Georgian financial institutions from having business relationships with shell banks, Article 8 of the Regulation on Commercial Banks places a requirement on banks to ascertain if their respondent banks have any dealings with shell banks. This provision sets out that banks shall be prohibited to establish correspondent relations with shell banks. They shall undertake reasonable measures to identify:

a) Whether the person they have business relationship with (or person with whom they are establishing business relations) belongs to the category of the shell bank; and

b) Whether the person they have business relationship with (or person with whom they are establishing business relations) has relations with the shell bank.

883. Similar provision for microfinance organization is set out in Article 6.8 of the Regulation on Microfinance Organizations.

884. Given that the wording of the provision does not explicitly require financial institutions to satisfy themselves that their respondent financial institutions do not permit their accounts to be used by shell banks, this criterion is not fully met.

Implementation:

885. The requirement on prohibiting the establishment of shell banks in Georgia is implemented by NBG through the licensing process. It disqualifies a shell bank from obtaining a banking license in Georgia through requirements which include financial resources, shareholder, ownership structure and reputation of major shareholders/controllers, management and staff expertise. The applicant entity also needs to obtain approval for the appointment of senior executives who are required to be based in Georgia, and inform NBG of the date of commencement of business. NBG has a validity period for its license which is set at six months, after which the license will no longer be valid if no operations have been set up during that period.

886. Banks interviewed by the evaluators indicated that they observed the requirement on prohibiting financial institutions from having business relationships with shell banks and that they

should ascertain whether their respondent financial institutions have relations with shell banks. These banks implement the necessary measures by requiring respondent banks to complete a detailed questionnaire on general information, ownership and management information, dealings with politically exposed persons, general AML policies, practices and procedures, risk assessment, customer due diligence, reportable transactions and policy on reporting STR, screening, monitoring and prohibitions, and AML training. The measures are examined by NBG during on-site inspection.

Effectiveness:

887. Georgia has an explicit prohibition on the operation of shell banks in Georgia and this is being implemented by NBG through its licensing and monitoring process. Georgia also has requirements prohibiting financial institutions from having business relationships with shell banks and that they should ascertain whether their respondent financial institutions have relations with shell banks. As part of NBG on-site inspection procedures, examiners would review the list of correspondent banking accounts opened, examine the account opening procedures and check compliance of the financial institution with the prohibition on maintaining correspondent banking relationships with shell banks.

888. In general with respect to correspondent banking relationships, the banks indicated to the assessment team that they perceive international correspondent banking as one of the high risk business areas susceptible to money laundering or terrorist financing. Establishment of a business relationship with a respondent bank is subject to management's approval. They also shared a copy of the KYC questionnaire with the assessment team which requires their respondent banks to confirm that the latter do not have any relationships with shell banks. While the provision only requires financial institutions to ascertain if their respondent banks have relations with shell banks and stops short of requiring them to ensure that respondent banks do not permit their accounts to be used by shell banks, the banks interviewed indicated that it was understood they should ensure that their respondent banks do not have dealings with shell banks.

3.9.2. Recommendations and Comments

- The authorities are recommended to introduce a specific provision that explicitly requires financial institutions to satisfy themselves that their respondent financial institutions do not permit their accounts to be used by shell banks.

3.9.3. Compliance with Recommendation 18

(R. 18 rated as PC in the 2007 MER)

	Rating	Summary of factors underlying rating
R.18	**LC**	• Lack of a specific provision that explicitly requires financial institutions to satisfy themselves that their respondent financial institutions do not permit their accounts to be used by shell banks.

3.10. Regulation, Supervision, Guidance, Monitoring and Sanctions

The Supervisory and Oversight System - Competent Authorities and SROs: Role, Functions, Duties, and Powers (Including Sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Legal Framework:

889. The legal framework for the designation and supervisory powers of the competent authority responsible for AML supervision is given in Articles 4 and 11 of the AML Law. Under Articles 4.a and 11 of the AML Law, NBG is the supervisory authority for commercial banks, currency exchange bureaus, and nonbank depository institutions, microfinance organizations, entities performing money remittance and currency exchange services, broker companies and securities' registrars, insurance companies and non-state pension scheme founders with respect to ensuring compliance with the AML legislation by these entities. The legal basis for AML/CFT supervision for financial institutions is further elaborated in the Organic Law of NBG and respective sectoral laws and regulations governing the activities of commercial banks, insurance companies, securities brokers, securities registrars, microfinance organizations, credit unions, money remittance service entities and currency exchange bureaus (Article 49.1.c) of the Organic Law of Georgia on NBG; Article 29 of the Law on the Activities of Commercial Banks; Article 27 of the Law on Credit Unions; Article 51.c of the Organic Law on NBG; Article 21.b of the Law on Insurance; Article 52.e of the Organic Law on NBG; Article 32.3 of the Securities Market Law; Article 50.1 of the Organic Law on NBG; Article 50.2 of the Organic Law on NBG).

Competent authorities—powers and resources: Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML Requirement (c. 29.1); Authority to conduct AML Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1); Adequacy of Resources—Supervisory Authorities (R.30)

Designation of Competent Authority (c. 23.2):

890. The main legislative document with respect to AML supervision is the AML Law, which defines the supervisory bodies for monitoring entities. Articles 4 and 11 of the AML law set out that supervisory authorities have the responsibilities to monitor the compliance of entities under their supervision with AML requirements. Under Article 13 of the AML Law, supervisory bodies also have the duty established under AML Law to cooperate with each other and with their foreign counterparts. Articles 4.a and 11 of the AML Law provide that NBG is the designated supervisory authority for commercial banks, currency exchange bureaus, and nonbank depository institutions, microfinance organizations, entities performing money remittance and currency exchange services, broker companies and securities' registrars, insurance companies and non-state pension scheme founders with respect to ensuring compliance with the AML legislation by these entities. NBG is both the central bank and integrated regulator that exercises supervisory oversight responsibilities over the banking, insurance, securities and nonbank institutions through the AML law, the Organic Law on the National Bank of Georgia and the sectoral laws on Banking, Insurance, Securities and nonbank financial institutions. Articles 48(2) and 50(2) of the Organic Law of Georgia directly refers to the

authority of NBG to supervise currency exchange bureaus and money remittance service providers for the purpose of AML/CFT.

891. NBG regulates and supervises its financial institutions with respect to their compliance with the AML Law and the decrees issued by the FMS on AML and guidelines issued by NBG.

892. The legislative framework providing for the supervision and regulation of financial institutions, including in terms of AML, has undergone some structural changes since 2007 as a result of the Georgian government's efforts to strengthen the financial system and improve the supervision in the financial sector. The Georgian financial sector was initially supervised by three independent supervisory bodies: the NBG which supervised commercial banks, nonbanking depositary institutions, microfinance institutions, and exchange bureaus; the Insurance State Supervision Service which supervised the Insurance sector; and the Securities Commission which supervised the securities market in Georgia. Later, a unified and a single regulatory body Financial Supervisory Agency of Georgia (GFSA) was established, while NBG reverted to being a central bank. This was further reformed with the functions of the GFSA vested with the NBG, and the NBG is now the integrated supervisor for the whole financial sector in Georgia and the central bank.

893. The following chart shows the AML supervision arrangement and the number of institutions subject to supervision.

894. The following chart shows the AML supervision arrangement and the number of institutions subject to supervision.

Type of Institution	No. of Licensed/ Registered Institutions as of end Sep 2011	Prudential supervisor/ regulator	Supervisor (licensing or Registration Requirement)	AML Supervisor
Commercial Banks	19	NBG	NBG /Licensing	NBG
Microfinance Organizations	57	NBG	NBG /Registration	NBG
Credit Unions	18	NBG	NBG /Licensing	NBG
Insurance Companies	16	NBG	NBG/Licensing	NBG
Non-State Pension Scheme Founders	0	NBG	NBG/Registration	NBG
Insurance Brokers	5	NBG	NBG/Registration	NBG
Securities Brokers	11	NBG	NBG /Licensing	NBG

Securities Registrars	6	NBG	NBG/Licensing	NBG
Stock Exchange	1	NBG	NBG/Licensing	Not subject to AML law and supervision
Central Depository	1	NBG	NBG/Licensing	Not subject to AML law and supervision
Money Remittance Services	58	NBG	NBG/Registration	NBG
Currency Exchange Bureaus	1485	NBG	NBG/Registration	NBG
Leasing subject to AML/CFT Measures since Dec. 2011)	Not available		Registration	MOF

895. Responsibility for AML supervision of financial institutions is clearly delineated in the AML Law and vested with the NBG. While the FMS has issued a number of regulations relating to AML requirements, the power to supervise the compliance with these requirements rests with NBG. Under Article 11 of the AML Law, if the supervisory body (NBG) discovers any violations of the requirements, it shall immediately inform the FMS and apply the appropriate sanction against the infringer.

Power for Supervisors to Monitor AML Requirement (c. 29.1):

896. The NBG has a range of powers to monitor and ensure financial institutions' compliance with AML measures, including powers of off-site surveillance, auditing and on-site visits and inspections. Supervisory powers are performed in accordance with the Organic Law on the National Bank of Georgia. The main powers and authority of the NBG are defined under the Organic Law, and supplemented by appropriate provisions from the sector-specific legislation. The NBG is authorized to receive any information within its own competence from financial institutions even if it concerns confidential information and is authorized to impose appropriate penalties in case of non-submission of requested information by financial institutions. Supervisory inspections are conducted on the basis of targeted AML inspections, and all inspections are carried out on a surprise basis without notification to the financial institutions. From time to time, AML inspections may be carried out at the same time as the inspection for prudential aspects. For supervisory purposes, NBG is authorized to inspect as well as to request directly from institutions to submit any information with respect to any issue related to the compliance with AML legislation.

897. The banking supervision department at NBG is responsible for supervising the banking sector, including AML/CFT risks in general. At the time of the on-site visit, there was no dedicated

unit for conducting off-site AML surveillance. NBG did not have the practice of collecting information or statistics on AML indicators off-site and nor did it have the practice of requesting financial institutions to complete an AML questionnaire or submit information on AML. As a result, there was no systematic approach to identifying financial institutions for inspection based on risk assessment. It selected financial institutions for on-site inspection primarily based on a time cycle basis. For instance, a bank rated as high risk based on the last inspection would typically get inspected in one to two years' time, while a bank rated as medium/low risk would generally get inspected in two to three years' time.

898. NBG gave consideration to the evaluation comment and further to the on-site visit and had decided to strengthen the supervision framework by introducing a systematic AML/CFT off-site monitoring. In the NBG policy document on supervision, it has set out its off-site monitoring function, using a risk-based approach to monitor the ML/TF risk profile of financial institutions. It has also included a questionnaire which financial institutions are required to complete to provide NBG with off-site information on institutions' AML/CFT policies and procedures, training programs, rules for monitoring transactions and information on the AML/CFT officer. The policy document also sets out guidelines on the coordination between the off-site and on-site functions for more effective supervision. The requirement to develop a supervisory plan of on-site examinations has also been introduced.

899. Legal provision on external audits of commercial banks is given in Article 27 of the Law on the Activities of Commercial Banks and NBG Regulation on External Audit. For such audits, external auditors are required to audit the financial statements and internal control mechanisms of the institution. Management letters are provided to NBG by the external auditors, in accordance with the regulation on external audit of commercial banks. In the management letters, weaknesses on internal controls, including issues related to AML/CFT are defined and in case of necessity, additional information may be requested by NBG.

900. NBG has the power to impose sanctions in accordance with the Organic Law and sector-specific legislation. Relevant provisions are provided in the Law on Activities of Commercial Banks; Law on Insurance; Law on Securities Market; Law on Microfinance Institutions; and Law on Credit Unions. In addition, NBG has issued regulation on pecuniary sanctions separately for each category of financial institution. Therefore, NBG has broad range of sanctions in case financial institutions do not comply with the AML legislation. This includes violations of the AML law as well as regulations issued by the FMS. For a detailed analysis of the sanctions regime and powers of NBG to impose specific sanctions, please refer to the section on Recommendation 17 below.

Authority to Conduct AML Inspections by Supervisors (c. 29.2):

901. NBG has the power to conduct on-site inspections and supervisory visits to financial institutions to examine their AML controls and procedures. The scope of NBG inspection includes the review of the financial institutions' policies and procedures, books and records, and sample or transaction testing. The power is set out in the following sectoral legislation.

Financial Institution	Legislation	Details on Supervision Power of NBG
Commercial Banks and Nonbank Depository Institutions	Article 49(1)(c) of the Organic Law of Georgia on NBG	NBG is authorized to inspect commercial banks and nonbank depository institutions and their subsidiaries, audit the accounting documents, components of financial statements and other material and receive any information from them within the scope of its competence. In the case of detection of signs of crime after an audit, the material shall be handed over to competent authorities.
	Article 29 of the Law on the Activities of Commercial Banks	Reports and Inspections (14. 03. 2008 N 5909) 1. Each bank shall prepare and submit to the NBG (both for the bank itself and separately for each of its subsidiaries) reports concerning organizational administrative and operational activities and concerning liquidity, solvency, and profitability in order to enable NBG to assess their financial conditions both individually and on a consolidated basis. These reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by regulation of NBG. 2. Each bank and each of its subsidiaries shall be subject to inspections by inspectors of NBG or by auditors appointed by it. If the inspection is being conducted in a branch office or subsidiary of a foreign bank, auditors may be employees of financial or controlling authorities operating in the given foreign country where the bank is located. 3. In its inspections of banks and their subsidiaries, NBG and its inspectors/auditors may: a) examine all books, accounts, funds, files and other documents of banks and their subsidiaries; and b) require that administrators and employees of banks and their affiliates submit for review information on the banks' shareholders, controlling persons and administrators and any information concerning the bank's operation and transactions. In case these requirements are not fully observed, sanctions set forth in Article 30 shall apply.
Credit Unions	Article 27 of the Law on Credit Unions	NBG shall supervise the activities of credit unions. Supervision implies issuance and revocation of licenses, any examination and regulation, imposition

		of limitations and sanctions, placement under temporary administration or liquidation, in accord with the Organic Law of the National Bank of Georgia and normative acts of the National Bank. NBG shall periodically inspect credit unions (both on-site and off-site) in order to analyze their financial condition and assess the compliance with this Law and normative acts of NBG.
Insurance Companies and Non-state Pension Scheme Founders	Article 51(c) of the Organic Law on NBG	NBG is authorized to inspect the observance of the requirements of normative and methodological documentations by insurers and non-state pension scheme founders, audit their accounting documents, components of financial statements and other material for which it may require the licensees to give any information within the scope of its competence.
	Article 21(b) of the Law on Insurance	NBG is entitled to supervise and examine observance by insurers of the requirements provided for in the normative and methodological documents, check accounting documents, components of financial statements and other materials for which it can request from the insurers any information within its competence.
Securities Market Participants	Article 52(e) of the Organic Law on NBG	NBG is authorized to monitor and inspect the activities of the securities market regulated participants.
	Article 32(3) of the Securities Market Law	NBG is entitled to inspect the observance by securities market participants of requirements provided for in the normative and methodological documents, check accounting documents, components of financial statements and other materials, for which it can request from the licensees any information within its competence.
Microfinance Organizations	Article 50(1) of the Organic Law on NBG	NBG shall supervise microfinance organizations by way of registration, cancellation of registration, inspection and imposition of sanctions.
Currency Exchange Bureaus	Article 50(2) of the Organic	NBG shall supervise money transfer agents and currency exchange points only by preventing

and Entities Conducting Money Remittance	Law on NBG	circulation of forged money and, for the purposes of the Law of Georgia on the Support of Prevention of Legalization of Illicit Proceeds, registering them, revoking their registration, inspecting them and setting minimum requirements and imposing sanctions on them.

902. All applications by Georgian financial institutions to establish a subsidiary or branch overseas are subject to NBG's approval. In their application, financial institutions are required to submit all relevant information, including information regarding the AML framework in the host country. Also the AML inspection unit has full powers to investigate the documents via the Georgian bank head office in relation to the established foreign branch and whether its compliance is satisfactory. There were two bank subsidiaries and one securities subsidiary operating in Azerbaijan, Belarus, and Ukraine as at end of September 2011.

903. NBG has signed supervisory MOUs with its counterparts in Azerbaijan, Belarus, and Ukraine with respect to on-site inspection access to these overseas subsidiaries. However, NBG has yet to conduct any inspection of these overseas subsidiaries.

904. NBG has developed an inspection manual for commercial banks, insurance companies, securities brokers and registrars, money remittance services, and currency exchange bureaus. The manual defines the scope of inspection and how inspectors shall examine each area of the AML regulation. The manual defines that the aims of inspection are:

- Assessment of the effectiveness of financial institutions' internal policies, procedures and internal control mechanisms;
- Assessment of financial institutions' compliance with internal policies, procedures and internal control mechanisms with requirements of the AML legislation;
- Assessment of the risk of money laundering and risk control mechanisms of financial institutions;
- Assessment of the adequacy of financial institutions' training programs; and
- Development of recommendations in case of deficiencies.

905. Together with these general principles that shall be assessed, inspectors also have the responsibility to assess if the licensee has implemented the recommendations given by inspectors in previous inspections. In accordance with the procedure of on-site inspections, inspectors have the duty to issue an inspection report which described the areas that were assessed, transactions that were assessed as well as the nature and details of violations noted, if any. The final part of the inspection report contains recommendations from the inspecting team concerning improvements in internal procedures, risk control mechanisms, CDD measures and procedures which the licensee is required to implement in order to rectify its AML deficiencies.

906. On-site inspections of financial institutions typically cover the following areas:

- KYC policy;

- Internal control policy (procedure to identify a client, analysis and recording of information, procedure to determine suspicious transactions, procedure to submit information and other related matters);
- Rights and obligations of the person in charge of AML compliance;
- Conducting operations and services;
- Record keeping of relevant information;
- Policy and practice of internal audit;
- Training policy; and
- Assessment of management–the inspection shall assess management's efforts with respect to implementation of internal policies and procedures for the purpose of ensuring compliance with the AML regulations and risk management and mitigation.

907. With respect to currency exchange bureaus, the registration rule also contains a description of inspection areas that are to be examined.

908. At the time of the on-site visit, there were no such manuals yet adopted for the other sectors–namely, securities market participants, credit unions, microfinance organizations and money remittance operators. A working group within the NBG was set up to work on the development of a manual for the other sectors. Since the on-site visit, NBG had completed the manuals for the sectors of securities market participants, money remittance and currency exchange bureaus. NBG has started to inspect insurance, securities and money remittance operators only recently, as far as it became the supervisory authority of these entities from December 1, 2010. Therefore, the appropriate manual will be fine-tuned based on the experience gained from first round inspections, taking into consideration all the risks associated in particular with each institution.

909. Based on the above, NBG appears to have sufficient authority to supervise each line of financial activity that it licenses or registers. Such authority includes off-site monitoring and carrying out on-site inspections, which include reviewing licensees' policies, procedures, books and records and doing sample testing of transactions to test compliance and assess the effectiveness of their internal controls.

Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1):

Article 45 of the Organic Law of Georgia on the National Bank of Georgia sets out the authority of the NBG to request any information that is related to the activities and responsibilities of the NBG undertaken according to the law. This Article provides that "the National Bank shall be authorized to require and receive from state institutions and any other person all statistical, accounting and other information (including confidential) necessary for discharging the duties imposed thereon." In addition, Article 48(5) of the Organic Law of Georgia provides that for the performance of supervisory functions, NBG is authorized to demand and receive within its scope of competence any information (including confidential information) from prescribed persons.

910. Under this provision, the term "any other person' is interpreted to include financial institutions which are obliged to provide any requested information to the NBG. Moreover, sanctioning regulations of the NBG with respect to each financial institution contains a pecuniary sanction for non-submission of information requested by NBG.

911. With respect to commercial banks, the Organic Law further provides the following:

- The NBG is authorized to require and receive information on the source of origination of any commercial bank's capital and beneficial owners who hold a significant share in the bank (Article 49.b); and

- Article 49.c empowers NBG to compel information from commercial banks and to inspect commercial banks and nonbank depository institutions and their subsidiaries, audit their accounting documents, components of financial statements and other material; and NBG is authorized to receive any information from them within the scope of its competence. The same type of provision is included in the Organic Law for insurance companies.

912. With respect to confidential information, Article 17 of the Law on Commercial Banks provides that confidential information can be submitted to the NBG. This article stipulates that "No person shall be permitted to reveal a bank's confidential information about any person or to disclose, disseminate or use such information for personal gain. Such information may be disclosed only to the National Bank within the appropriate areas of its responsibilities."

913. Therefore, the NBG as a supervisory authority is not required to apply to the court to receive any information from a regulated entity even in cases when such information might be considered confidential.

Adequacy of Resources—Supervisory Authorities (R.30)

914. The NBG has a dedicated unit of five staff members to perform AML on-site inspection of all financial institutions operating in Georgia. There is currently no dedicated unit established for AML off-site monitoring although some AML issues may be monitored by NBG's prudential section. As at end of September 2011, there were the following categories and number of financial institutions operating in Georgia:

Type of Institution	No. of Licensed/Registered Institutions as of end Sep 2011
Commercial Banks	19
Microfinance Organizations	57
Credit Unions	18
Insurance Companies	16
Non-State Pension Scheme Founders	0
Insurance Brokers	5
Securities Brokers	11
Securities Registrars	6
Stock Exchange	1
Central Depository	1
Money Remittance Services	58
Currency Exchange Bureaus	1485
Total	1677

915. Given the number of only five staff allocated to perform on-site inspections of 1,677 financial institutions, this has given rise to long supervisory cycles between each inspection for most categories of financial institutions. For instance, the supervisory cycle for banks is about two to three years, and for money exchange bureaus, the cycle is once every five years. Considering this and the fact that there was no off-site monitoring unit at the time of the on-site visit to assess the risk profile of financial institutions to facilitate a risk-based approach to identify institutions for inspections, the amount of resources allocated by NBG for AML supervision and monitoring was assessed to be inadequate.

Effectiveness:

916. It is a positive factor that NBG has a dedicated team of examiners to do targeted AML inspections of financial institutions. However, at the time of the on-site visit, there was no dedicated off-site monitoring to assess the ML risk profile and monitor developments of financial institutions, although the policy document of NBG has now included the establishment of an off-site function. The on-site examination also did not have a systematic approach for developing a supervisory plan and list of financial institutions to be inspected. After the on-site visit, significant improvements were made and a policy document was issued to address the issues of off-site monitoring, coordination between the off-site and on-site function and having a systematic approach to develop a supervisory plan. These improvements are positively noted, but they need to be implemented before effectiveness can be assessed.

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)

917. The authority of NBG to impose sanctions for violation with AML requirements is provided in the Organic Law of the NBG, the sector-specific regulations, and NBG's regulations on pecun*iary sanctions for financial institutions.*

918. **The NBG has a range of regulatory and supervisory sanctions available against financial institutions for failure to comply with or properly implement their AML obligations.** NBG can also direct the removal of a chief executive or officer, or issue him/her a formal reprimand, if NBG is satisfied that they willfully contravened or caused the financial institution to contravene the AML regulations.

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)

919. Georgia has the power to impose criminal and administrative sanctions to deal with financial institutions (legal and natural persons) which are subject to the AML law and fail to comply with national AML requirements. NBG is the authority responsible for applying all non-criminal sanctions and it can submit cases to the court for criminal sanctions.

920. NBG's general authority to impose sanctions is provided in Article 48.3 of the Organic Law of Georgia. The provision stipulates that for carrying out its supervisory duties, NBG is authorized to issue relevant decrees and orders to require the implementation of measures and to impose relevant sanctions. NBG's specific power to impose sanctions on each category of financial institutions is also set out in the Law and provided below:

- Commercial Banks and nonbank depository institutions–general authority of the NBG to impose sanctions is defined under Article 49.1.a. This Article provides that "The National Bank shall be authorized to supervise the operation of commercial banks and nonbank depository institutions. It covers: issuance and revocation of licenses, audit and regulation, imposition of restrictions and sanctions;"

- Insurance companies and non-state pension scheme founders–general authority of the NBG to impose sanctions is defined under Article 51.g, which states that NBG shall be authorized to "set sanctions including monetary penalties to insurers/non-state pension scheme founders, the amount and rule of imposition of which shall be defined under the National Bank's normative act. The amount of monetary penalty shall be wired to the state budget of Georgia;"

- Securities Market Participants–general authority of the NBG to impose sanctions is defined under Article 52.g;

- Microfinance organizations–general authority of the NBG to impose sanctions is defined under Article 50.1;

- Currency Exchange Bureaus–general authority of the NBG to impose sanctions is defined under Article 50.2; and

- Entities conducting money remittance–general authority of the NBG to impose sanctions is defined under Article 50.2.

921. As at the date of the on-site mission, leasing companies and electronic money institutions were not covered by the AML law and not subject to any supervision, enforcement, and sanction by a supervisory body.

922. Subsequent to the on-site visit, the AML Law was amended in December 2011 to include leasing companies as monitoring entities subject to AML/CFT measures. The amendment entered into force on January 1, 2012. Electronic money institutions were still not covered by the AML/CFT Law as at the cut-off date of February 13, 2012 for considering legal amendments.

923. The NBG has the authority to apply a broad range of measures ranging from administrative sanctions to revocation of license for AML contraventions. For commercial banks, insurance companies, non-state pension scheme founders, securities market participants and credit unions, NBG has the power under the sector specific laws to implement these sanctions which include issuing written warnings and instructions requiring that the financial institution cease certain current practices; imposing fines according to rules and amounts established by the National Bank; suspending the signing authority of the financial institution's administrators and requiring their

temporary or permanent dismissal; imposing restrictions on the financial institution's operations; and revoking the financial institution's license. For microfinance organizations, NBG has the power to issue written warnings, impose a financial fine, or adopt a decision to cancel the registration of the entity under the established procedures defined by NBG for AML/CFT issues.

924. Pecuniary sanctions (fines) for financial institutions are defined by the NBG Regulation on imposition of pecuniary sanctions. Violations of the AML legislation for financial institutions (commercial banks, insurance, securities, microfinance organizations, credit unions and non-state pension scheme founders) are generally given in the event as follows:

- Non-submission or/and incompliance with the set time frame – delayed submission of information on transactions subject to monitoring to the FMS;
- Non-submission of information on transactions subject to monitoring to FMS;
- Rendering services without identification of documentation;
- Violation of the requirements set for registering and documentation for the monitoring process;
- Non-submission or/and incompliance with the set time-frame – delayed submission of additional information and documents on transactions subject to monitoring to FMS; and
- Non-submission of additional information and documents requested by the FMS.

925. At the time of the on-site visit, there were no pecuniary sanctions (fines) for failure to comply with the requirement on the maintenance of proper internal controls. In February 2012, legal amendments were introduced in the regulations for all financial sectors under the NBG supervision to include imposition of sanctions for failure to maintain proper internal controls.

926. The NBG became a supervisory authority for money remitters since December 1, 2010. NBG has issued regulation on imposition of pecuniary sanctions for these entities which are set out in Article 4 of the Decree No. 22/01 of the President of the National Bank of Georgia concerning the Definition, Imposition and Execution of the amount of Pecuniary Sanctions on Microfinance Organizations and Money Remittance Services.

927. As for currency exchange bureaus, pecuniary fines are set out in Article 7, para.6 of the Decree of the President of National Bank on Approval of Rule of Registration and Regulation of Currency Exchange Point.

928. With respect to Credit Unions, the sanctioning regime is defined under Article 31 of the Law on Credit Unions and under the NBG regulation on imposition of pecuniary sanctions. In February 2012, legal amendments were made to the Law on Credit Unions and NBG Regulation on Pecuniary Penalties on Credit Unions, which empowered NBG to impose sanctions on credit unions as well as the management of credit unions.

929. The table below shows the range of fines imposed on each category of financial institutions according to the types of violations detected. In the case of commercial banks, the range of fines is GEL 100 to GEL 5,000 for each instance of violation. For the other categories of financial institutions, the range of fines is narrower with a lower end amount.

Financial Institutions	**Range of Fines**	**Details**
Banks	GEL 100 to 5,000 (for each instance of violation)	a) in the event of non-submission or/and incompliance with the set time frame - delayed submission of the information on transactions subject to monitoring to FMS of Georgia by the date established under the NBG order on the bank's inspection for each instance of violation: - up to 30 days delay–at the amount of GEL 100 (one hundred); - 30 days and more delay–at the amount of GEL 300 (three hundred)." b) in the event of non-submission of information on transactions subject to monitoring to FMS of Georgia by the date established under the NBG order on the bank's inspection–at the amount of GEL 5,000 (five thousand) for each instance of violation; c) in the event of rendering banking services to any person without identification–at the amount of GEL 1,000 (one thousand) for instance of violation; d) in the event of revealing violation of the requirements set for registering and maintaining information (documentation) about the monitoring process–at the amount of GEL 1,000 (one thousand) for each instance of violation; e) in the event of non-submission or/and incompliance with the set time frame - delayed submission of the additional information and documents on transactions subject to monitoring to FMS of Georgia by the date established under the NBG's order or ruling on the bank's inspection, for each instance of violation: - up to 30 days delay–at the amount of GEL 100 (one hundred); - 30 days and more delay–at the amount of GEL 300 (three hundred). f) in the event of non-submission of additional information and documents on transactions subject to monitoring to FMS of Georgia by the date established under the NBG's order on the bank's inspection–at the amount of GEL 5,000 (five thousand) for each instance of violation.
Securities Brokers and Securities Registrars	GEL 150–2,000 (for each instance of violation)	

Insurance Companies	GEL 100-2,000 (for each instance of violation)	
Non–State Pension Scheme Founders	GEL 100-2,000 (for each instance of violation)	
Microfinance Organizations	GEL 100-2,000 for each instance of violation)	
Money Remitters	GEL 50-2,000 (for each instance of violation)	
Currency Exchange Bureaus	GEL 50-200 (for each instance of violation)	
Credit Unions (sanctions introduced since February 2012)	GEL 50-2,000 for each instance of violation	

930. The NBG applies its range of administrative sanctions with the objective of getting financial institutions to comply with the requirements in the AML Act focusing on the aspects of identification, reporting and timeliness of reporting. As at the time of the on-site visit, there was no sanction that addressed deficiencies in financial institutions' internal control systems. Since February 7, 2012, NBG has introduced amendments that include sanction on violation of internal control mechanism.

931. In the course of on-site inspections, NBG examiners comment on the financial institutions' compliance with AML regulations as well as their policies and procedures, and require the financial institutions' management to rectify the deficiencies noted, normally within a time frame of one to six months; depending on the type of deficiencies and the length of time typically needed to remedy the deficiencies. For rectification measures that require major system changes or the procurement of additional resources, the financial institution might be given more time.

932. In the case of financial institutions under the consolidated supervision of foreign regulatory authorities, NBG does not yet have the practice of sending inspection reports to their head offices and parent regulators. NBG follows up on the examination findings to ensure that the inspected institution takes measures to rectify the deficiencies noted, and this is being carried out by the team of five AML examiners.

933. At the time of the on-site visit, NBG was not authorized to impose pecuniary penalties on directors and senior management of the financial institutions if they failed to ensure proper AML/CFT controls. NBG however was authorized to impose other sanctions, such as the removal of director and restriction of signatory authority. Since February 7, 2012, legal amendments had been introduced to empower NBG to impose pecuniary sanctions on directors and management of financial institutions in case they fail to ensure the adoption and observance of appropriate internal control mechanisms and rules by relevant financial institutions.

934. With respect to currency exchange bureaus, NBG at this point does not consider it necessary to introduce sanctioning regime for the managers of the currency exchange bureaus as most of such bureaus are in the legal form of sole partnership. Under Georgian legislation, sole partnership is

responsible wholly with its own property and without any limitation. Therefore, any sanctions imposed on currency exchange bureaus by the NBG are to be considered imposed on natural persons as well because sole partnership is a form of legal entity which does not have limited liability. Owner of the sole partnership can be considered manager as well because these types of legal formation under the law do not have any management bodies. Given that 72.4 percent of the currency exchange bureaus are registered as sole proprietorship, while the balance of 27.6 percent are non-sole proprietorship, the assessment team recommends that the NBG consider introducing a sanctioning regime for the managers of the currency exchange bureaus.

Implementation - Overview of actions taken against financial institutions for AML contraventions

935. Statistics on the sanctions imposed on financial institutions based on inspection findings from the period 2007 to 2011 are given below:

Table on measures/sanctions imposed by NBG

	2007 for comparison	2008	2009	2010	2011
Number of Financial Institutions that were sanctioned by NBG	**7 banks** **82 currency exchange bureaus**	**10 Banks** **159 currency exchange bureaus**	**10 banks** **67 currency exchange bureaus**	**5 Banks** **10 Microf. Institutions** **27 Money remitters** **132 Currency Exchange Bureaus**	**6 Banks**
Type of measure/sanction *					
Written warnings[117]	**-**	**-**	**10**	**1**	**6**
Fines	**GEL 583,100 (EUR 255,052) for banks,** **GEL 41,000 (EUR 17,934) for currency exchange bureaus**	**GEL 1,347,600 (EUR 615,736) for banks,** **GEL 8,250 (EUR 3,770) for currency exchange bureaus**	**GEL 464. 800 (EUR 199,442) for banks,** **GEL 21,750 (EUR 9,333) for currency exchange bureaus**	**GEL 25, 000 (EUR 10,579) for banks** **GEL 153, 100 (EUR 64,872) for microf. institutions** **GEL 43 750 (EUR 18,538) for money remitters** **GEL 173 400 (EUR 73,474) for currency exchange bureaus**	**GEL 342, 400 (EUR 145,084) for banks**

[117] The Georgian authorities indicated written warnings had been issued but no statistics were maintained.

Removal of manager/compliance officer	-	-	-	-	-
Withdrawal of license	-	-	-	-	-
Other**	-	-	-	-	-
Total amount of fines	**GEL 624, 100 (EUR 272,986)**	**GEL 1, 355, 850 (EUR 619,506)**	**GEL 486,550 (EUR 208,775)**	**GEL 395,250 (EUR 167,478)**	
Number of sanctions taken to the court (where applicable)	-	-	-	-	-
Number of final court orders	-	-	-	-	-
Average time for finalizing a court order	-	-	-	-	-

936. The table below shows the breakdown of pecuniary fines by the type and nature of violations:

Year 2011	Inspected Total	Financial Sanctions were imposed on :		Amount of Fines
Banks	**6**	**6**		**369,700**
			Non submission of information to FMS	110,000
			up to 30 days delay	11,500
			30 days and more delay	89,100
			Non-submission of additional information to FMS	
			up to 30 days delay of the additional information	100
			30 days and more delay of the additional information	
			Violation of the CDD process	159,000
			Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	
Insurance companies	**3**	**2**		**3,100**
			Violation of the CDD process	100
			Non submission of information to FMS	3,000
Total:	**9**	**8**		**372,800**

2010	Inspected Total	Financial Sanctions were imposed on :		Amount of Fines
Banks	**1**	**1**		**25,000**
			Non submission of information FMS	20,000
			up to 30 days delay	500
			30 days and more delay	4,200
			Non-submission of additional information to FMS	
			up to 30 days delay of additional information to FMS	300
			30 days and more delay of additional information to FMS	
			Violation of the CDD measures	
			Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	
Entities Performing Money Remittance Services	**27**	**14**		**43,750**
			Non-submission of the form of registration in FMS	3,000
			Non submission of the information to FMS	31,000
			Violation of the CDD measures	9,750
Microfinance Organization	**6**	**4**		**153,100**
			Non submission of the information	142,000
			Delay of the information	5,400
			Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	600
			Violation of the CDD process	5,100
Currency Exchange Bureaus	**132**	**57**		**173,400**
			Violation of the record-keeping obligation	1,400
			Non submission of the information	21,300
			Delay of the information	5,400
			Violation of the CDD process	900
			Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	200
			Violation of the record-keeping obligation/copy of identification doc	144,000
			Non-submission of the form on registration in FMS	200
Total:	**166**	**76**		**395,250**

2009	Inspected Total	Financial Sanctions were imposed on :		Amount of Fines
Banks	**10**	**10**		**517,800**
			Non submission of the information	415,000
			up to 30 days delay	4,800
			30 days and more delay	26,700
			Non-submission of the additional information	30,000
			up to 30 days delay of the additional information	700
			30 days and more delay of the additional information	600
			Violation of CDD process	40,000
			Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	
Currency Exchange Bureaus	**149**	**67**		**21,750**
			Violation of the record-keeping obligation	7,800
			Non submission of the information	3,000
			Delay of the information	700
			Identification process violation	7,450
			Violation of the requirements set for registering and maintaining the information (documentation) about the monitoring process	800
			Violation of the record-keeping obligation/copy of identification doc	1,400
			Non-submission of the form of registration in FMS	600
Total:	**159**	**77**		**539,550**

937. In imposing sanction on a financial institution, NBG issues an administrative legal act called an Ordinance of the Governor/Vice Governor on the imposition of sanction/pecuniary penalty on the relevant financial institution. The Ordinance is delivered to the institution and NBG receives proof of delivery based on which NBG is empowered to enforce the sanction one month from the delivery date.

938. Based on the statistics above, NBG has imposed pecuniary penalties (fines) on violations of AML requirements (such as failure to obtain proper or complete customer identification) and issued written warnings but has not employed other types of sanctions, such as removal of AML compliance or revocation of license. The pecuniary penalties (fines) are small in a number of cases amounting to several hundred Laris. As for revocation of license, NBG indicated that none of the findings arising from on-site inspections were severe enough to warrant this sanction. It also indicated that pecuniary penalties were dependent on the size and development of each financial sector, and the amounts of fines levied were based on the principles of rationality and fairness.

939. The sanctions and fines appear to be relatively proportionate when compared to the sanctions imposed on other types of violations, such as non-publishing of audited statements which also attract a fine of GEL 1,000. The sanction framework for AML/CFT violations and internal control

deficiencies is also designed with element of proportionality where the severity of sanctions would increase with the severity of violations/deficiencies starting from imposition of financial fines to issuance of written warnings and, in the most severe case, the revocation of license. Within the financial fines framework itself, the amount of fines is made proportional to the nature of violations/deficiencies starting from a lower amount of several ten/hundred GEL for late reporting to authorities to several hundred/thousand GEL for non-reporting of STR; (KIV further information on the circumstances of written warnings to comment more on proportionality and dissuasiveness). The sanction is effective to the extent that it has served as a factor in motivating commercial banks to develop policies, procedures and guidelines and put in place AML/CFT measures. The sanction regime is also effective to the extent that it raises high level of awareness for the need to comply with objective elements of the requirements such as submission of reports to the FMS. For the other types of financial institutions that had been inspected, such as insurance companies, money remittance service operators, microfinance organizations and currency exchange bureaus, their compliance attitude was also driven by a large extent the amount of financial fines that NBG imposed during on-site inspections. However, these entities had more resource limitations in terms of developing and implementing policies, systems and controls. However, the amount of fines cannot be considered as dissuasive since violation of CDD requirement attracts only a range of fines from GEL 100 to 1,000. While the assessment team acknowledged that the amount of fines should take into account the size and revenue of each financial sector, it is important to recognize that money laundering involves proceeds-generating crimes and the amounts of fines have to be punitive in nature to be considered as dissuasive and effective.

Effectiveness:

940. As noted above, the sanction regime has been effective at enforcing compliance with reporting requirements. However, effectiveness on a number of issues such as imposition of sanctions for failure to maintain proper internal controls on senior management of financial institutions and imposition of sanctions on credit unions and their management cannot be tested since legal amendments were introduced recently in February 2012. Also, there have also been few or no sanctions on failure to identify ultimate beneficial ownership or politically-exposed persons although these issues featured quite prominently during the assessment team's discussions with financial institutions.

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)

941. At the point of admission, financial institutions have to obtain NBG's approval by applying for a license or a registration with NBG to carry on business in Georgia.

942. Financial institutions subject to licensing requirements are: commercial banks, credit unions, insurance companies, securities brokers, securities registrars, stock exchange, and central depository. Financial institutions subject to registration requirement are: microfinance organizations, non-state pension scheme founders, insurance brokers, money remittance services, and currency exchange bureaus. All these categories of financial institutions are subject to the AML Law, except for the stock exchange and central depository.

943. In accordance with the Organic Law of Georgia on the National Bank of Georgia, the NBG is authorized to inspect financial institutions (Article 49.g; Article 51.g; Article 52.e). With respect to microfinance institutions, money remitters and currency exchange bureaus, Article 50 directly stipulates that for the AML/CFT purpose, NBG is authorized to supervise these entities and the supervisory measures include: registration, cancellation of registration, inspection, setting of minimum requirements, and imposing sanctions.

944. Entities conducting money remittance services as a form of financial institution were introduced in year 2008 and they encompass the postal organizations which are now supervised by NBG, and the registration requirement applies to them as well. In addition, a requirement for insurance brokers to be registered at NBG was introduced from December 1, 2009. With respect to the leasing sector, the AML Law was amended in December 2011to include leasing companies as monitoring entities subject to AML/CFT measures. The amendment entered into force on January 1, 2012.

945. All financial institutions when applying for a license or registration at NBG have the duty to register at FMS. NBG's sanctioning regulations of financial institutions contain the power to impose sanction in case of violation of registration requirements with FMS.

Fit and Proper Checks

946. The directors and members of senior management of financial institutions that are subject to the Core Principles are required to satisfy the fit and proper criteria. This means that these appointment holders should have no criminal or other adverse regulatory records but have the qualifications and expertise appropriate for their level of responsibility. They are also expected to be financially sound.

947. Under Article 49 of the Organic Law of Georgia on the "National Bank of Georgia," NBG is empowered to require and receive information on the source of origination of any commercial bank's capital and beneficial owners holding a significant share in the bank. In addition, the Law of Georgia on Commercial Banks, namely Article 41 sets out fit and proper criteria for shareholders and administrators holding significant shares in a commercial bank.

948. NBG' approval is required for: (1) the appointment of directors and senior management; and (2) specific threshold changes in the shareholdings of the financial institution to ensure that criminals are prohibited from holding or controlling a significant investment in a financial institution or from holding any management function in the financial institution.

949. NBG' approval is also required for those who intend to hold or control a significant investment in a financial institution. At the point of admission, NBG will establish the identity of any person having the ultimate controlling interest or exercising controlling influence over the financial institution (beneficial owners).

950. According to the law of Georgia on the "Activities of Commercial Banks", an individual shall be prohibited to be the owner of significant share of a commercial bank, if he has been convicted for especially grave crime, FT and/or illicit income legalization, or economic crime or/and for the crime against any entrepreneurial or other economic activity. This law defines the cases when an individual

is allowed to be an administrator of the commercial bank as follows: when an individual has not been declared as incapable by the court; has not been convicted for illicit income legalization or/and FT; has respective education or /and experience; is not simultaneously administrator of another bank, except for the case when he occupies the position of administrator in a bank subject to control of the given bank or in a bank which controls the given bank; has not been convicted for an economic crime or/and a crime against any entrepreneurial or other economic activity.

951. In addition to the Law of Georgia on the "Activities of Commercial Banks," there is a Decree No. 234 of the President of the National Bank of Georgia on "Fit and Proper Criteria For Administrators of Commercial Banks." According to this decree, the fit and proper criteria for bank administrators shall be based on professional education, qualifications, experience, competence, and honest approach to work.

952. According to the fit-and-proper criteria for administrators, a person to be appointed as a bank administrator shall comply with the following requirements: a member of the bank directorate, head of a branch and other similar subdivision and his/her deputy shall have a university education in one of the following fields: economics, finance, banking, business administration, audit, accounting or jurisprudence; the bank's chief accountant and his/her deputy, branch chief accountant and his/her deputy shall have a university education in one of the following fields: economics, finance, banking, business administration, audit, or accounting; a member of the bank directorate shall have relevant qualification and professional experience and a minimum of four years of work experience in the banking and finance sectors, of which two years are in the position of a senior manager (head or deputy head of a structural unit); a head of the branch and his/her deputy, a head of a division (service center) and his/her deputy shall have relevant qualification and professional experience and a minimum of three years of work experience in the banking and finance sectors, of which one year is in the position as a senior manager (head or deputy head of a structural unit); a chief accountant of a bank and his/her deputy shall have a minimum of three years of work experience in the banking and finance sectors; a chief accountant of a branch and his/her deputy shall have a minimum of two years of work experience in the banking and finance sectors; a person to be appointed shall not be a member of the supervisory council or the auditing commission of the same bank and/or of any other commercial bank, nonbank depository institution–credit union, and/or a member of directorate or other administrator of any other enterprise; a person to be appointed shall not be subject to the requirement of the National Bank of Georgia to the bank's supervisory council and/or the board of directors to be dismissed from his/her position; a member of the bank directorate shall not be the spouse, child or close relative of a member of the same bank's directorate; a chief accountant of the bank and his/her deputy, a chief accountant of its branch and his/her deputy shall not be the spouse, child or close relative of the director of the same bank or the director of the same branch.

953. The NBG is authorized to examine the compliance of bank administrators with the fit-and-proper criteria established by this regulation. For the purpose of examining the compliance of administrators with the fit and proper criteria, NBG is authorized to examine in detail the truthfulness and accuracy of the information regarding the administrator submitted by the bank. In case of noncompliance of a bank administrator with the fit-and-proper criteria, the NBG is authorized to terminate this administrator's signatory right and to request the Supervisory Council and/or Board of Directors in writing to temporarily or permanently dismiss him/her from the occupied position. In case the bank's supervisory council and board of directors fail to meet the requirements, NBG shall

be authorized to apply to the bank the sanctions provided under Article 30 of the Law of Georgia on the Activities of Commercial Banks.

954. As for insurance companies, the Law of Georgia on Insurance empowers NBG to request information on the source of capital with respect to insurance companies (Article 21) and sets out the propriety criteria for administrators and owners of such entities. According to subparagraph "f" of para. 5 of Article 22 of the Law of Georgia on Insurance, the applicant in order to receive the insurance license shall submit documents of all administrators and owners of a significant share of the insurer proving that these persons: have not been declared as incapable by the court; have not been convicted for legalization of illicit income or/and FT; have not been convicted for economic crime or/and any other offense against business or economic activity; are not simultaneously administrators of the other insurer, except for the case when they occupy an administrator's position in an insurance organization/reinsurance company subject to control of this insurance organization/reinsurance company or in that insurance organization/reinsurance company which controls this insurance organization/reinsurance company. However, there are no fitness tests stipulated for administrators of insurance companies to determine their competence, formal qualifications, previous experience and track record.

955. For securities brokerage companies, Article 24 of the Law of Georgia on "Securities Market" sets out a limited set of propriety criteria which only require an applicant for a securities brokerage license to submit information to show that "a member (of its governance body) has not been convicted of economic crime in the preceding 10 years; has not been imposed administrative punishment for gross violation of the Georgian legislation on securities in the last five years. This is similar to the case of an applicant of a securities registrar license under Article 29 of the Law of Georgia on Securities Market. There are no propriety tests for owners of securities brokerage companies and securities registrars. In addition, there are no fitness tests for the administrators of these securities companies for NBG to determine their competence, formal qualifications, previous experience and track record.

956. Fit-and-proper criteria of a director of a Microfinance Organization are defined in Article 7 of the Law of Georgia on "Microfinance Organizations." According to Article 7, a director (a member of the board of directors) of a Microfinance Organization may not be a partner (shareholder), member of a supervisory board and/or board of directors of any commercial bank, nonbank depository organization-credit union or any other Microfinance Organization. The Law of Georgia on "Microfinance Organizations" lists the cases when a person may not be a director of a Microfinance Organization, namely: if the person has participated in any operation or transaction that has resulted in substantial loss for a commercial bank or a nonbank depositary institution–credit union and derogated the rights of a commercial bank and a nonbank depository institution–credit union depositors or other creditors, or lead the commercial bank or the nonbank depository institution–credit union to insolvency or bankruptcy; previously held an administrative position in a commercial bank, credit union or other Microfinance Organization and as a result of their activities the bank, credit union or other Microfinance Organization became insolvent; has failed to fulfill any financial obligation to a bank or a nonbank depositary institution–credit union; has been declared bankrupt or convicted of a financial crime under the Georgian CCG and has not been cleared of a conviction under Georgian legislation. A director of a Microfinance Organization may not participate in the decision-making of the issues involving their private interests. At the time of the on-site visit, there were no propriety tests for owners of microfinance organizations. In addition, there were no fitness

tests for the administrators of these entities for NBG to determine their competence, formal qualifications, previous experience and track record. In February 2012, legal amendments were made to the Law on Microfinance Organizations which introduced a fit-and-proper test for owners of microfinance organizations.

At the time of the on-site visit, there were no criteria on fit-and-proper checks on senior executives of credit unions even though they are deposit-taking institutions. In February 2012, legal amendments were made to introduce a propriety test for management of credit unions.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7)

Financial Institutions other than Banks, Securities, and Insurance

957. In Georgia, the following types of financial institutions are not subject to the Core Principles:

(a) Money-changing or remittance business operators.

958. Under Article 50 of the Organic Law on the National Bank of Georgia, these financial institutions are required to be registered, and they are supervised by NBG from the AML perspective.

959. At the time of the on-site visit, there were no propriety tests on the owners and administrators of money-changing or remittance business operators. In February 2012, legal amendments were made to introduce propriety tests on owners and administrators of such businesses to ensure that they have no criminal records before they are allowed to own or manage such businesses.

(b) Leasing companies

960. At the date of the on-site visit, leasing companies were neither subject to supervision nor oversight for AML purposes. Effective January 1, 2012, leasing companies are now included as monitoring entities under the AML Law and are required to comply with AML obligations. Under Article 4 of the AML Law, the supervisory body for the leasing sector is the Georgian Ministry of Finance.

(c) Electronic money institutions;

961. Electronic money institutions are still not yet subject to the AML Law.

Implementation and Effectiveness

962. The implementation and effectiveness of Georgia's market entry framework was assessed to be weak at the time of the on-site visit as there were no fit or proper tests for the owners and administrators for a number of categories of financial institutions. Specifically, there were no propriety tests on owners of securities brokerage, securities registrars, microfinance organizations and credit unions; no fitness tests on administrator of insurance companies, securities brokerage, securities registrars, microfinance organizations and credit unions. In addition, for currency exchange

bureaus and money remittance services, there were no fit and proper tests on owners and administrators.

963. The NBG is empowered to require and obtain information on beneficial owners of commercial banks. Under Article 8(1) of the Law on Commercial Banks, any change in shareholding of ten percent or more is subject to approval by NBG. However, it is not clear if adequate due diligence is carried to identify and verify the ultimate beneficial ownership of banks in all cases. Despite the high foreign ownership in the Georgian banking system, the NBG has not made requests of its foreign counterparts to do background checks of prospective bank shareholders. According to the NBG, most of the foreign shareholders are well known international financial institutions, investment funds, and commercial banks and well known high net worth individuals. Therefore, it did not need to conclude MOU with each shareholder's country that is present in the Georgian banking sector.

964. It is crucial that there are proper market entry controls and due diligence on shareholders and administrators of financial institutions to ensure that they are not a source of weakness to those entities. This applies even if prospective shareholders are well-known high net worth individuals. As Georgia develops policies to make the country attractive to foreign investments, there should be compensatory controls to enable NBG to have the ability to prevent criminals or their associates from holding, controlling, or managing financial institutions. Further to the on-site visit, fit and proper tests had been introduced for owners and management of several categories of financial institutions.

Ongoing supervision: Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML Supervision of other Financial Institutions (c. 23.7); Guidelines for Financial Institutions (c. 25.1)

965. Licensing and structure: NBG regulates and supervises financial institutions for AML purposes by licensing/registering and performing ongoing supervision of them. In licensing commercial banks, NBG takes into account their risk profile such as the group structure. NBG would assess the group structure of the bank using a bottom-up approach by ascertaining whether the regulated bank is part of a financial conglomerate or is controlled by a bank or held by shareholders; if the bank parent company is regulated and supervised (including for AML purposes); and whether it is possible to identify ultimate beneficial owners, how complex the structure is. This is supplemented by a top-down approach where NBG would assess the subsidiaries of the bank, especially pay attention if subsidiaries are abroad and the possibility of cooperation with the relevant foreign supervisory authority.

Consolidated Supervision as required by the Core Principles

966. Currently, Georgian financial institutions have banking and securities operations in three overseas locations: Azerbaijan, Belarus, and Ukraine. NBG has signed supervisory MOUs with the supervisory authorities of these three countries and the MOUs contain an agreement for cooperation on on-site inspections. NBG has not yet conducted any on-site inspection of the overseas operations, although it is authorized to check on such overseas operations through head offices of Georgian financial institutions.

Ongoing Supervision

967. NBG issued on November 1, 2011 a policy document to formalize its AML on-site inspections of financial institutions. Based on this policy, NBG would carry out its inspections based on the date of the last inspection, duration of the inspection period, and the risk level assigned from the last inspection. The scope and purpose of the on-site inspections are to:

- Assess the policies, procedures and internal control mechanisms of financial institutions to determine their adequacy and compliance with the AML Law, and Regulations;

- Determine the institution's management mechanisms and oversight and the institution's risk level; and

- Issue recommendations or, in the case of violations and impose sanctions.

968. The frequency of inspection of financial institutions is as follows:

a) Commercial banks: for banks rated as high risk from the last inspection, their inspection frequency is two to three years. Banks which are rated medium or low risk are inspected every three or four years. Based on the changes in the risk level of the commercial bank, the frequency of the inspection can be adjusted.
b) Insurance companies and non-state pension funds–they are inspected every two or three years;
c) Microfinance organizations and credit unions–they are inspected every three years;
d) Independent registrar of stocks and brokerage companies–they are inspected every three years;
e) Money remitters–they are inspected every four years;
f) Currency exchange bureaus–they are inspected every five years.

969. For financial institutions other than currency exchange bureaus and money remittance entities, they are identified for inspection based on the lapse in time from the last inspection and the level of ML risk assigned. For currency exchange bureaus and money remittance entities, they are identified for inspection based on their location by regions and districts and the volume of their business. The NBG is also able to select financial institutions for inspection based on extraordinary factors.

970. The AML unit selects the financial institution to be inspected and makes a report to the Governor or Vice-Governor of the NBG. The report contains recommendations on the financial institution to be inspected; the period of planned inspection and duration of inspection; and the reason and subject of inspection.

971. The duration of inspection and the number of inspectors required for each inspection is dependent on the type of financial institution to be inspected and are defined as follows:

Type of Financial Institution	Duration and number of inspectors
Commercial banks	Large-sized bank – duration of inspection: five to six weeks, number of inspectors: five; Medium-sized bank - duration of inspection: three to four weeks, number of inspectors: two to three; Small-sized bank - duration of inspection: two to three weeks, number of inspectors: two.
Insurance companies and non-state pension funds	Duration of inspection: one to two weeks, number of inspectors: two to three.
Microfinance organizations	Duration of inspection: five to ten days, number of inspectors: two.
Brokerage companies and independent registrars of stocks	Duration of inspection: five to ten days, number of inspectors: two.
Nonbanking depositary institutions (i.e., credit unions)	Duration of inspection: five to ten days, number of inspectors: two.
Money remitters	Duration of inspection: two to three days, number of inspectors: two.
Currency exchange bureaus	Duration of inspection is dependent on the volume of financial activity. If the currency exchange bureau is of large size, the duration of inspection is generally two to three days, and, if it is of small size – two hours. In both cases number of inspectors is two.

972. At the end of each inspection, the AML team prepares a report and presents it to the Vice-Governor. In the case of violations of AML requirements, a decision on sanctioning is taken and the Vice-Governor instructs the Legal Department to prepare an ordinance on pecuniary penalty in accordance with the requirements of the AML Law. In addition, in special cases, based on the severity of violations and risks, the inspection act and report prepared by inspectors are discussed by a committee comprising senior officials of NBG (the Committee of Financial Sector Supervision). After discussion, the Committee presents to the Governor of National Bank its recommendations about measures to be taken towards the relevant financial institution.

Implementation - Overview of AML Inspections– Statistics

973. The statistics above show the number of AML inspections carried out by the NBG from the years 2009 to 2011, together with the violations noted and the fines imposed on financial institutions.

974. As shown in the table, there were no on-site inspections of securities brokers, securities registrars, and credit unions in 2009, 2010, and 2011. Based on the NBG's risk assessment of the securities market, the volume of transactions was low and a significant portion of trades were executed by bank-owned securities entities which were required to implement their parent banks' policies and procedures. There was also very limited or no usage of higher risk products and services such as fund/wealth management, investment funds, bearer securities, bills of exchange and

wholesale securities market. NBG also derived assurance that securities trades above the threshold of GEL 30,000 were required to be reported and monitored by FMS. As for credit unions, the NBG assessed the sector to be of low risk given the total asset size of GEL 4.4 million and an average deposit size of GEL 2,500. Another factor was that members of credit unions were required to be identified at the outset of becoming a member.

975. According to its procedures, NBG examiners would review the adequacy of the AML policies, procedures and controls of the inspected institutions, as well as their compliance with the AML Law and FMS decrees/regulations. It conducts detailed checking of transactions in all inspections. In summary, some of the common weaknesses noted included:

(a) Non-submission of CTR or STR to FMS;
(b) Delay in submission of CTR or STR to FMS;
(c) Violation of the CDD process;
(d) Violation of the record-keeping obligation; and
(e) Violation of the requirements set for registering and maintaining information (documentation) relating to the monitoring process.

976. The assessment team noted that given the way the Georgian sanction regime is designed where it places much emphasis on levying monetary fines for each instance of violation, NBG on-site examination is geared towards doing detailed transaction testing to detect if there is any violation of requirement in order to impose monetary fines on financial institutions. In practice, this is confirmed by views from the financial institutions interviewed, which generally indicated that NBG on-site inspections were very much focused on detecting those violations that warrant a monetary fine.

Money or Value Transfer Service, or a Money or Currency Changing Service

977. As at end of September 2011, there were 58 money remittance services and 1,485 money exchange bureaus operating in Georgia. These operators are subject to AML requirements under the AML law and are subject to NBG's registration and on-site inspection. They are also subject to decrees/regulations issued by FMS. Microfinance organizations that carry out money remittance operations are similarly subject to NBG's registration and on-site inspection, as well the obligation to comply with decrees/regulations issued by FMS. Microfinance organizations totaled 57 as at end of September 2011.

978. The NBG is the supervisory body for money remittance service entities and currency exchange bureaus. This is provided in Article 50 of the Organic Law of Georgia on the National Bank of Georgia. Supervisory powers include: registration, cancellation of registration, inspection of these institutions, and imposition of sanction on them.

979. Registration process of these institutions includes provision of information on person in charge of the AML legislation compliance. Also, the registration application form includes a provision which states that the owner of the currency exchange bureau and person responsible for the compliance of AML requirements should be well aware of the AML legislation.

980. In accordance with Article 50(1) and (2) of the Organic Law of Georgia on the National Bank of Georgia, NBG is authorized to inspect financial institutions.

981. NBG monitors the regulatory compliance of all money-changing and remittance businesses operators by performing on-site inspections.

982. As indicated in the inspection statistics above, currency and remittance entities as well as microfinance organizations have been inspected by NBG. In 2010, NBG inspected 27 money remitters, six microfinance organizations, and 132 currency exchange bureaus. In 2009, it inspected 149 currency exchange bureaus. Most of the inspection findings related to non-reporting or delay in reporting to the FMS and violation of CDD requirements.

983. Based on the inspection policy issued on November 1, 2011, the supervisory cycle in general for money remitters is once every four years, and for currency exchange bureaus, the cycle is once every five years. For microfinance organizations, the supervisory cycle is once every three years. The supervisory cycle established for these operators appears infrequent and represents significant lapse of time between each inspection.

Statistics

984. The NBG maintains statistics on the on-site examinations of financial institutions that include AML inspections as well as the sanctions applied.

985. The NBG has conducted inspections of commercial banks, microfinance organizations, currency exchange bureaus, and money remitters. As the NBG became the supervisory authority for insurance and securities market participants only from December 1, 2010, on-site inspections of these institutions began in August 2011. These institutions were previously supervised and inspected by the Georgian Financial Services Authority (GFSA).

Implementation:

986. For institutions subject to the Core Principles (these institutions are banks, microfinance organizations, credit unions, insurance companies, securities brokerages, and independent securities registrars in the case of Georgia), they are subject to NBG's regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering to a certain extent with respect to licensing and ongoing supervision. However, inadequacies were noted in implementation at the time of the on-site visit in the following:

- There were no propriety tests on the owners of securities brokerage companies, securities registrars, microfinance organizations, and credit unions. There were also no fitness tests on the administrators of insurance companies, securities brokerage, securities registrars, microfinance organizations, and credit unions;
- Ongoing supervision was inadequate due to the lack of a systematic off-site monitoring unit to assess the risk profile of institutions and limited resources allocated for on-site inspections. There was also no supervisory plan identifying and listing the type and name of financial institutions to be inspected at the start of each year.
- Monitoring of the money remittance and currency changing sector was inadequate due to the lack of off-site monitoring, fit-and-proper checks on the owners/operators, and NBG's long supervisory cycle of these businesses.

Effectiveness:

987. Overall, the effectiveness of the AML off-site supervision to assess the risk profile of financial institutions and monitor their developments cannot be tested as the AML off-site function was introduced only recently in February 2012. The absence of off-site supervision at the time of the visit prevented the detection of problems in-between inspections. Secondly, the effectiveness of developing a supervisory plan and identifying a list of financial institutions targeted for inspections also cannot be tested as it was introduced in February 2012. The supervisory cycle for some institutions also appears to be quite long, particularly for currency exchange bureaus and money remittance operators, even though their risk profile warrants a more intensive approach. The current examination approach which focuses on ensuring strict compliance with the objective elements of laws and regulations (e.g., threshold reporting, watch zone), is not complemented by a more thorough inspection of more subjective elements (e.g. suspicious operations, "reasonable measures"), or complex elements (e.g., identification of politically-exposed persons, ultimate beneficial owners).

Recommendation 25: Guidelines (Guidance for Financial Institutions other than STRs)

988. The NBG, as the regulator for the financial sector, has issued a set of guidelines for financial institutions to supplement the AML legislation. The "Guidance on the risk based approach to combating illicit income legalization" issued by NBG in February 2010 contains guidelines on risk-based approach, customer due-diligence measures, know your client policy, and requirements for internal rules and procedures. These guidelines serve to assist financial institutions in evaluating ML/TF risks and implementing AML measures in a risk-based approach. The guidelines are sent to management of all categories of financial institutions subject to AML obligations. The NBG has also issued a set of guidelines with respect to identification and verification of "ultimate beneficial owners" to provide guidance to financial institutions.

989. The NBG also conducts consultations with representatives of financial sectors on various matters, including consultations on the adoption of new AML regulations. These consultations are carried out either through the industry associations (such as the Banking Association, the Insurance Association) or bilaterally with representatives of financial institutions. Consultations are also conducted when a financial institution has concerns with respect to the interpretation of any norms adopted by the NBG. Before adoption of new regulations or instructions, it is an accepted practice that relevant employees of the NBG meet with representatives of financial sectors and discuss matters related to new norms subject to introduction in the NBG regulations. The NBG also conducts meetings on a semi-annual basis separately with each financial institution subject to core principles. The purpose of these meetings is to discuss any major concerns of the financial institution, share information with respect to the trends and changes in NBG's supervisory policy, although these meetings are primarily focused on prudential issues, and AML issues may be discussed in certain cases.

990. Based on the assessment team's interviews with financial institutions, it appeared that some of them had challenges with respect to implementing certain requirements, such as identification of the beneficial owners of customers and record keeping of customer documents. However, the sense was that most of them did not consult directly with NBG as they had encountered imposition of quite substantial penalties for violations of CDD requirements, and their interest was more to meet the examiners' interpretation of those requirements. In one case, the financial institution performed CDD

not only at the inception of account opening but also each time customers perform a transaction. It appeared to the assessment team that in some institutions, AML measures were taken chiefly to mitigate regulatory risks rather than to control underlying ML or TF risks that may be present in their business activities.

3.10.2 Recommendations and Comments

Recommendation 17

The authorities are recommended to:

- Review and increase the amount of monetary fines for several categories of violations to ensure that the fines are punitive and dissuasive.
- Include proper sanctions against electronic money institutions for non-compliance with AML/CFT requirements.

Recommendation 23

NBG is recommended to:

- Initiate the practical implementation of the significant reforms introduced in February 2012 as soon as resources are available. These reforms included the introduction of fit and proper tests for several categories of financial institutions; establishing an AML off-site function; and developing a supervisory plan for on-site inspections.
- Consider re-orientating its on-site inspection approach with the objective of ensuring that financial institutions have proper risk management processes to ensure compliance with AML laws and regulations and to control and mitigate ML and TF risks from the activities of the financial institutions rather than focusing its on-site inspection to detect violations which call for a monetary fine.
- Impose AML/CFT requirement against electronic money institutions.

3.10.3. Compliance with Recommendations 23, 29, 17, and 25

(R.17 rated as PC, R.23 as PC, R.25 as PC and R.29 as LC in the 2007 MER)

	Rating	Summary of factors underlying rating
R.17	**LC**	Fines are too low in nominal terms to be punitive and dissuasive for some categories of violations. • Electronic money institutions are not subject to sanctions. • Effectiveness relating to implementation of several categories of sanctions cannot be tested as the sanctions were introduced only in February 2012. This includes sanctions for failure to maintain internal controls, updated sanctions for credit unions, and sanctions

		for officers of financial institutions.
R.23	**PC**	• The supervisory cycle is relatively long for some institutions such as currency exchange bureaus and money remittance operators, even though their risk profile warrants a more intensive approach. • Electronic money institutions are not subject to AML/CFT supervision. • The effective implementation of significant reforms introduced in February 2012 (such as fit and proper tests for several categories of financial institutions; establishing a systematic AML off-site function, and developing a supervisory plan for on-site inspections) could not be tested. • Reform in the fit and proper tests will not apply retrospectively to the existing 1485 currency exchange bureaus and money remitters.
R.25	**LC**	**Effectiveness:** • The industry would benefit from more clarity and guidance from NBG on actual implementation of preventive measures, especially on identification of beneficial ownership.
R.29	**LC**	• Electronic money institutions are not subjected to the AML Law and supervision. • Effectiveness of the power to supervise leasing companies cannot be tested as they have only been subjected to the AML Law in January 2012.

3.11. Money or Value Transfer Services (SR.VI)

3.11.1 Description and Analysis

Legal Framework:

991. Money transfers are conducted by commercial banks, microfinance organizations, and money remittance services (which include post offices that represent entities performing money remittance services). Money remittance service operators are subject to the AML Law (Article 3.a.1) and are supervised by the NBG (Article 4 of the AML Law and Articles 48.2 and 50 of the Organic Law on the National Bank of Georgia).

Designation of Registration or Licensing Authority (c. VI.1):

992. As at end of September 2011, there were 58 money remittance service operators conducting business in Georgia. Money remittance service operators are required to register with the NBG to carry on their business, and are subject to NBG's regulation and supervision such as imposition of requirements and on-site inspection and sanctions. Article 48.2 of the Organic Law of Georgia on the National Bank of Georgia sets out that for the purposes of supporting the prevention of illicit income legalization and circulation of forged money, NBG is authorized to regulate entities conducting money remittance by way of registering, auditing them and setting minimum requirements for them.

993. Article 50 of the same law further provides that: "The National Bank shall supervise the entities conducting money remittance services and currency exchange points only by preventing circulation of forged money and, for the purposes of the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization, by registering them, revoking their registration, auditing them and setting minimum requirements and sanctions to them." The rule of registration and revocation of registration by the National Bank, the amount of pecuniary penalty and the rule of its imposition shall be defined under the National Bank's normative act. The amount of monetary penalty shall be wired to the state budget of Georgia.

994. The Regulation on the registration of money remittance service operators, issued by the predecessor regulator the GFSA and grandfathered as far as NBG became the legal successor of the GFSA, provides that all persons before commencement of the activities of money remitters have to register at the NBG and present the registration form. As a registration requirement, the applicant is obliged to submit a registration form to the NBG. An entity can only be authorized to be registered if the place where it undertakes its activities satisfies requirements for AML purposes, has a computer, a copy machine and printing equipment, special software for registration of money transfer transactions. Money remittance service providers are also obliged to inform the NBG within seven days in case of changes in the registration information and documents. The NBG is authorized to cancel the registration of MVT when: (i) upon a written request by the applicant; (ii) in case of death, liquidation, bankruptcy of the entity or in case of a person by a court order was declared as missing or with diminished capacity; and (iii) liquidation of legal person has been started.

Application of FATF Recommendations (applying R.4-11, 13-15 and 21-23, and SR.I-IX)(c. VI.2):

995. As nonbank financial institutions, money remittance service operators are subject to the requirements of the AML Law by virtue of Article 3.a.1. The requirements they are required to comply with are:

- CDD (Article 6 of the AML Law of Georgia and Article 6 of the Regulation on Money Remittance Services);
- Obligations on PEPs (Article 6^1 f the AML Law of Georgia and Article 6^1 of the Regulation on Money Remittance Services);
- Reliance on third party/intermediary (Article 6.10 of the AML Law of Georgia and 6.11^1 of the Regulation on Money Remittance Services);

- Recordkeeping (Article 7 of the AML Law of Georgia and Article 8 of the Regulation on Money Remittance Services);

- Internal control (Article 8 of the AML Law of Georgia and Article 4 of the Regulation on Money Remittance Services);

- Obligations related to non cooperative or watch zones (Article 2.e of the AML Law of Georgia and Article 2.j; Article 3.3 of the Regulation on Money Remittance Services).

996. As such, the deficiencies recorded in section 3 above are equally applicable.

Monitoring of Value-Transfer Service Operators (c. VI.3):

997. As nonbank financial institutions, money remittance service operators are subject to monitoring/supervision by the NBG, Article 48.2 of the Organic Law of Georgia on the National Bank of Georgia sets out that NBG shall be authorized to regulate entities conducting money remittance by way of registering, auditing them, and setting minimum requirements for them for AML purposes.

List of Agents (c. VI.4):

998. All money remittance service operators, including those acting as agents, are required to be registered with NBG. NBG keeps a register of these entities and persons conducting money remittance services .The operators also maintain a list of their agents. This meets the requirement on maintaining a list of service operators and agents made available to NBG as the designated competent authority.

999. MVT service operators are also obliged to register with FMS within 10 working days from the registration at the NBG. The registration regulation (Article 3.2.b) directly states that MVT service operators are obliged to satisfy the requirements set out in the AML regulation issued by the FMS.

Sanctions (applying c. 17.1-17.4 in R.17) (c. VI.5):

1000. Sanctions for violation of the AML obligations by money remittance entities are defined under the Regulation on Defining, Imposing and Collecting Pecuniary Penalties against Microfinance Organizations and Money Remitters (approved under the Decree of the President of the National Bank of Georgia of February 22, 2010, #22/01). These are detailed under Recommendation 17 above. As noted, the sanctions are primarily focused on ensuring strict compliance with the objective elements of laws and regulations (e.g. threshold reporting, watch zone).

Adequacy of Resources—MVT Registration, Licensing and Supervisory Authority (R.30):

1001. No specific resources have been assigned by NBG to the supervision of money remittance service operators, and they are included in the AML supervision for the financial sector. The supervisory cycle of four years is relatively long and NBG should consider having more resources for monitoring/supervising this sector.

1002. A report by the International Organization on Migration indicated that remittances represent a significant source of foreign earnings. In 2008, the total volume of money transfers to Georgia exceeded US$1 billion, an increase of US$136 million (15.7 percent) on the 2007 figure. The banking industry, an almost exclusive payer of remittances, competes with a relatively important informal sector. The report indicated that three most widespread methods of transferring money in Georgia, according to information provided by a household survey, are as follows:

- money transfers via money remittance service providers–42 percent;
- bank transfers–28 percent;
- sending money via driver, agent, or courier–27 percent.

1003. The Georgian authorities indicated that unauthorized remittance activities are illegal as far as these activities are subject to registration, and Article 192 of the CCG of Georgia defines it as a criminal offense to conduct services without the requisite registration or licensing. The Georgian financial police also have full authority to take action against any unauthorized remittance activity.

1004. In view of the significant flow of remittances that appear to be channeled through the informal sector, it is recommended that the Georgian authorities develop an approach to address this issue. One possible approach as taken in other countries is to conduct outreach to the general public and alert them of the risk of dealing with unauthorized remittance service providers.

Additional Element—Applying Best Practices Paper for SR.VI (c. VI.6):

1005. As part of the nonbank financial institution sector, the full range of applicable measures under the AML Law is relevant to the MVT sector. As such, most of the elements of the Best Practices paper are covered, including:

- Extending all the obligations of the AML Law to money remitters, which are considered reporting entities;
- Money remitters are required to be registered with NBG, and are subject to on-site inspection by the NBG; and
- Money remitters are subject to sanctions for non-compliance with the AML Law, decrees and regulations.

Implementation:

1006. The AML Law applies to money remittance service operators and they are subject to all applicable preventive measures. They are also subject to on-site examination by NBG.

1007. The supervisory cycle for money remittance service operators for on-site inspection is generally once in four years based on a policy document on on-site inspection of financial institutions issued by NBG on November 1, 2011. The statistics on the number of AML inspections on money remitters in recent years are given below:

1008. Figures on AML on-site inspections conducted on MTV operators since they came under NBG's supervision in December 2009:

	2009	2010	2011
Inspections of MVT		27	

1009. Based on the inspections carried out by NBG on 27 money remittance service operators in 2010, there were 14 cases where fines were imposed due to violations of AML requirements. These violations related to non-reporting or late reporting to FMS and violation of CDD requirements.

1010. However, a factor which undermines the effectiveness of the regime is the lack of fit and proper checks on the owners and administrators of such entities up to the time of the on-site visit. After the on-site visit, amendments were made to introduce the propriety test for MVT operators. Financial and statistical reporting obligations were also introduced to enhance the level of supervision of MVT operators. Supervisory resources for this sector were generally not adequate and the supervisory cycle was generally envisaged to be once in four years, although the NBG indicated it could shorten the cycle depending on the risks of the entities.

Effectiveness:

1011. Despite the fact that the AML Law applies to money remitters, several factors undermine the effectiveness of the regime. Up to the time of the on-site visit, there were no propriety checks on the owners and administrators of remittance entities to prevent criminals or their associates from having a beneficial ownership or management in such businesses. Supervisory activity in relation to money remitters appeared to be low, and there were no inspections on remitters in 2009 and 2011 as shown above. In addition, there were remittances de facto conducted by casinos accounts and payment systems such as Paybox. These forms of remittances were not registered by the NBG and operated outside of the regulated system.

3.11.2 Recommendations and Comments

The Authorities are recommended to:

- Take measures to address remittances which are taking place outside the regulated sector in Georgia.
- Rectify the legal deficiencies relating to preventive measures that apply to MVT operators
- Increase supervisory resources available to supervise MVT operators.

3.11.3 Compliance with Recommendations

Rating Summary of Factors Underlying Rating

(SR.VI rated as PC in the 2007 MER)

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• There were some forms of MVTs (such as electronic money institutions, casino accounts) which were not yet subject to regulation and supervision. • Deficiencies in the AML/CFT Law relating to preventive measures, particularly on CDD, apply to MVT operators. • Amount of fines for many types of violations, such as performing services without client identification, is very small for MVT operators to be considered effective and dissuasive. • Effectiveness of implementation of reforms introduced with respect to systematic off-site monitoring and fit and proper tests could not be tested.

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Recommendation 12 (rated NC in the 3rd round report)

4.1. Customer Due Diligence and Record keeping (R.12)

4.1.1. Description and Analysis

Legal Framework:

1012. The Law of Georgia on Facilitating the Prevention of Illicit Income Legalization (subsequently referred to as "new AML/CFT Law (as amended on December 20, 2011) provides the legislative basis for most requirements for DNFBPs. The legal analysis refers to the legal framework in place two months after the on-site mission (i.e. by mid-February 2012). References to articles of laws and regulations adopted after the on-site mission are included in footnotes. Recent amendments to the AML/CFT Law extend obligations to accountants, and introduce additional obligations to notaries, casinos and DPMS regarding ongoing due diligence; non-face-to-face transactions; and new technologies. The implementation of the legal requirements enacted after the on-site mission has not been assessed. The effectiveness of the AML/CFT regime has been assessed at the time of the mission.

1013. Pursuant to Article 3 of the AML/CFT Law, Designated Non-Financial Businesses and Professions defined as monitoring entities include entities organizing lotteries, gambling and commercial games; entities engaged in activities related to precious metals, precious stones and products thereof; and notaries. The legislative framework does not apply to real estate agents, lawyers and trust and company service providers.

1014. For the regulation of activities of the above mentioned DNFBPs, the FMS based on the AML/CFT Law of Georgia, issued the Decrees:

- Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by the Persons Organizing Lotteries, Gambling and Commercial Games and Forwarding to the Financial Monitoring Service of Georgia (approved under the FMS Decree No. 94 of the Head of the FMS of July 28, 2004);[118]

- Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by Casinos and Forwarding to the Financial Monitoring Service of Georgia (approved under the FMS Decree No. 94 of the Head of the FMS of July 28, 2004);[119]

[118] FMS Decree No. 94 was amended on February 6, 2012.

[119] FMS Decree No. 94 was amended on February 6, 2012.

- Regulation on Receiving, Systemizing and Processing the Information by Notaries and Forwarding to the Financial Monitoring Service of Georgia (approved under the FMS Decree No. 93 of the Head of the FMS of July 27, 2004);[120]

- Regulation on Receiving, Systemizing and Processing the Information by Persons Conducting Accountancy or/and Auditor Activity and Forwarding to the Financial Monitoring Service of Georgia" (approved under the FMS Decree No. 12 of the Head of the FMS of Georgia of January 31, 2012).

1015. As analyzed in Section 3 of this report, the decrees issued by the FMS constitute secondary legislation based on the criteria set by the methodology.

1016. Legislations and decrees specific to certain professions also outline some obligations that assist in the compliance regarding preventive measures. This includes the Georgian Law on Notaries; Rules for Drawing up Notary Deeds, approved by decree of the Ministry of the Justice on March 31, 2010, and Order 69 on the Disciplinary Liability of Notaries approved by the Minister of Justice on March 31, 2010.

1017. The Rules on Drawing-Up Notary Deeds are deemed to be secondary legislation based on the criteria established by the standards. Article 5.2 of the Georgian Law on Notary stipulates that the Minister can issue "rules of fulfilling notary act". The rule is thus "authorized by a legislative body" as required by the standards. The rule is subject to sanctions pursuant to Article 2 of the Order 69 on the Disciplinary Liability of Notaries approved by the Minister of Justice.

Scope of Covered Activities

Casinos

1018. The AML/CFT framework does not define "entities organizing lotteries, gambling and commercial games", however the concept of "organizing commercial games" is broad enough to encompass both physical and internet casinos. Casinos offering services on the internet must also have a land casino. Two FMS Decrees 94 have been issued; one for casinos and one for Persons Organizing Lotteries, Gambling and Commercial Games. The decrees describe the obligations for casinos and those engaged in the provision of gambling and other commercial games. Most provisions between the two sets of decrees are identical; however any distinctions are highlighted in the text.

Real estate agents

1019. Although there are real estate agents in operation in Georgia, AML/CFT obligations have not been extended to the sector. The National Agency of Public Registry responsible for registering real estate transactions has been designated as a reporting entity and is required to monitor real estate transactions and report suspicions of ML/FT to the FMS.

[120] FMS Decree No. 93 was amended on January 31, 2012.

Dealers in Precious Metals and Dealers in Precious Stones (DPMS)

1020. "Entities engaged in activities related to precious metals, precious stones and products thereof" are identified as monitoring entities in the AML/CFT Law. Precious metals and stones are not defined in the legislation making it difficult for entities to determine whether they are covered by the legislation. No decree specifying the details of the obligations has been issued, therefore the requirements outlined in the AML/CFT Law are not considered to be in force for the DPMS sector. For all requirements listed under R.12 and 16, the on-site mission determined that DPMS were not aware of their obligations, and no implementation appears to have been undertaken.

Lawyers

1021. Lawyers are not subject to AML/CFT obligations. Meeting with industry association confirmed that lawyers undertake triggering activities identified by the standard namely: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements; and buying and selling of business entities.

1022. The Bar Association believes that approximately 20 to 30 percent of lawyers engage in activities related to corporate law and that an even smaller percentage is specifically engaged in the triggering activities listed above.

Accountants

1023. Meeting with industry associations confirmed that accountants undertake triggering activities identified by the standard namely: buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organization of contributions for the creation, operation or management of companies; creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

1024. Recent amendments to the AML/CFT Law expand requirements to the accounting sector. Article 3.i[121] of the AML/CFT Law covers "persons conducting accountancy and/or auditor activity as it is defined by Georgian legislation". The scope of coverage is broader than what is required by the standard as all accountants and auditors are covered rather than being limited to the triggering activities outlined in the standard. Triggering activities are, however, applied to requirements related to transaction monitoring and client identification.

1025. The definition covering accountants should however be more specific with respect to what accountancy activities are covered. Although the Law of Georgia "on Auditor's Activity" defines who can be an auditor, there is currently no parallel legislation for accountants. The current absence of a definition for accountants poses a problem as the profession is currently not regulated and

[121] Article 3.j of the recent AML/CFT Law (as amended on December 20, 2011) .

individuals who do not possess a certification undertake accounting activities. In absence of clarification, accountants will not know if obligations will apply to them. The drafting of the Law on "Activities of Accountants" is currently underway and plans to address these shortcomings.

1026. FMS Decree No. 12 of January 31, 2012 outlines further AML/CFT obligations for accountants.

Notaries

1027. Notaries are subject to the AML/CFT Law. FMS Decree No. 93 outlines further AML/CFT obligations for notaries.

Trust and Company Service Providers

1028. Authorities indicated that there are no trusts in Georgia and the assessment team did not find evidence that trusts were in operation. However, there is a legal basis for trusts to be established in Georgia. Both the Bar Association and the Georgian Federation of Professional Accountants and Auditors have indicated that company formation activities are being undertaken by individuals outside their profession. No AML obligations apply to this sector.

1029. The following section will detail requirements outlined and implemented for notaries, casinos and DPMS. The section will present requirements by sector as requirements vary from sector to sector. Efforts have been made not to repeat the legal analysis of the AML/CFT Law that has been undertaken in Section 3. However, at times, requirements can be outlined in parallel in the AML/CFT Law and relevant decrees and the intersection of both the legislative and regulatory requirements is required to provide the reader with a comprehensive picture of requirements and compliance with the standard.

CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R.5 to DNFBP) (c. 12.1):

Anonymous and Numbered Accounts (R.5.1)

1030. No prohibition of anonymous or fictitious accounts for DNFBPs. Although a prohibition related to anonymous accounts did exist in the previous version of the AML/CFT Law, the applicability to DNFBP was removed in the new AML/CFT Law. This presents a shortcoming as internet casinos provide accounts to their customers.

Implementation:

1031. Although internet casinos do have some CDD requirements, their application of these obligations is inconsistent, creating a situation where an account could be opened under a fictitious name. For an analysis of implementation of CDD requirements by casinos, please refer to the criteria below.

When CDD is required (R.5.2)

1032. Article 6 of the new AML/CFT Law (as amended on December 20, 2011) outlines some CDD measures for measures for notaries, casinos, DPMS and accountants. Article 6.1 of the new AML/CFT Law (as amended on December 20, 2011) outlines identification and verification requirements for notaries, casinos and accountants. Under Article 6.1, identification and verification is required when: a) the transaction amount exceeds GEL 3,000; b) the client aims to carry out domestic/international wire transfers that exceed GEL 1,500; c) doubt arises regarding the veracity of adequacy of previously obtained client identification data; and d) the transaction is suspicious.

1033. The identification and verification of beneficial owners is outlined in Article 6.10 of the new AML/CFT Law (as amended on December 20, 2011) and ongoing due diligence obligations are outlined in Article 6.15.

1034. There is no obligation to conduct CDD when establishing a business relationship for any of the covered DNFBPs.

Notaries

1035. Article 6.5 outlines: "monitoring entities shall be obliged to identify a person involved in the transaction (operation) and verify identity of such person through documents of reliable and independent source. Also, Article 5.1 of FMS Decree No. 93 require notaries to identify persons for which they have a business relationship, their representatives and proxies, as well as any third person, in whose favor transaction is being concluded, when: transaction (operation) amount exceeds GEL 3,000 (or its equivalent in other currency); and when a transaction is suspicious according to Article 2.e. Recent amendments to the AML/CFT Law (Article 6.1.c) and Decree No. 93 now include identification and verification requirements when "doubts arise regarding the veracity or adequacy of previously obtained client identification data".

1036. The provision outlined in the Rules of Drawing-Up Notary Deeds is broader than the requirement outlined in the AML/CFT Law by requiring the identification of all clients for whom a transaction is prepared or conducted. Article 5.5 of the recently amended FMS Decree No. 93 for notaries indicates that "notaries shall not be authorized to certify (confirm) transaction (document), carry out any other notarial activity or establish business relationship with the person (render services to the client), without preliminary identification of this person" creating an obligation to conduct due diligence when establishing business relationship.

Casinos Gaming Establishments

1037. In addition to identification requirements outlined in Article 6.2[122] and 6.5 of the AML/CFT Law, FMS Decree No. 94 stipulates that "casinos shall identify all persons taking part in a transaction, when: a) transaction amount exceeds GEL 3,000 (or its equivalent in other currency); b) transaction is suspicious according to Subparagraph (i) of this Regulation; c) in other cases

[122] Article 6.1 of the recent AML/CFT Law (as amended on December 20, 2011).

provided for in the Law." An identical provision exists in FMS Decree No. 94 for Persons Organizing Lotteries, Gambling and Commercial Games.

1038. The client identification requirement is not comprehensive as it does not apply to business relationships or instances when there are doubts about the veracity or adequacy of previously obtained information. Recent amendments to the AML/CFT Law include requirement at Article 6.1.c that the monitoring entity should identify his client when "doubts arise regarding the veracity or adequacy of previous obtained information".

Dealers in Precious Metals and Stones

1039. Article 6.2-1 of the AML/CFT Law stipulates that "persons engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities, proceeding from their major activity, shall carry out identification of business-related persons, if the amount (paid in cash) of transaction (operation) exceeds GEL 30,000 (US$18,100/€13,500).

1040. Article 6.2 of the new AML/CFT Law (as amended on December 20, 2011) stipulates that "persons engaged in activities related to precious metals, precious stones and product thereof, as well as antiquities shall carry out identification of clients if the amount (paid in cash) of transactions exceeds GEL 30,000." The new provision addresses concerns related to the previous wording.

1041. This client identification and verification threshold is line with the standard.

Accountants

1042. Article 5.1 of FMS Decree No. 12 stipulates that monitoring extends client identification requirements to persons conducting accountancy or/and auditor activities when they prepare or carry out transactions (operations) for the client when: a) buying and selling of real estate; b) managing funds, securities or other assets; c) managing bank, savings or securities accounts; d) organizing contributions for the creation, operation or management of legal entities; e) creating operating or managing legal entities or organizational formations; and f) buying and selling of legal entity (share). For the purposes of this section, these activities will be referred to as triggering activities.

1043. The scope of triggering activities is not fully in line with the standard. The article refers to "the buying and selling legal entities" rather than referring to "the buying and selling of a business entity". This distinction becomes important as it does not address situation where the business that is not a legal entity such as sole proprietorships. The wording also refers to the "creation, operation and management of legal entity or organizational formation." The standard requires that for the "creation, operation and management of legal entities" to be covered. Legal arrangements are not covered in the concept of "organizational formation".

Implementation:

Notaries

1044. Based on meetings with two notaries and discussions with the Ministry of Justice, CDD requirements appear to be applied systematically by notaries. For all notary acts, notaries are required to enter key information, including the client's information in prescribed software. If information on

the client is not properly entered, the notary act cannot be recorded by the system. When there is suspicion about the identification document provided by the client, the notary is required to refuse to conduct the transaction.

Casinos

1045. The implementation of client identification requirements varies for each casino based on the internal regulations that casinos have developed. Some casinos met with during the mission indicated that identification is taken at the entry of the casino although exceptions to this practice are applied. For these casinos, customers are issued a casino number that is used to track the purchase of casino chips both at the cash teller and at the tables which allows casinos using this approach to track purchases. These casinos interviewed indicated that purchases are reviewed on a daily basis for FMS reporting purposes (see R.16). Identification is not requested again when the GEL 3,000 identification threshold is reached. Transactions conducted by a specific client at slot machines cannot always be monitored, making it impossible in these cases to identify transactions above GEL 3,000 and subsequently identify the client conducting these transactions.

1046. Other casinos have more relaxed policies of identification with some identifying clients at the GEL 3,000 threshold when an employee visually ascertains that GEL 3,000 worth of credits are displayed on the slot machine. The internet casino met during the mission took identification information when the client registered, but verification of information was only done if the client cashed out at one of its locations. Inconsistent application of client identification results in casinos not being able to systematically link identification with transactions conducted by the client.

DPMS and Accountants

1047. With the absence of a decree pertaining to AML/CFT obligations, DPMS did not conduct CDD. The implementation of accountants' obligation could not be ascertained due to the recent coming into force of the requirements.

Required CDD Measures (R.5.3-5.7)

Notaries

1048. Article 5.7[123] of FMS Decree No. 93 outlines the documents necessary for identification process as being:

- **for a Georgian citizen**–a citizen identity card, a passport, or any other official document of same or equal value under Georgian legislation, which contains the relevant information; if the physical person is registered as a sole proprietor–document confirming registration;

[123] Article 5.10 of the recently amended Decree No. 93 for Notaries.

- **for a foreign citizen**–passport issued by the competent authority of the relevant State or other official document of same or equal value under the Georgian legislation, containing relevant data;

- **for resident legal entity**–respective legal act on establishing the legal entity or/and excerpt from enterprise register (or other relevant register) and document confirming person's representational authority; and

- **for a nonresident legal entity–**documents issued by competent authorities of the foreign State, legalized in conformance with the Georgian legislation and confirming foundation of the non-resident legal entity and certifying respective authority of its representative(s).

1049. Article 5.6[124] of FMS Decree No. 93 for Notaries outlines the information that should be obtained through the identification process. In the case of a physical person: first name, last name; citizenship; date of birth; permanent (registered) place of residence; number of ID (passport) and citizen's personal number by ID (passport); if the physical person is registered as an individual entrepreneur–the relevant registration date, number, registering authority, identification number of tax payer.

1050. In the case of a legal entity the same provision requires: "full name; business activity; legal address (in case of the branch or representation the legal address of the head office also); registering authority, date and number of registration; identification number of tax payer; identification details of persons authorized for management and representation (separately shall be indicated details of the person, who represents this legal entity in a transaction)."

1051. In the case of organizational formation considered under the legislation, which does not represent legal entity, the following information is required: "full name; legal address; legal act, based on which this formation has been established (or has been functioning); identification number of tax payer; identification details of persons authorized for management and representation in (separately shall be indicated details of the person, who represents this legal entity in a transaction)".

1052. Recent amendments to Decree No. 93 outline in Article 5.2 a requirement that: "a notary shall identify the beneficial owner of the person having business relationship with the Notary (client), as well as to undertake reasonable measures to verify his/her identity by means of reliable, independent source and be satisfied that it knows who the beneficial owner of the person (client) is. Identification procedures similar to those used for natural persons shall be applied against beneficial owner." Although beneficial ownership identification and verification requirements were complied with through the Rules for Drawing-Up Notary Deeds, the new requirement is also in line with the standard.

1053. In addition to requirements outlined in FMS Decree No. 93, Article 19.4 of the Rules for Drawing-Up Notary Deeds further specifies that the: "notary has the obligation to indicate the parties

[124] Article 5.9 of the recently amended Decree No. 93 for Notaries.

of the notary act: their first and last names, birth date, place of residence, personal identification number (in the case there is a foreign citizen who doesn't have the personal identification number, notary has to indicate the date of issuance of the passport and the number of the document)".

1054. Article 20 of the Rules for Drawing-Up Notary Deeds also outlines identification and verification requirements for legal entities. Article 20.1 states:

- "If the party is a legal entity, notary has to require the following representation authority:
- From resident legal entities–the Articles of incorporation from the Registry of commercial and non-commercial legal entities;
- Non-residential legal entities–the document that is issued under the legislation of the respective country equal to the document that is mentioned in paragraph "a" and approved with the apostil or legalized; and
- The original or verified copy of the charter (bylaws) of the residential and non-residential legal entities (if it is necessary under the legislation of the respective country)".

1055. The requirements outlined in the Rules for Drawing-Up Notaries Act inform how all transactions conducted by notaries are identified and verified (FMS Decree No. 93 only requires that transactions over GEL 3,000 be subject to identification). The Ministry of Justice conducts inspections based on this Rule in addition to conducting inspection on the FMS Decree. In instances where the FMS Decree and the Rules for Drawing-Up Notaries Act are in contradiction, the Rules of Drawing-Up Notaries Act prevails as the conditions outlined in the Rules are those required to register a notary act.

1056. Furthermore, Article5.7-1 of FMS Decree No. 93 allows the notary to use the electronic databases of identification documents provided by the Civil Registry Agency.

1057. The obligation to verify the provisions regulating the power to bind the legal person is outlined in Article 48 of the Georgian Law on Notaries. The notary is required to prove the identity of person concerned with the power of attorney and their representative; check the authority and capacity of parties participating in the deal; and if the deal is executed by means of proxy, the notary also checks the authority of the proxy.

1058. Recent amendments to FMS Decree No. 93 adopted on January 31, 2012 outlines in Article 5.1 a requirement to "identify the person having business relations with the notary based on the principal activity of the latter (its representative and proxy as well as the third person if the transaction is being concluded in favor of the third person) and take reasonable measure to verify their identity by means of reliable and independent source of information" for transactions over GEL 3,000; suspicious transactions or when doubts arise about the veracity and/or adequacy of previously obtained person identification data". The identification of proxy is equivalent to "the person acting on behalf of" as outlined in the standard. The requirement is not entirely in line with the standard as it only applies to transactions over GEL 3,000.

1059. The identification and verification provisions for legal entities require that the notary checks the authority of the proxy. The requirement to obtain proof regarding the director of the legal person is covered by the identification details of persons authorized by management. Requirements regarding powers of attorney are in line with the standard.

1060. In addition to Article 6.8[125] of the AML/CFT Law, requirements requiring the identification and verification of beneficial owners are further outlined in Article 5.2 of recently amended FMS Decree No. 93. The provision stipulates that "notaries shall identify the beneficial owner of the person having business relationship with the Notary (client), as well as to undertake reasonable measures to verify his/her identity by means of reliable, independent source and be satisfied that it knows who the beneficial owner of the person (client) is. Identification procedures similar to those used for natural persons shall be applied against beneficial owner". The definition of beneficial owner is included in Decree No. 93 as well as in the AML/CFT Law.

1061. Article 5.8.b[126] of FMS Decree No. 93 further specifies that if documents stored in or presented to the Notary allow, the following details should be documented. In the case of a legal entity (as well as organizational formation, which does not represent a legal entity) this information should include: identification details on physical persons and legal entities owning 20 percent and more of the stock or share; date of appointing persons authorized for management and representation; bank account details.

1062. The requirement to obtain the identification details on physical persons and legal entities owning 20 percent and more of the stock is only applicable if the documents stored or presented to the notary allow for this, thus making the requirement not mandatory. It is therefore difficult for the notary to gain a full understanding of the ownership and control structure as well as determine the persons who exercise ultimate effective control over a legal person.

1063. The requirement to keep information up-to-date as outlined in Article 6.11[127] of the AML/CFT Law is in line with the standard.

1064. Recent changes to Decree No. 93 outline an obligation to scrutinize transactions in order to establish that the conducted transaction is consistent with their knowledge of the client, client's business, personal activity or risk profile and where necessary the source of funds. This new obligation is in line with the standard.

1065. Recent changes to the AML/CFT Law establish a number of new requirements related to CDD as described in Section 3. Article 6.15 of the AML/CFT Law outlines a permanent monitoring requirement for business relationships. Also, Article 6.10 requires entities to undertake reasonable measures to identify the beneficial owner of the client and take reasonable measures to verify his/her identity.

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[125] Article 6.1 of the recently amended AML/CFT Law.

[126] Article 5.11.b of the recently amended FMS Decree No. 93 for Notaries.

[127] Article 6.15 of the recently amended AML/CFT Law.

1066. Recent changes to Decree No. 93 outline a requirement to ascertain the nature and purpose of relations the client intends to establish at Article 5.4.[128]

Casinos/Gambling Establishment

1067. Article 5.6 of FMS Decree No. 94 for casinos stipulates that "for the identification of resident physical person, a citizen identity card, or a citizen passport, or any other official document, which contains the relevant information and is equalized to them under the Georgian legislation shall be required." Article 5.7 further specifies that for the identification of nonresident physical person, passport issued by the competent authority of the relevant State or other official document containing relevant data, equalized to the passport according to the Georgian legislation, shall be required.

1068. Article 5.5[129] of FMS Decree No. 94 for casinos mandates the information that should be collected through the identification process of a physical person: a) first name, last name; b) citizenship; c) date of birth; d) permanent (registered) place of residence; e) number of ID (passport) and citizen's personal number by ID (passport). An almost identical requirement exists for gambling establishments at Article 5.6[130] of in FMS Decree No. 94 for Persons Organizing Lotteries, Gambling and Commercial Games.

1069. The requirement to keep information up to date as outlined in Article 6.11[131] of the AML/CFT Law is in line with the standard.

1070. There are no modalities on how to identify legal entities for casinos and gaming institutions. However, authorities and the private sector indicated that no legal entities gamble in casinos.

1071. There is no third party determination requirement for casinos or a requirement to document the purpose and intended nature of a transaction.

1072. Recent changes to the AML/CFT Law establish a number of new requirements related to CDD as described in Section 3. Article 15[132] of the AML/CFT Law outlines a permanent monitoring requirement for business relationships. Also, Article 6.10 requires entities to undertake reasonable measures to identify the beneficial owner of the client and take reasonable measures to verify his/her identity.

Dealers in Precious Metals and Stones

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[128] Article 5.6 of the recently amended FMS Decree No. 93 for Notaries.

[129] Article 5.8 of the recently amended FMS Decree No. 94 for Casinos.

[130] Article 5.9 of the recently amended FMS Decree No. 49 for Persons Organizing Lotteries, Gambling and Other Commercial Games.

[131] Article 6.15 of the recently amended AML/CFT Law.

[132] Article 6.15 of the recently amended AML/CFT Law.

1073. All CDD obligations for DPMS are outlined in the AML/CFT Law. No decree has been issued for this sector.

1074. The requirement to identify and verify customers is outlined at Article 6.2 where DPMS "shall carry out identification of clients if the amount (paid in cash) of transaction exceeds GEL 30,000".

1075. Please refer to Section 3 for a complete analysis of the AML/CFT Law's compliance with these criteria. Shortcomings identified include the absence of requirements regarding the identification and verification of legal arrangements; the absence of definition or guidelines on what should be considered as reasonable measure and reliable source. There is no requirement to understand the ownership and control structure of the customer.

Accountants

1076. Article 5.1 of Decree No.12 outlines client identification and verification requirements for accountants. These requirements are subject to the triggering activities outlined in criteria 5.2. The content of Decree No. 12 is substantially similar to the requirements outlined in Decree No. 93.

Implementation:

Notaries:

1077. Some aspects of CDD are undertaken by notaries met by assessors. Identification data used to verify the identity of individuals are reliable and independent. The Registry of Entrepreneurial and non Entrepreneurial Legal Entities provided by the National Agency of Public Registry of the Ministry of Justice that is used to verify the existence of legal entities with respect to Georgian legal entities owned by Georgian individuals (also see Recommendation 33 of this report) although information on entities registered prior to 2010 is not available on this site.

1078. Notaries highlighted the difficulty of identifying and verifying beneficial ownership when the legal entity is owned by a foreign legal entity. This presented a particular challenge when the foreign legal entity was located in an offshore jurisdiction. The notary requires information on the decision making structure of the legal entity as well as documents proving the authority to bind the corporation. However, transactions will be completed even if the ultimate beneficial ownership information is not obtained, if the decision structure of the organization is understood. Notaries met by the assessors do not proactively ask if a transaction is being conducted on behalf of a third person with a stated exception in cases where there is a power of attorney in place. Identification is verified for each notary act helping ensure that identification information is kept up-to-date. The purpose and intended nature of the transaction must be recorded as part of registering the notary act thus ensuring compliance with this requirement.

1079. There was no requirement to conduct ongoing due diligence at the time of the on-site visit. As such, the implementation of the new obligation could not be ascertained.

Casinos

1080. In the absence of supervision, the implementation of client identification and verification practices varies from one casino to another with none of the approaches encountered during the on-site visit being in line with the standard. All land based casinos purport to undertake client identification at some point, however the timing of verification varies from taking identification when entering the casino, ad-hoc monitoring of when a client attains GEL 3,000 or only taking identification when a client "cashes out." No verification of identification was undertaken by any of the casinos met during the on-site visit. When client identification is undertaken in a face-to-face setting, the national ID card and passports are used as identification methods by the casino. These can be considered reliable and independent.

1081. Client identification and verification practices for internet casino are insufficient. There are no rules governing identification creating an environment where the casino can use unreliable methods to ascertain identification and where verification of identification is not undertaken. For example, some internet casinos obtain information on the client's name and national identification number when registering the client; however, no copies of the identification document is requested and no verification is made that the identification number corresponds to the name of the individual. Furthermore, there are no controls to prevent individuals from using fictitious names and ID numbers. With some casinos, client identification is collected if the client cashes out his account or winnings at one of the cash counters; however, no verification is taken when the client deposits money in their casino account. Furthermore, there are situations where if the client chooses to send the money to his bank account or credit card, no verification of identity is made.

1082. Although there was no requirement to conduct ongoing due diligence at the time of the on-site visit, the casinos do have in place monitoring software that can monitor both the gaming activity undertaken by the client as well as financial transactions related to the purchase and cashing of casino chips that can assist in identifying when transactions are not consistent with the casino's knowledge of the customer. Although these activities are undertaken, the focus is on fraud detection rather than AML/CFT prevention. Once a client is identified, the casinos met as part of the on-site mission did not systematically verify identification. Casinos also did not verify whether the identification of document used at the time of initial identification remained valid, thus sometimes relying on identification that is no longer valid.

DPMS and Accountants

1083. With the absence of regulations regarding CDD requirements DPMS did not conduct CDD. The implementation of accountants' obligation could not be ascertained due to the recent coming into force of the requirements.

Risk (R.5.8 – 5.12)

1084. Recent amendments to the AML/CFT Law include an enhanced due diligence requirement at Article 6.13. Please refer to Section 3 for a complete legal analysis. Identical provisions are outlined in recently amended Decree No. 93 for notaries and Decree No. 94 for casinos and the newly adopted Decree No. 12 for accountants. No decree has been issued for DPMS. The application of simplified CDD has been stipulated under recent amendments of the AML/CFT Law.

There is no specific prohibition to apply simplified CDD when there is a suspicion of ML/FT or in cases of high risk and no regulation indicating when simplified measures are appropriate.

Implementation:

1085. Due to the adoption of the obligations related to risk following the on-site visit, implementation could not be assessed for all covered DNFBPs.

Timing of Verification (R.5.13 – 5.14)

1086. Recent amendments to the AML/CFT Law outline timing of verification requirements for reporting entities. Please refer to section 3 for a complete legal analysis. The requirement does not consider the situation of occasional customers.

Implementation:

1087. Notaries identify clients prior to conducting the transactions, the timing of which is mandated by the software that allows for the registration of notary acts. For casinos, the timing of verification could vary from one casino to another; however in practice, most casinos would appear to identify their clients when they enter the casino. However, instances have been noted were identification has not been undertaken at this time. Casino met during the mission noted that they do not verify clients when the GEL 3,000 threshold is reached relying on previously obtained identification. As identification of clients is not consistent, this can result in some clients not being identified. The prohibition to undertake transactions without identification is not enforced by the Ministry of Finance for casinos. DPMS do not undertake identification of clients. The implementation of accountants' obligation could not be ascertained due to the recent coming into force of the requirements.

Failure to Satisfactorily Complete CDD (5.15-5.16)

Notaries

1088. According to Article 5.3[133] of FMS Decree No. 93: "a notary shall not be authorized to certify (confirm) transaction (document), carry out any of notarial activities, render services to the client or establish business relationship with him, without preliminary identification of this person".

1089. Article 5.5[134] further stipulates that when a person willing to establish a business relationship cannot be identified or when a party is on the list of terrorists, the notary cannot conduct notarial activities and should report to the FMS.

[133] Article 5.5 of the recently amended Decree No. 93 for Notaries.

[134] Article 5.8 of the recently amended Decree No. 93 for Notaries.

1090. In addition to the requirement set out in FMS Decree No. 93, Article 19.3 of the Rules for Drawing-Up Notary Deeds further stipulates that: "if notary is suspicious about the identification card presented by the party, he or she is obliged to refuse performing the notary deed".

1091. The requirement to report transactions to the FMS should not be limited to clients who do not want to be identified or persons on the terrorist list as is currently outlined in Article 5.5 of Decree No. 93. To be in line with the standard notaries should be required to consider whether reporting an STR to the FMS in any instance where CDD is not undertaken as appropriate.

1092. There is no prohibition to perform the transaction if: the ownership and control structure of the customer is not understood or the beneficial owner is not determined or identified.

1093. There are no requirements in the AML/CFT framework to terminate the business relationship and to consider making an STR where a business relationship has already commenced and where the notary cannot comply with CDD requirements described in criteria 5.3-5.6 of the assessment methodology.

Casinos/Gambling Establishment

1094. Pursuant Article 5.3 of the FMS Decree No. 94 for casinos, casinos shall not be authorized to permit the person to participate in a game or drawing or pay the winnings to such person either in monetary or in kind form, or receive monetary amount without fulfilling identification requirement.

1095. Article 5.6 of the new FMS Decree No. 94 for casinos further stipulates that the casino shall not suspend its services (not impede the person to take part in a game or drawing), except for the following cases: a) person (client) willing to establish business relationship with the casino cannot be identified; b) any party of the transaction is on the list of terrorists or persons supporting terrorism; c) if there is refusal on establishing business relations with a PEP when obtaining management approval.

1096. Article 5.7 states if a casino has a suspicion on authenticity of identification details, it shall submit the respective reporting form to the Financial Monitoring Service of Georgia on the day of origination of the suspicion. In cases of suspicion or when dealing with a party identified on the terrorist list, the Casino shall immediately submit to the FMS the respective reporting form, available materials and any other information on the operation (transaction) and persons involved therein.

1097. Recent amendments to the AML/CFT Law include the addition of beneficial ownership requirements at Article 6.14 requiring that identification and verification be undertaken before the transaction is carried out.

1098. There is no prohibition to perform the transaction if the purpose and intended nature of the business relationship is not recorded. Also, there are no requirements in the AML/CFT framework to terminate the business relationship and to consider making an STR where a business relationship has already commenced and where the casino cannot comply with CDD requirements described in criterion 5.3-5.6 of the assessment methodology.

Dealers in Precious Metals and Stones

1099. Article 5.7 of the AML stipulates that an entity shall refuse to carry out the transaction if it is impossible to identify the person intending to set a business relationship. There is no prohibition to perform the transaction or to consider submitting an STR if: the identification of a one-time customer is not undertaken; the ownership and control structure of the customer is not understood; the beneficial owner is not determined or identified; or the purpose and intended nature of the business relationship is not recorded.

1100. There are no requirements in the AML/CFT framework to terminate the business relationship and to consider making an STR where a business relationship has already commenced and where the notary cannot comply with CDD requirements described in criteria 5.3-5.6 of the assessment methodology.

Accountants

1101. Article 5.8 of Decree No. 12 stipulates that accountants shall not establish a business relationship with the client and submit a report to the FMS when the person wanting to establish a business relationship cannot be identified; when a party to the transaction is on the list of terrorists and upon refusal of senior management to establish a business relationship with a PEP.

1102. Shortcoming as the same as those identified for DPMS above.

Implementation:

***Notaries*:**

1103. The above provisions explicitly prohibit the certification of transactions and the carrying out of notarial activities unless identification is verified. As noted previously notary acts cannot be registered (and consequently the transaction completed) without the identification information and the purpose and intended nature of the transaction being entered in the software registering notary acts. However, notaries have indicated that they have been unable to obtain the beneficial ownership information in some instances but still proceeded with the transaction.

***Casinos*:**

1104. As noted above there are instances where casinos have failed to identify clients when the GEL 3,000 threshold is reached. No procedures are in place to deal with instances where clients are not identified or when identification is not verified.

DPMS and Accountants:

1105. There is no indication that DPMS have complied with this requirement. The implementation of accountants' obligation could not be ascertained due to the recent coming into force of the requirements.

Existing Customers (R.5.17- 5.18)

1106. Pursuant to Article 16.11[135] of the AML/CFT Law, there is a requirement to update existing identification data and bring those into compliance with the effective requirements. There is no requirement to conduct due diligence on existing relationships on the basis of materiality and risk at appropriate times.

Implementation:

1107. As identification information is obtained for all notary acts, information on existing clients is automatically kept up-to-date by notaries. For casinos, no procedures are in place to address circumstances where client identification is not taken. Information on existing customers is not systematically updated and no process is in place to ensure that previously obtained identification remains valid. There is no indication that DPMS have complied with this requirement. The implementation of accountants' obligations could not be ascertained due to the recent coming into force of the requirements.

CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R.6 and 8-11 to DNFBP) (c. 12.2):

Politically Exposed Persons (PEPs) (R.6)

1108. Please refer to Section 3 for legal analysis. As noted in Section 3, the definition of close business relationship does not include legal arrangements. Similar provisions are outlined in Article 5-1 of Decree No. 12 for accountants, No. 93 for notaries and Decree No. 94. No decree was issued for DPMS.

1109. Although the provisions for accountants are substantially similar, they do have an additional requirement outlined at Article 6.4 stating that: "Persons Conducting Accountancy or/and Auditor Activity shall have respective procedures based on which it ensures obtaining respective information from client, as well as from public sources or respective electronic databases for the purpose of ascertaining and verifying Politically Exposed Persons".

Implementation:

1110. With respect to the identification of PEPs both notaries and casinos rely on the internet searches to identify whether a client is a PEP. These searches are conducted more systematically for notaries who research all foreign clients where those casinos who actually implement the requirement conduct searches on individuals from certain ethnic communities. This approach is not effective in identifying all potential PEPs as internet searches will not always reveal the relevant information. No entity met during the assessment obtained senior management approval; obtained source of wealth and funds conducted ongoing monitoring. The absence of guidance compounds the issue of lack of awareness. The implementation of accountants' obligations could not be ascertained due to the recent coming into force of the requirements.

[135] Article 6.15.b of the recently amended AML/CFT Law.

Non-Face-to-Face Transactions; New Technologies (R.8)

1111. Recent amendments to the AML/CFT Law outline obligations regarding non-face-to-face transactions and new technologies at Article 6.16. Similar provisions are also outlined in Article 5.14 of Decree No. 93, Article 5.13 of Decree No. 94 and Article 5.14 of FMS Decree No. 12 for accountants. No decree was issued for DPMS.

Implementation:

1112. Although there were no requirements regarding non-face-to-face transactions for notaries in place at the time of the on-site visit, a robust mechanism to identify clients in non-face-to-face situations has been established by notaries. Georgian clients are interviewed through the internet and their name, address, date of birth, and national identification number are confirmed with the information contained in the civil registry. The notary also ascertains if the person participating in the internet conference is a visual match to the picture in the civil registry. The process is videotaped and witnessed by two observers.

1113. Due to the adoption of the obligations related to risk and non-face-to-face transactions following the on-site visit, implementation could not be assessed for other sectors. Although internet casinos met by the assessors conduct initial client identification through non-face-to-face channels, no specific policies have been put in place to address the specific risks associated with non-face-to-face delivery channels. As noted in R.5, no verification is made that the identification number corresponds to the name of the individual. Furthermore there are no controls to prevent individuals from using fictitious names and ID numbers.

Introducers *(R.9)*

1114. Section 3 describes the requirements regarding introducers as outlined in Article 6.10[136] of the AML/CFT Law. These requirements apply to notaries, casinos, DPMS and accountants.

Notaries

1115. Recent amendments to Decree No. 93 outline in Article 5.3 the ability to "rely on a third person/intermediary, who according to international standards carry out identification and verification of identification of a person and its beneficial owner, maintaining of documents defined under Article 7 of the Regulation and is subject to the respective supervision and regulation for the purpose of preventing illicit income legalization and FT." The Article further specified that "in addition, for ensuring immediate access to information (documents or copies thereof) required for identification the Notary shall take respective action. In such a case an ultimate responsibility for identification and verification of the person according to the procedure set by this Regulation shall remain with the Notary."

[136] Article 6.11 of the recently amended AML/CFT Law.

1116. This requirement is not entirely in line with the standard. There is no requirement for the third party to comply with some requirements set out in Recommendation 5 and the requirement to immediately obtain information from the third party does not relate to all elements of the CDD process.

Casino/Accountants

1117. An identical provision is outlined for casinos in Article 5.3 of the recently adopted FMS Decree No. 94 for casinos and Article 5.3 of the recently adopted FMS Decree No. 12 for Accountants. Shortcomings are the same as those outlined for notaries.

DPMS

1118. No decree was issued for DPMS. Please refer to Section 3 for an analysis of the legislative framework. Shortcomings include the AML/CFT Law only mentioning access to the client (and not the beneficial owner) identification data documents while the standards also include other relevant documents relating to CDD.

Implementation:

1119. The mission was not able to ascertain instances of reliance on third parties in the casino, DPMS, accounting or notary sectors.

Record Keeping (R.10)

1120. Record-keeping requirements are outlined in Article 7 of the AML/CFT Law which are described and analyzed in Section 3. The power to request an extension of the record keeping period is attributed to the respective supervisory authority and does not allow other competent authorities to extend the record keeping period. These requirements apply to notaries, casino, DPMS and accountants.

1121. FMS Decree No. 12, No. 93 and No. 94 also outline the obligations of accountants, notaries, casinos and gaming establishments to keep information. The provisions are either identical or substantively similar to the requirements outlined in the AML/CFT Law.

1122. Recent amendments to Decree No.12, No. 93 and 94 at Article 5 include an obligation to keep business correspondence records for six years.

1123. In addition to obligations included in FMS Decree No. 93, notaries are also required to keep records indefinitely pursuant to Article 40 of the Rules for Drawing Up Notary Deeds. No decree was issued for DPMS.

Implementation:

1124. The assessment team believes that notaries comply with record keeping requirements. This determination is based on the results of examinations conducted by the Ministry of Justice notaries as well as the use of the prescribed software that keeps records of transaction details and which is mandatory for notary acts. Due to the absence of supervision in the casino sector, it is impossible to

ascertain if records are kept by casinos. DPMS do not appear to keep records for AML purposes. The implementation of accountants' obligations could not be ascertained due to the recent coming into force of the requirements.

Attention to Complex, Unusual Transactions (R.11):

1125. Requirements to pay special attention to complex and unusual transactions are outlined in Article 5.9 of the AML/CFT Law. A description of the requirements and their compliance with the standard can be found in Section 3 of this report. Unusual patterns of transactions are not covered under the current definition of unusual transaction and there is no clear requirement in the AML/CFT Law or FMS Decrees to make unusual transactions available to external auditors. These requirements apply to notaries, casinos, DPMS and accountants.

Notaries

1126. In addition to the provision in the AML/CFT Law, Article 3.3-1of FMS Decree No. 93 outlines specific requirements for notaries regarding paying special attention to unusual transactions, including complex, unusual large transaction and types of transactions which do not have apparent or visible economic purpose. The requirements are substantially the same as those outlined in the AML/CFT Law with the exception that the FMS Decree requires that notaries ascertain the "grounds" for concluding such a transaction compared to the AML/CFT Law that only requires that the "purpose" be ascertained.

1127. There is also under Article 3.2 of FMS Decree No. 93 an additional monitoring requirement regarding terrorism. The article stipulates that "any transaction (regardless its amount), other than transactions listed in para. 1 of this Article shall be subject to monitoring, if there is a supposition that any party of the transaction is related or is likely to be related with terrorists or persons supporting terrorism or/and funds involved in the transaction whether obtained legally or illegally, which may be related with or used for terrorism, terrorist act or by terrorists or persons financing terrorism. The list of terrorists and terrorism–supporting persons shall be published in the Official Gazette–"Sakartvelos Sakanonmdeblo Macne" by the Financial Monitoring Service of Georgia".

Accountants

1128. Identical provisions to those outlined in Decree No. 93 of notaries are outlined in Decree No. 12 for accountants.

Casino

1129. There is not specific provision related to complex and unusual transactions in Decree No. 94 for casinos. In the absence of additional requirements outlined in a decree, there is no specific requirement to examine the "background" of the transaction.

DPMS

1130. No decree has been issued for DPMS.

Implementation:

1131. The requirement to pay attention to complex and unusual transaction is partially implemented by notaries. Notaries are primarily focused on identifying CTRs over GEL 30,000. Some attention is being paid to red flags that have been provided by the FMS; however, ML/FT vulnerabilities are poorly understood. If unusual or complex transactions were identified, notaries met by the assessors were unaware that the grounds of the transaction should be examined and documented.

1132. Casinos monitor unusual and complex transactions for fraud purposes which may result in the identification of transactions of concern from an ML/FT perspective. However, casinos met during the on-site visit did not leverage their monitoring programs to identify unusual and complex transactions for ML/FT purposes. As noted with notaries, casinos were unaware that if an unusual or complex transaction was undertaken that they were required to examine and document the ground of the transaction.

1133. There is no indication that DPMS have complied with this requirement. The implementation of accountants' obligation could not be ascertained due to the recent coming into force of the requirements.

Effectiveness:

1134. Despite the extension of CDD measures to notaries, casinos and DPMS, the assessors question the ability of most DNFBP sectors to provide comprehensive information to competent authorities when an ML investigation is undertaken. Concerns are focused on the lack of obligations for most DNFBP sectors; ineffective implementation of CDD obligations for casinos and DPMS and challenges related to obtaining beneficial ownership information for notaries, accountants, and lawyers.

1135. The absence of obligations for lawyers and company service providers presents a risk, given the use of legal entities to conceal the origins of proceeds of crime as a common ML method in Georgia. As notaries, accountants, lawyers and company service providers, all play a role in the creation of legal entities and also at times conduct transactions on their behalf, their inclusion in the AML/CFT framework becomes important. The failure to extend obligations to lawyers and TCSPs creates an opportunity for launderers to target these sectors when wanting to establish legal entities with a goal to conceal the origins of proceeds. The absence of coverage of lawyers also creates vulnerabilities given the scope of legal privilege in Georgia and the lack of ability for competent authorities to access documents related to financial transaction in a lawyer's office.

1136. The casino industry is vulnerable to ML due to the possibility that launderers are not identified and laundering activities proceed undetected. This vulnerability has materialized in the Georgian gaming industry with inadequate CDD measures, creating an opportunity for criminals to conduct transactions anonymously. The absence of requirements regulating how client identification practices are undertaken in the casino sector results in CDD procedures being defined by each casino resulting in an uneven application of the obligation. These varying client identification procedures at times results in clients not being identified at the prescribed threshold and do not always allow for the client to be associated with particular transactions. This results in limited client identification

information being collected and transactions records that have insufficient information to permit the reconstruction of individual transactions as to provide evidence for the prosecution of criminal activity.

1137. The recent rapid expansion of the sector has not been effectively managed to ensure that AML/CFT obligations are understood and supervised. This has also contributed to CDD measures not being effectively applied.

1138. The ML/FT vulnerabilities associated with internet casinos is heighted due to the use of internet casino accounts as remittance vehicles. The absence of regulation on client identification for non-face-to-face channels and the management of casino accounts allow clients to use their casino account as a method of remitting funds to bank accounts; credit cards, cash boxes or other areas within Georgia where the casino has a physical location. The ML/FT vulnerabilities associated with internet casino accounts are compounded by the fact that identification measures are applied inconsistently or not at all allowing an attractive laundering vehicle to be used anonymously by criminals.

4.1.2. Recommendations and Comments

1139. The authorities are recommended to:

- Extend obligations to lawyers, real estate, and company service providers.
- Extend triggering activities for accountants to all AML/CFT obligations.
- Define precious metals and stones.
- Issue implementing regulations (FMS decree) for DPMS.

Recommendation 5

- Extend the prohibition to open anonymous accounts to DNFBPs.
- Remove client identification threshold for accountants.
- Establish CDD requirements when establishing a business relationship for sectors other than notaries.
- Extend circumstances when “CDD” is required to all aspects of CDD, not just identification and verification.
- Establish a requirement related to the identification and verification of legal arrangements.
- Establish a requirement for DPMS to verify the authority of a person purporting to act on behalf of the customer or a legal entity.
- Establish definition or develop guidelines on what is considered reasonable measure and reliable source.

- Establish provisions that require entities to understand the ownership and control structure of the legal entity for all DNFBP sectors except notaries and casinos.

- Establish a requirement to obtain information on the purpose or intended nature of business relationships for all sectors except notaries and accountants.

- Establish regulations that govern cases where DNFBPs may complete the verification of the identity of customers and beneficial owners after the establishment of the relationship.

- Establish a requirement for DPMS to terminate the business relationship and to consider making an STR when the DNFBP has commenced the business relationship and is unable to comply with CDD requirements described in c.5.3 to c.5.5 of the common assessment methodology.

- Establish a requirement to conduct due diligence on existing relationships on the basis of materiality and risk at appropriate times.

- Amend the AML/CFT Law to explicitly state when simplified measures may be applied. Such measures should only be allowed for countries that effectively apply FATF Recommendations.

- Amend AML/CFT Law to prohibit simplified measures when there is a suspicion of ML/CFT or in cases of high risks.

- Ensure that beneficial ownership information is systematically captured and verified by notaries.

- Ensure that CDD measures are applied by casinos.

Recommendation 6

- Establish requirement for entities to have appropriate risk-management systems to determine whether the customer is a PEP for all sectors except accountants.

- Expand definition of close business relationship to cover legal arrangements.

- Ensure that senior management approval and source of wealth and funds is obtained when establishing a PEP relationship.

- Ensure that DNFBPs apply ongoing due diligence with PEP relationships.

- Clarify the definition of “reasonable measures”.

- Provide guidance on the required “enhanced monitoring” measures to be applied to PEPs.

Recommendation 8

- Prescribe CDD methods for the casino sector including the timing of identification and verification as well as acceptable methods of non-face-to-face identification methods for internet casino.

- Ensure that internet casinos apply adequate ongoing CDD to non-face-to-face customers.

- Issue guidelines on the use of non-face-to-face channels.

Recommendation 9

- Require that DNFBPs relying on third party immediately obtain from the third party information related to all elements of the CDD process.

- Require that DNFBP relying on a third party immediately obtain access to other relevant documents relating to CDD.

- Require that DNFBPs relying on a third party obtain access to information on beneficial owner.

- Ensure that competent authorities have an explicit requirement to take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.

Recommendation 10

- Empower other competent authorities other than the respective supervisor to request an extension of the record keeping period.

Recommendation 11

- Ensure that the legal basis for unusual and watch zone related transaction is clear and comprehensive, more precisely by:

    - Amending the definition of unusual translations to include the unusual patterns of transactions; and

    - Extending the watch zone related transactions to all financial institutions and DNFBPs defined by the FATF standards to include business relationship and transactions with persons, including companies, DNFBPs and financial institutions from countries which do not or insufficiently apply the FATF standards. This requirement should go beyond specific transactions currently determined in the AML/CFT Law to include all transactions and business relationships.

- Provide DNFBPs with guidelines on the implementation of the requirement to pay special attention to unusual and watch zone related transactions and amend the reporting forms to exclude the unusual and watch zone related transactions from the breakdown list.

1140. Authorities should also consider:

- Prohibiting the use of casino accounts as remittance vehicles.
- Providing guidance with respect to effective CDD for PEPs.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	• Customer due diligence measures and record keeping obligations do not apply to lawyers, real estate agents, and trust and company service providers. • Unclear scope of accounting activities that are covered by the legislation. • Absence of definition of "precious metals and precious stones" • No implementing regulations for DPMS. **Recommendation 5:** • Existence of minimum threshold for customer identification for accountants. • No CDD requirement when establishing a business relationship for sectors other than notaries. • Absence of requirements regarding the identification and verification of legal arrangements. • No obligation for DPMS requiring the verification of the authority of the person purporting to act on behalf of the legal entity or the customer. • No provisions that require accountants and DPMS to understand the ownership and control structure of the legal entity. • No requirement to obtain information on the purpose or intended nature of business relationships other than for notaries and accountants. • No regulations that govern cases where DNFBPs may complete the verification of the identity of customers and beneficial owners after the establishment of the relationship. • No requirement for DPMS to terminate the business relationship and to consider making an STR when the DNFBP has commenced the business relationship and is unable to comply with CDD requirements.

		• No specific prohibition to apply simplified CDD when there is a suspicion of ML/FT or in cases of high risk and no regulation indicating when simplified measures are appropriate. • No requirement to conduct due diligence on existing relationships on the basis of materiality and risk at appropriate times. **Recommendation 6** • Definition of close business relationship does not include legal arrangements. **Recommendation 9** • No requirement that DNFBPs relying on a third party immediately obtain information related to all elements of the CDD process. • No requirement that DNFBPs are satisfied that the third party has measures in place to comply with all elements of the CDD requirements. • No requirement for third party to grant access to other relevant documents relating to CDD and beneficial ownership. **Recommendation 10** • No ability for other competent authorities other than the respective supervisor to request an extension of the record keeping period. **Recommendation 11** • Unusual pattern of transactions is not covered under the current definition of unusual transaction. • No clear requirement in the AML/CFT Law or FMS Decrees to make unusual transactions available to external auditors. • No specific requirement to examine the background of transaction that have no apparent or visible economic or lawful purpose for casinos or DPMS. **Implementation:** • Beneficial ownership requirements by notaries are not effectively implemented. • CDD measures by casinos are not effectively implemented. • Senior management approval and source of wealth and funds are not

		obtained when establishing a PEP relationship. • No ongoing due diligence is applied with PEP relationships. • No procedures implemented to mitigate the risks associated with non-face-to- face transactions in internet casinos. **Effectiveness:** • Poor CDD measures in casinos increase the risk of laundering occurring undetected. • Effectiveness and implementation of the following obligations could not be assessed due to their recent coming into force: o All obligations applying to accountants. o Conducting ongoing due diligence of business relationships. o Implementation of policies and procedures to mitigate the risk of non-face-to-face transactions. o Monitoring of risks associated with new technologies. o Conducting enhanced due diligence of high risk customers, business relationships and transactions. o Not carrying out transactions or ceasing business relationships if beneficial owner cannot be subject to identification and verification.

4.2. Suspicious Transaction Reporting (R.16)

Recommendation 16 (rated PC in the third round report)

4.2.1. Description and Analysis

Legal Framework:

1141. The AML/CFT Law outlines requirements related to STR reporting in Article 5. Obligations regarding internal controls are outlined in Article 8. The legislative framework regarding the reporting of STRs and internal controls does not apply to lawyers, real estate agents, and trust and company service providers.

1142. The regulation of activities related to STR reporting and internal controls are also outlined in the following Decrees:

- Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by the Persons Organizing Lotteries, Gambling and Commercial Games and Forwarding to the Financial Monitoring Service of Georgia (approved under the FMS Decree No. 94 of the Head of the FMS of July 28, 2004);[137]

- Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by Casinos and Forwarding to the Financial Monitoring Service of Georgia (approved under the FMS Decree No. 94 of the Head of the FMS of July 28, 2004);[138]

- Regulation on Receiving, Systemizing and Processing the Information by Notaries and Forwarding to the Financial Monitoring Service of Georgia (approved under the FMS Decree No. 93 of the Head of the FMS of July 27, 2004);[139]

- Regulation on Receiving, Systemizing and Processing the Information by Persons Conducting Accountancy or/and Auditor Activity and Forwarding to the Financial Monitoring Service of Georgia" (approved under the FMS Decree No. 12 of the Head of the FMS of Georgia of January 31, 2012).

1143. FMS Decree No. 65/4 of the President of the National Bank of Georgia of August 24, 2011 on "Establishing the List of Watch Zones for the purposes of the Law of Georgia of Facilitating the Prevention of illicit Income Legalization" outlines high risk countries subject to special attention.

1144. When the legislative provisions have been described in Section 3, the description and analysis will not be repeated here. Any deficiencies identified in Section 3 regarding the legislative framework also apply to DPMS, notaries, accountants, casinos and gaming establishments.

Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 and IV.1 to DNFBPs):

1145. Article 3 of the AML/CFT Law outlines requirements regarding the monitoring of transactions. Requirements apply to notaries, casinos, DPMS and accountants.

Notaries/Casinos/Accountants

1146. Article 5 of the AML/CFT Law, Article 3 in FMS Decree No. 12 for accountants, No. 93 for notaries and No. 94 for Casinos and Persons Organizing Lotteries, Gambling and Commercial Games also specify requirements regarding the monitoring of transactions. The many requirements outlined in the FMS Decrees are either identical or substantively the same as those outlined in the AML/CFT Law. The modalities of how to report suspicious transactions are also included in FMS Decree No. 12, No. 93 and No. 94.

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[137] FMS Decree No. 94 was amended on February 6, 2012.

[138] FMS Decree No. 94 was amended on February 6, 2012.

[139] FMS Decree No. 93 was amended on January 31, 2012.

1147. Recent amendments to Decree No. 93 outline at Article 8.4.b that if transaction or identification data is considered as suspicious, the report should be submitted on the day of origination of supposition or suspicion. Decree No. 94 outlines at Article 5.11[140] a requirement for casinos to develop an electronic data base for the purposes of revealing suspicious and structured transactions.

DPMS

1148. No decree has been issued for DPMS.

STRs Related to Terrorism and its Financing (applying c. 13.2 to DNFBPs):

1149. Please refer to Section 3 for the analysis of the legal framework. Requirements apply to notaries, casinos, DPMS and accountants. No significant deficiencies were found in the legal framework.

No Reporting Threshold for STRs (applying c. 13.3 and IV.2 to DNFBPs):

1150. Refer to Section 3 for analysis of the legal framework. Requirements apply to notaries, casinos, DPMS and accountants. No significant deficiencies were found in the legal framework.

Making of ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying c. 13.4 and c. IV.2 to DNFBPs):

1151. Refer to Section 3 for analysis of the legal framework. Requirements apply to notaries, casinos, DPMS and accountants. No significant deficiencies were found in the legal framework.

Additional Element—Reporting of All Criminal Acts (applying c. 13.5 to DNFBPs):

1152. Refer to Section 3 for analysis of the legal framework. Requirements apply to notaries, casinos, DPMS and accountants. No significant deficiencies were found in the legal framework.

Implementation:

1153. STR reporting has only been extended to casinos, accountants, DPMS and notaries. Notaries and casinos were aware that they had to report suspicious transactions but many of the entities met during the on-site mission reduced suspicious reporting to identifying countries identified in the watch list. DPMS were not generally aware of the obligation and did not report any STRs. The implementation of accountants' obligations could not be ascertained due to the recent coming into force of the requirements.

1154. The requirement to report attempted transaction was generally understood by notaries but casinos and DPMS were not aware of the obligation. The FMS has not received any suspicious attempted transactions from the DNFBP sectors.

[140] Article 5.14 of Decree No. 94 (amended February 6, 2012).

1155. Notaries indicated that they would report suspicious transactions related tax matters and funds that were proceeds of all criminal acts. Casinos did not make the distinction between the underlying crimes and indicated that they would report all suspicions.

STRs SUBMITTED TO THE FMS BY DNFBPs					
	2007	**2008**	**2009**	**2010**	**2011**
Notary	19	7	1	1	11
Lawyers	-	-	-	-	-
Accountants	-	-	-	-	-
DPMS	-	-	-	-	-
Casino	-	-	-	-	-
Gambling	-	-	-	-	-
Real Estate	-	-	-	-	-
TCSP	-	-	-	-	-
Total	**19**	**7**	**1**	**1**	**35**

1156. Implementation of the STR reporting requirement is low as only notaries are reporting STRs. This relatively low number of reports for notaries and the absence of reports in the casino and DPMS sector may be due to overemphasis placed on reporting entities to identify and report CTRs. This is particularly true in the notaries sector where 82 percent of notaries were sanctioned in 2009 for incomplete or late reporting to the FMS. With the attention of the supervisor focused on CTRs and watch list reporting, there is a risk that notaries do not focus on the identification of suspicion and filling of STRs.

1157. The number of STRs submitted by notaries saw a sharp decrease but has rebounded in 2011. The number of STRs went from 19 reports in 2007 to one report in both 2009 and 2010. The statistics may lend credibility to the argument that notaries focused on CTR reporting following sanctions being applied by the Ministry of Justice to notaries who submitted incomplete CTRs to the FMS in 2009. The number of STRs has seen an increase in 2011 to 36 reports.

1158. The number of STRs reported in Georgia may also be impacted by the requirement to report CTRs and transactions related to countries found in the list published by the NBG (and previously by the Government of Georgia). It is unclear how many of the STRs reported by the notaries are watch list related as the FMS does not keep distinct statistics for STRs as defined by the standard and “watch list” transactions.

1159. Casinos may not fully understand STR requirements as demonstrated by the total absence of STRs being reported. Casinos met during the on-site mission indicated that they had been asked by

law enforcement to provide information on suspects of crime as well as conduct monitoring on these clients. One casino indicated that they receive this type of request from law enforcement at least 10 times a year. The cases were mostly related to robbery investigations where the person of interest was suspected of laundering proceeds of crime in the casino. Despite being involved in providing information to a police investigation, no STRs were filed by the casino.

1160. The FMS has indicated that the quality of STRs received by notaries is good. As noted previously, the Ministry of Justice focused its supervision efforts on the quality of reporting in 2009 and 2010, imposing a large number of sanctions to notaries. As a result, the FMS has indicated that the quality of reporting has improved.

1161. Although Georgia comparatively has received more STRs in total compared to similar economies, a year over year comparison notes a sharp decrease in reporting in Georgia compared to the constant increase seen in other countries from 2007 to 2010. Reporting rebounded in 2011 when notaries reported a total of 36 STRs.

Cross-country comparison of STR Reporting (DNFBPs)				
Country	**2007**	**2008**	**2009**	**2010**
Georgia	**19**	**7**	**1**	**1**
Albania	**-**	**-**	**4**	**6**
Armenia	**-**	**-**	**-**	**-**
Moldova	**-**	**1**	**6**	**6**

Protection for Making STRs (applying c. 14.1 to DNFBPs):

1162. Refer to Section 3 for the analysis of the legal framework. Requirements apply to notaries, casinos, DPMS and accountants. There is no express protection for civil liability.

Prohibition against Tipping-Off (applying c. 14.2 to DNFBPs):

1163. Article 12.1 of the AML/CFT Law outlines requirements regarding the prohibition of tipping-off. Requirements apply to notaries, casinos, DPMS and accountants.

1164. Article 8.17 of FMS Decree No. 93 for Notaries; Article 4.7 of FMS Decree 94 for casinos; Article 4.6 of FMS Decree No. 94 for persons organizing lotteries, gambling and commercial games and Article 9.13 of FMS Decree No.12 for accountants outline requirements that are substantively the same as in the AML/CFT Law. No decree has been issued for DPMS.

Implementation:

1165. Some casinos and all notaries met by the assessors were aware that they were not authorized to inform parties to the transaction or other persons that a report had been submitted to the

FIU. However, in one instance, a gaming establishment indicated that it would inform the customer that a suspicious report had been submitted if the gaming establishment ever submitted an STR. Implementation of the requirement was difficult to ascertain given the low number of STRs. DPMS were not aware of their obligation to report much less the prohibition against tipping-off. The implementation of accountants' obligations could not be ascertained due to the recent coming into force of the requirements.

Additional Element—Confidentiality of Reporting Staff (applying c. 14.3 to DNFBPs):

1166. Pursuant to Article 12.7 of the AML/CFT Law "in the course of fulfillment of the obligation to submit information to the FMS provided for in this Law, the identity of employees of monitoring entities shall not be disclosed." Requirements apply to notaries, casinos, DPMS and accountants.

Establish and Maintain Internal Controls to Prevent ML and TF (applying c. 15.1, 15.1.1 and 15.1.2 to DNFBPs):

1167. Article 8 of the AML/CFT Law outlines requirements to maintain internal controls for AML. The requirements apply to notaries, casinos, DPMS and accountants. The requirements do not require that the compliance officer be designated at the management level.

Notaries

1168. Article 4 of FMS Decree No. 93 for notaries provides a general reference to the implementation of internal controls. The provision states "the notary shall exercise internal control in accordance with the normative acts issued by the Ministry of Justice".

Casinos

1169. Article 4 of FMS Decree for Casinos and Persons Organizing Lotteries, Gambling and Commercial Games outlines requirements regarding internal controls for casinos and gambling institutions. The vast majority of requirements are identical or substantially similar to the requirements outlined in the AML/CFT Law. The AML/CFT Law also applies to gambling business institutions.

1170. There are, however, some additional details that are provided. Article 4.2 outlines that internal controls should specifically include:

a) Identification of persons involved in transaction subject to monitoring related to Gambling Business Institutions, as well as identification of their beneficial owners and other transaction participants according to the procedure set under the present Regulation; undertaking measures provided for in the legislation against Politically-Exposed Persons (PEP) (02.06.2010 #11);

b) Analyzing the information obtained through identification process and revealing transactions subject to monitoring, documenting, systemizing, and filing such information;

c) Submission of the information on transactions subject to monitoring to the Financial Monitoring Service of Georgia in the special reporting form.

1171. FMS Decree No. 94 specific to Casinos also outlines in Article 4.4.c an additional requirement for the compliance officer of a casino. The Article stipulates that "the person who makes decision on considering transaction as suspicious and/or aimed at partition of the transaction and forwarding a respective reporting form to the Financial Monitoring Service of Georgia, such a person should be a person in charge of monitoring, also according to the regulation of the Casino person taking the final decision may be a representative of management or other authorized person of the Casino."

1172. The provisions outlined in the decree provide additional information to monitoring entities regarding the specific type of information that should be included in internal controls, however they do not impact the level of compliance for this criterion.

Accountants

1173. Article 4 of Decree No. 12 for Accountants outlines the content of internal control implementation namely the identification of clients; measures dealing with PEPs; permanent monitoring; analyzing information gathered through monitoring; recording, systemization and filing of information; and reporting to the FMS.

DPMS

1174. No decree has been issued for DPMS.

Independent Audit of Internal Controls to Prevent ML and TF (applying c. 15.2 to DNFBPs):

1175. There is no requirement in AML/CFT Law or related decrees related to maintaining an adequately-resourced and independent audit function for any of the DNFBP sectors.

Ongoing Employee Training on AML/CFT Matters (applying c. 15.3 to DNFBPs):

1176. Article 8, para. 6 of the AML/CFT Law requires that "monitoring entities shall be obliged to provide periodic training for the employees involved in the process of detecting the facts of legalizing illicit income and terrorism financing."

Casinos

1177. A specific requirement to provide training to employees of casinos has been outlined in Article 4.2.d of the FMS Decree No. 94 for Casinos. This requirement is more comprehensive than the requirement outlined in Article 8, para. 6 of the AML/CFT Law that requires the training of employees involved in the process of detecting ML. By extending the training obligation to all employees, the requirement for casinos is more in line with the standard.

Notaries/Accountants

1178. No additional requirements are outlined in the Decrees for notaries and accountants.

DPMS

1179. No decree has been issued for DPMS.

Employee Screening Procedures (applying c. 15.4 to DNFBPs)

1180. There is no specific requirement related to employee screening procedures in the AML/CFT Law.

Notaries

1181. Article 11 of the Georgian Law on Notaries outlines the terms and conditions of occupying notary's position. The conditions include: notary's position may be occupied under the present Law by any capable citizen, having higher legal education, who has passed in-depth training or has at least one year length of service as a notary or at least five years length of service by his (her) specialty in the public service, and passed notaries' qualification examinations.

1182. Article 14 of the Georgian Law on Notaries provides the basis for refusing the appointment of a notary. These include being convicted of committing deliberate crime; having a current prosecution under way against him; committing a crime immediately connected with notary activity, being released from public service; being released from notary service for misdemeanor.

1183. The Minister of Justice is responsible for appointing notaries based on Article 13 of the Georgian Law on Notaries.

1184. The procedures to ensure the integrity of the notary profession are in line with the standard. The Ministry of Justice oversees the notary's qualification exam prior to their entry into the profession. It also ensures that the prohibitions outlined in Article 14 do not apply to candidates that are appointed as notaries.

Casino/DPMS/Accountants

1185. There are no employee screening procedures in place for casinos, DPMS, or accountants.

Additional Element—Independence of Compliance Officer (applying c. 15.5 to DNFBPs):

1186. There is no specific provision for an independent compliance officer.

Implementation:

1187. All DNFBPs met during the mission were not aware that they were required to implement internal controls, establish a training program, review controls, and put in place screening procedures for employees. Casinos did have some procedures documented in internal regulations that is required as part of their licensing requirements. Some details on how to conduct client identification was included in these documents, however no other elements were covered. Notaries and DPMS had not implemented this requirement.

1188. Implementation of the training obligation is relatively poor in DNFBP sectors. Notaries did not provide direct training to their staff, however some AML/CFT training has been delivered by the Chamber of Notaries in cooperation with the FMS. Only one casino indicated that it provided training to its employees working in the cash cage related to client identification and the identification of fraudulent currency. DPMS do not provide training to their employees on AML/CFT related issues.

1189. Despite having no requirement to do so, both casinos and notaries have developed employee screening procedures. For notaries, in addition to the requirements outlined in the Georgian Law on Notaries, the Ministry of Justice also undertakes criminal background checks before designating a notary. Notaries are also responsible for verifying the integrity of their employees and ensuring that employees ensure the confidentiality of information handled by the notary. The Ministry of Justice reviews the contracts of the employees and has the power to sanction and remove the employee if the employee is deemed to have a questionable background. Casinos require criminal background checks from all their employees. In addition, some casinos also require drug tests. References from previous employers are also verified.

1190. All notaries and some casinos met during the mission had appointed compliance officers. Notaries normally appointed themselves as compliance officers. In casinos met by the assessors, the position of the compliance officer varied but they were always at the management level with the manager of the finance department and the cash cage manager designated in three casinos/gaming establishments. In another casino, they had appointed three individuals as responsible for reporting to the FMS but had not appointed a compliance officer per se. In all cases, compliance officers from the casino and notary sector had access to CDD and transaction information although compliance officers met during the on-site did not know that they were also responsible for all AML/CFT obligations listed in the AML/CFT Law. DPMS were not aware of the obligation to appoint a compliance officer.

1191. The implementation of accountants' obligations could not be ascertained due to the recent coming into force of the requirements.

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 and 21.1.1):

1192. Article 5.1 of the AML/CFT Law outlines monitoring requirements. Please refer to Section 3 for the analysis of the legislative framework. The legal framework does not require DPMS to apply counter-measures in cases where a country continues not to apply or insufficiently applies the FATF Recommendations.

Notaries

1193. Article 2.j of FMS Decree No. 93 for Notaries defines a non-cooperative area or watch zones as country or a part of the territory thereof defined by the National Bank of Georgia on the basis of proposition of the Financial Monitoring Service of Georgia (FMS). The article requires the country or territory thereof to be identified as such on the basis of the information provided by competent international organization, or if the grounded supposition exists that in such zone weak mechanisms for controlling illicit income legalization are effective.

1194. The requirement to monitor transactions from non-cooperative zones is not in line with the standard as the watch list published by the NBG does not include all ICRG listed countries (i.e., Turkey). Other than the publication of the watch list, there are no specific measures in place to advise notaries of concerns about weaknesses in the AML/CFT systems.

Casinos/Gambling Establishments

1195. Article 3.3 of FMS Decree No. 94 for Casinos and Persons Organizing Lotteries, Gambling and Commercial Games requires the monitoring of any transaction (operation), regardless of its amount, implemented by the person operating or registered in watch or suspicious zone. The publication of the list of non-cooperative countries and watch zones is published by the NBG as noted above for notaries.

1196. As noted above for notaries, casinos and gambling establishments are required to monitor transactions pursuant to Article 5.1 of the AML/CFT Law, and the definition of suspicious transaction outlined in Article 2.h of the FMS Decree makes this requirement more explicit.

1197. Same shortcoming identified for notaries apply to casinos.

DPMS

1198. There has been no decree issued for DPMS.

Accountants

1199. Accountants have similar provisions in Decree No. 12 for Accountants as those outlined in the Decree No. 94 for Casinos. Shortcomings identified also apply to accountants.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):

1200. Article 5.9 of the AML/CFT Law outlines the requirement for this criterion. Please refer to Section 3 for the analysis of the legislative framework. The requirement of examining the purpose of the transaction does not extend to examining its background. Also there is no clear requirement to make such transactions available to auditors.

Notaries

1201. Article 3.3[1] of FMS Decree No. 93 requires notaries to "focus special attention on unusual transactions and within their competence ascertain the purpose and grounds for concluding such transaction and depict findings in writing". Unusual transactions are defined in the Article 2.o of FMS Decree No. 93 as "complex, unusual large transaction, also types of transactions, which does not have apparent or visible economic (commercial) content or lack lawful purpose and is inconsistent with the ordinary business activity of the person involved therein".

1202. The above requirement is in line with the standard as it requires notaries to ascertain the purpose and grounds of transactions that have no apparent economic or visible lawful purpose and to depict the findings in writing.

Casinos/Accountants/DPMS

1203. No additional requirements were outlined in decrees for casino and accountants. No decree has been issued for DPMS.

Implementation:

1204. The monitoring of the watch zone list appears to be implemented by the notary sector with notaries consulting the list when transactions involve foreign clients or entities. The monitoring by the casino sector is more piecemeal with the list being consulted for foreign clients coming from certain countries but not systematically for all foreign clients. Despite this initial monitoring, little effort is made to subsequently understand the background and purpose of the transaction and make a determination whether the transaction is suspicious. Although both notaries and casinos indicated that the watch zone list can serve as a catalyst for reporting an STR, the absence of reporting for casinos and the relatively low level of reporting for notaries appear to challenge that. Furthermore, it was not apparent what the basis was for removal from the list of certain countries identified by the FATF which may further impact the effective implementation of this requirement. DPMS did not implement this obligation.

Ability to Apply Countermeasures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

1205. There is no mechanism in place in Georgia to apply appropriate countermeasures to countries that insufficiently apply FATF recommendations. Analysis of implementation and effectiveness can be found under Section 3 of the report.

Effectiveness- R.16

STR Reporting

1206. The absence of reporting requirements for lawyers, TCSP, real estate and, until recently, accountants undermines the effectiveness of the reporting regime. Given the risk associated with the creation of legal entities as outlined above, the absence of lawyers, accountants, and TCSPs from the AML/CFT framework prevents the FMS from receiving information from valuable sources.

1207. Overall, the level of reporting of suspicious transactions from covered DNFBP sectors is very poor. There are no STRs reported by casinos. This level of reporting is not commensurate with the risks associated with internet casinos and the ability for internet casino clients to use their internet casino accounts to remit funds from one location to another. Furthermore land casinos have been asked by law enforcement to monitor robbery suspects demonstrating that suspected criminals are conducting transactions in casinos; yet no STRs have ever been filed by the sector. The absence of adequate CDD measures impacts casinos' ability to link clients to specific transactions making it difficult to identify suspicious transactions.

1208. The number of STRs reported in the notaries sector is not commensurate with the number of CTRs reported. In 2010, one STR was reported compared to 8,455 CTRs reported in the same period. Although an increase in STRs was noted in 2011, the level of reporting appears to be low, considering the role of notaries in company formation and the fact that notaries met during the assessment

indicated that they could not always identify the beneficial owner, particularly when dealing with entities located in foreign jurisdictions. With the use of foreign legal entities being identified as a common ML typology in Georgia, there would be an expectation that the number of STRs would be higher.

1209. Also, as noted in Section 3, monitoring entities are confused about the different requirements related to reporting. In addition to STRs, monitoring entities are required to report CTRs, unusual transactions, and watch zone related transactions. The focus on reporting these last types of transactions detracts from the reporting of STRs.

Internal Policies and Controls

1210. Effectiveness of internal policies and controls can be assessed by whether AML/CFT obligations are understood and implemented. In Georgia, the absence of internal AML/CFT policies and procedures is reflected in a very low level of compliance with most AML/CFT requirements by covered DNFPBs. Internal controls and the requirement to develop policies and procedures related to all AML/CFT obligations provide an opportunity for reporting entities to familiarize themselves with their obligations. The absence of policies and procedures in all DNFBP sectors thus results in a general lack of awareness regarding obligations and an uncoordinated approach to ML/FT monitoring and detection. Because there is no document that outlines how an entity will meet all of its AML/CFT obligations, client identification might be undertaken but employees and management do not make the link between identification and the monitoring of transactions.

1211. The absence of procedures also impacts the effectiveness of monitoring activities as it is not clearly defined what could be considered suspicious in the context of the operations of the reporting entity and what process should be undertaken to report to the FMS by employees. There is an understanding of having to identify clients but the absence of documented policies and procedures make it difficult for entities to implement more specific CDD requirements, such as the identification of beneficial owners and PEPs and the requirement to refuse transactions when CDD is not complete.

1212. The limited amount of training provided further exacerbates the lack of awareness within reporting entities, creating a situation where entities solely focus on reporting CTRs without focusing on other elements of the framework that could assist in the identification of suspicious transactions and compliance with all AML/CFT requirements.

Special Attention to Transaction from Some Countries

1213. The absence of obligations for lawyers, TCSPs and, until recently, accountants allows transactions conducted in countries that insufficiently apply FATF recommendations to be conducted without further scrutiny. This presents an issue as the risks related to the creation of legal entities that may have beneficial owners in these jurisdictions is not mitigated.

1214. The requirement to pay special attention to transaction from some countries is limited to a very narrow list of transactions. The list of watch zone countries does not reflect the FATF ICRG countries. It does not include some countries on the FATF ICRG list and excludes others on the FATF public list, i.e., Turkey.

4.2.2. Recommendations and Comments

1215. It is recommended that authorities:

- Extend STR reporting and internal control requirements to lawyers, real estate agents, and TCSPs.
- Provide for the possibility to apply countermeasures in cases where a country continues not to apply or to apply insufficiently the FATF recommendations.
- Develop guidance regarding reporting and internal controls for DNFBPs.

Recommendation 13

- Implement an outreach program to raise awareness of ML/FT sectoral vulnerabilities and STR monitoring and reporting amongst DNFBPs.

Recommendation 14

- Amend Article 12 of the AML/CFT Law to ensure that the protection and tipping-off requirements extend to temporary and long term establishment situation.
- Apply both criminal and civil protection for STR reporting.

Recommendation 15

- Establish requirement for screening procedures to ensure high standards when hiring employees for DPMS, accountants, and casinos.

Recommendation 21

- Update the watch zone list to include countries identified by FATF which do not or insufficiently apply FATF recommendations.
- Provide for the possibility to apply countermeasures in cases where a country continues not to apply or to apply insufficiently the FATF Recommendations.
- Establish a requirement to make information on transactions with no apparent economic or visible lawful purpose available to auditors.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	**Recommendation 16 and SRIV** • ML and FT suspicious transaction reporting and the implementation of internal controls do not apply to lawyers, real estate agents and trust, and

		company service providers. **Recommendation 14** • Protection of information and tipping-off requirements do not extend to temporary or long term establishment situation of staff. • The protection against liability does not apply to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision. • Protection should be available even if individual did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. **Recommendation 15** • No screening procedures requirements for the hiring of employees for casinos, accountants and DPMS. • Lack of requirement for DNFBPs to have an adequately resourced and independent audit function. **Recommendation 21** • No ability for DNFBPs to apply countermeasures in cases where a country continues to not apply or insufficiently applies the FATF Recommendations. • Requirement to give special attention to business relationships and transactions with persons from some countries is confusing and limited to certain number of transaction over GEL 30,000 and should be enlarged to countries which do not or insufficiently apply FAFT recommendations. • No requirement to make information on transactions with no apparent economic or visible lawful purpose available to auditors. • The requirement of examining the purpose of the transaction for transactions with no apparent economic or visible lawful purpose does not extend to examining its background for casinos and DPMS. **Implementation:** • Policies and procedures are not developed by DNFBPs. • Training programs targeted to employees are not delivered by DNFBPs. • Audit functions to test compliance with policies and procedures are not

		established by DNFBPs. • Background and purpose of transaction conducted in countries that insufficiently apply FATF standards are not examined and documented. • Despite the very real threat of terrorism and TF activity in Georgia, no STRs relating to terrorist financing have been received from any DNFBP. • No attempted transactions reported by DNFBPs. **Effectiveness:** • STR reporting level is not commensurate with the level of risk associated with casino and notary sector (i.e. no reporting of STRs by casinos).

4.3. Regulation, Supervision, and Monitoring (R.24-25)

Recommendation 24 (rated PC in the 3rd round report)

4.3.1. Description and Analysis

Legal Framework:

1216. Article 4 of the AML/CFT Law designates the following supervisory authorities for the DNFBP sectors:

Sector	Designated Supervisor	Number of entities
Notaries	Ministry of Justice	210
Casinos	Ministry of Finance (no specific powers to conduct AML/CFT inspections)	15 land casinos (8 operate internet casinos) 150 gambling establishments
DPMS	Ministry of Finance	100[141]
Accountants	Organization created on the basis of the Georgian legislation that is the member of the International Federation of Accountants (Legislation designating organization not yet adopted).	5000[142]

[141] Estimate in 2007 DAR.

[142] Membership of the Georgian Federation of Professional Accountants and Auditors.

Lawyers	No AML supervisor or obligations.	3,500
Real Estate	No AML supervisor or obligations.	100-150[143]
TCSP	No AML supervisor or obligations.	Unknown

1217. Article 4 of the AML/CFT Law lists the supervisory bodies for each covered sector but does not clearly indicate that the supervisory bodies are responsible for supervision of AML/CFT matters (this can be inferred). The responsibilities of the supervisory bodies are described under Article 11 of the AML/CFT Law.

1218. Recent amendments to the AML/CFT Law extend obligations to accountants and designate the "member organization of the International Federation of Accountants". In practical terms, this is intended to refer to the Georgian Federation of Professional Accountants and Auditors; however, the legislation formally designating the Federation has not been adopted.

1219. The Law of Georgia Organizing Lotteries, Games of Chance and Winning Games (hereafter the Law on Games of Chance) describes the licensing requirements for casinos as well as how casinos should be operated.

1220. Article 4.c of the AML/CFT Law designates the Ministry of Justice as being responsible for the supervision of notaries for AML/CFT purposes. The Law on Notaries outlines the supervisory authority of the Ministry of Justice. Associated charters and regulations include the Ministry of Justice Decree No. 177 on Supervising Authority of the Notary Activities and Ministry of Justice Decree No. 69 on Disciplinary Liability of Notaries Charter.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3):

Designated Competent Authority Responsible for Casino Supervision (c.24.1.1)

1221. The MOF is responsible for the supervision of AML/CFT obligations for casinos and gambling establishments. Article 7.3 of the Law on Games of Chance empowers the Revenue Service of the MOF to monitor the fulfillment of the permit conditions for casinos and gaming establishments. Despite the designation in Article 4 of the AML/CFT Law, the legal framework does not vest the MOF with the power to conduct inspections (including on-site inspections to ensure compliance with the standards) or enforcement and sanction powers.

Licensing (c.24.1.2)

1222. Article 7 of the Law on Games of Chance stipulates that permits for games of chance and winning games are issued by the Revenue Service.

[143] Estimate by industry representative.

1223. Article 19 of the Law on Games of Chance details the documents that should be submitted to the Revenue Service to obtain a permit for setting up a casino. They include: an extract from the Public Registry certifying ownership of the property intended for setting up of a casino; conditions (regulations) of setting up a casino containing: the list of gaming tables present in a casino with indication of name, serial number, year of manufacture and manufacturing country; minimal and maximal stakes; a casino work rules; the rules of conduct in a casino; the rules of games played in a casino; and samples of gaming tokens.

1224. Other than the information listed above, no additional information is required regarding the owners or operators and no fit and proper controls are applied. The legal framework does not confer specific authority to the Revenue Service to request information needed to establish whether owners or operators are fit and proper.

1225. Separate licenses are issued for casinos, gaming establishments; lottery and sports betting. A land-based casino is required to operate an internet casino but no special license is required to operate an internet casino.

Measures to Prevent Criminals (24.1.3)

1226. There are no provisions in place to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino.

Implementation:

1227. There is no supervision of the casino sector for AML/CFT purposes. The Revenue Service appears to conduct spot checks of casinos with respect to compliance with internal regulations that were developed to obtain the casino license in the context of tax audits. However, no specific examinations are undertaken regarding compliance with the AML/CFT Law.

1228. Licensing requirements are focused on ensuring that the proper documentation is filed and that the owners on the casino are not on the Revenue Service black list or on the list of terrorist issued by the FMS. When applying for a license, casinos are required to provide information on the owners of the casino. During the licensing process, the Revenue Service will identify the beneficial owner of the casino if the casino is owned by a legal entity. If the casino is owned by a foreign legal entity, the Revenue Service would obtain information on the ultimate beneficial owner although no casinos are currently owned by foreign interests. No steps are taken to determine whether the owners, management or operators of the casino could be criminals or their associates. No information is gathered on the management and operators of the casino.

Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1):

1229. Article 4 of the AML/CFT Law of Georgia identifies the MOF as being responsible for ensuring compliance with AML/CFT obligations for entities organizing lotteries and commercial games; entities engaged in activities related to precious metals, precious stones and products. The Ministry of Justice of Georgia is designated at the supervisory authorities for notaries. The designation in Article 4 does not clearly indicate that the supervisory bodies are responsible for

supervision of AML/CFT matters although this can be inferred. The responsibilities of the supervisory bodies are described under Article 11 of the AML/CFT Law.

1230. No AML/CFT supervision is undertaken for lawyers, TCSPs and real estate agents as they currently are not subject to obligations.

DPMS

1231. Article 4 designates the Ministry of Finance as the AML supervisor for dealers in precious metals and stones. As noted previously, the legal framework does not vest the MOF with the power to conduct inspections (including on-site inspections to ensure compliance with the standards) or enforcement and sanction powers. No inspections have been undertaken regarding compliance with obligations in the AML/CFT Law.

Accountants

1232. Article 4 of the recently amended AML/CFT Law designates the "member organization of the International Federation of Accountants" to supervise "persons conducting accountants and/or auditor activity as it is defined by the legislation". The Georgian Federation of Professional Accountants and Auditors will be undertaking these supervisory.

1233. The largest association of accountants in the country the Federation is slated to undertake the responsibility of licensing accountants through the Law on "Activities of Accountants" which is currently in the process of being drafted. Given this new role in licensing the activities of the accounting sector, the designation of the Federation presents a number of advantages. Resources dedicated to licensing and supervision can be consolidated. AML/CFT training can be integrated into the Federation's continual education program. The Federation also benefits from knowledge of the sector.

Notaries

1234. The Ministry of Justice's authority to supervise notaries is outlined in Article 10 of the Law of Notaries. The article states: "Notary's official activity is supervised by the Ministry of Justice, which within the frames of its competence:

- Controls compliance of notary's activities with the Georgian legislation and accuracy of making pay duties for fulfillment of notary acts;
- Requires from the notary all information and material being necessary for making supervision; and
- Transfers the supervision authority to the Notary Chamber of Georgia on certain issues of official activities of notaries".

1235. Subparagraph 3 of the Law on Notaries specifies that the Ministry of Justice is responsible for supervision over notaries in accordance with the rules established by the AML/CFT Law. Article 10.2 of the Decree on Supervising Authority of the Notary Activities further stipulates that the Ministry of Justice should inspect notary deeds with respect to the AML/CFT Law.

1236. The Regulation on Disciplinary Liability of Notaries outlines disciplinary punishment that can be applied if a notary violates liabilities imposed by Georgian legislation, including AML/CFT obligations. Article 5.f stipulates that "a notary (substitute) commits an average disciplinary misdemeanor if she (he) unduly fulfills the requirements set by the Georgian Law on Facilitating the Prevention of Illicit Income Legalization and relevant legal acts and acts of the financial monitoring service of Georgia".

1237. Article 8 of the Regulation on Disciplinary Liability of notaries stipulates that for the discipline misdemeanors considering the extent of the gravity of the latter notary will be assigned the following punishments: a) oral warning; b) written reprimand; c) termination of commission; d) releasing from the position. Pursuant to Article 18 of the Law on Notaries, a notary's license can be revoked for having committed an extremely grave misdemeanor or for having been found guilty of a criminal act. Non-compliance with the AML/CFT Law is considered to be an average disciplinary misdemeanor. There are no criminal or monetary sanctions that can be applied to non-compliance with AML/CFT obligations.

Implementation:

1238. The extension of the obligations to accountants and the designation of the Federation of Professional Accountants and Auditors occurred following the on-site visit as such effectiveness was not assessed.

1239. The Ministry of Justice undertakes regular supervision of notaries for AML purposes. The table below highlights the number of inspections where AML/CFT was the primary focus. The subsequent table highlights the type and number of sanctions applied for AML/CFT violations.

	2007	2008	2009	2010	2011
AML/CFT on-site examinations	-	-	-	210	210

Type and number of sanctions applied in notaries sector for AML/CFT violations					
	2007	2008	2009	2010	2011
Oral warning	-	-		9	48
Written reprimand	-	-	172	7	16
Termination of commission	-	-	-	9	-
Release from position	-	-	-	-	-
Total Number of Sanctions	-	-	172	25	64

1240. Prior to 2009, regular on-site visits to notaries included an AML/CFT component but the emphasis was on other requirements supervised by the Ministry of Justice. In 2009 and 2010, the focus of regular inspections was shifted with the main component of examinations being focused on AML/CFT obligations.

1241. AML/CFT inspections focus on the determination of whether transactions of more than GEL 30,000 were reported to the FMS. Inspectors review submitted reports to determine if the report was sent within the prescribed timelines and whether the information contained in the report is comprehensive. This includes ascertaining whether proper client identification information was verified and recorded and that proper records were kept. These on-site inspections are supported by weekly off-site monitoring of reports submitted to the FMS by the Ministry of Justice. During the review of transactions, instances will be flagged when indicators of ML, provided by the FMS, are present. However, no analysis of the effectiveness of notary's STR monitoring system is undertaken.

1242. The Ministry of Justice does not ensure compliance with other obligations outlined in the AML/CFT Law. This may be related to the limited understanding of the AML/CFT Law and lack of knowledge regarding other requirements. A number of obligations are thus ignored. These include PEPs determination; the implementation of internal controls; the requirement to provide periodic training and the requirement to pay attention to unusual transactions. Although inspections do focus somewhat on obtaining beneficial ownership, this is done in the context of ensuring compliance with the requirements of a notaries act. There is no particular attention paid to instances where the ultimate beneficial owner is not identified but the information necessary to complete the notary act is obtained.

1243. The Ministry of Justice must undertake inspections of all notaries at a minimum every three years. In 2010 and 2011, on-site inspection was conducted in all notary bureaus (210 bureaus). These inspections all included AML/CFT components to the inspections with AML/CFT being the primary focus of the 2010 inspections. Inspections are conducted for a period of three to four hours with a total of three inspectors and a representative of the Chamber of Notaries. At least one inspector is focused exclusively on AML/CFT issues.

1244. Disciplinary sanctions related to breaches of the AML/CFT Law regarding the submission on CTRs have been applied to 172 notaries in 2009; 25 notaries in 2010, and 64 notaries in 2011. Sanctions include oral warning; written reprimand, and suspension of activities for up to three months. Most deficiencies were related to CTR not having all the prescribed information or being submitted after the prescribed timeline.

1245. The Ministry of Justice does have the ability to impose disciplinary measures regarding non-compliance with AML/CFT obligations. A significant number of measures have been applied with 82 percent of notaries having been subject to disciplinary measures in 2009. The application of these sanctions was effective as the level of compliance with reporting obligations improved following their application.

1246. The absence of criminal and monetary sanctions impact the sanctioning regime's ability to be proportionate and dissuasive for more serious offenses.

Effectiveness- R.24

Casinos

1247. The absence of supervision in the casino sector increases the risks associated with this already vulnerable and rapidly growing sector. Since the last assessment in 2007, the number of casinos has increased from 2 to 15. This rapid expansion has not been accompanied with a commensurate focus on ensuring that AML/CFT obligations are applied by the sector. The Revenue Service does not conduct any AML/CFT related supervisory activities. The absence of supervision in the casino sector creates an environment where there is no incentive to comply with client identification and reporting requirements.

Notaries

1248. Supervision of notaries undertaken by the Ministry of Justice does not focus on the ML risks associated with the notary profession. As mentioned previously, the failure to identify the ultimate beneficial owner has been identified as a shortcoming in the implementation of CDD measures by notaries. Compliance with beneficial ownership requirements is not included in the scope of current examinations. Also, the Ministry of Justice does not inspect requirements related to internal controls and PEPS once again creating an environment where there is no incentive to comply with measures.

Accountants

1249. A number of issues will need to be addressed if the Federation of Professional Accountants and Auditors is to implement an effective supervisory framework for the accountants. Supervisory powers including the ability to undertake inspections, compel documents, and impose sanctions will have been to be identified in the AML/CFT Law for the Federation. The absence of a funding source for resources to conduct inspections is a serious drawback. The absence of defined expectations regarding the number of examinations to be conducted also makes it difficult for a realistic estimation of required resources to be conducted. The proposal to collect inspections fees may be ill-advised when it is considered that the majority of accountants are small business owners who may not be able to pay inspection fees.

Guidelines for DNFBPs (applying c. 25.1, 25.2)

Recommendation 25 (rated PC in the 3rd round report)

1250. The FMS has issued STR indicators for notaries and published on its website the FATF International Best Practices Papers and RBA guidance. No indicators have been published for casinos, accountants or DPMS. Although Manuals on Rules and Procedures on Completing the Reporting Form Subject to Monitoring have been issued for notaries and casinos, they do not assist entities in complying with other AML/CFT requirements. No manual has been published for accountants or DPMS. Guidance documents do not provide a description of ML and FT techniques and methods.

1251. The FMS provides an acknowledgement of the receipt of the report to reporting entities when a report is received; however no specific case-by-base feedback is provided regarding the quality of reporting. No specific information is provided on ML/FT techniques, trends and methods

other than the indicators provided for notaries; and no sanitized examples of money laundering cases have been published involving DNFBP sectors.

Adequacy of Resources—Supervisory Authorities for DNFBPs (R.30)

DPMS/Casinos

No resources are dedicated to the supervision of AML/CFT obligations for DPMS and casinos within the Revenue Service. Knowledge of AML/CFT obligations and issues is very poor within the Revenue Service. Additional training would be required.

Accountants

1252. The Federation of Professional Accountants and Auditors did not know how supervisory resources were going to be funded. They speculated that a fee for inspections might be applied. They indicated that their present staff did not have the necessary expertise to undertake this new supervisory role. No additional resources had been negotiated with the government and they have not been officially designated as AML supervisors. Training will be required once a team of inspectors has been identified.

Notaries

1253. Within the Ministry of Justice, the section overseeing compliance with the AML/CFT Law has three officers. The officers all have supervisory backgrounds and have been subject to AML/CFT training.

1254. The Ministry of Justice is adequately structured and funded to oversee the notaries sector. With a coverage rate of 100 percent in 2010 and 2011, the number of resources attributed to AML/CFT inspections within the notary sector is appropriate. Even if the scope of examinations is expanded to include all AML/CFT obligations, the current coverage rate can afford to be reduced at the expense of more comprehensive examinations.

1255. The team responsible for AML/CFT supervision within the Ministry of Justice is appropriately skilled to undertake AML/CFT supervision. They would however benefit from additional knowledge on AML/CFT requirements related to internal controls, ongoing monitoring, and enhanced due diligence measures. Although having already received AML/CFT training, the section responsible for the supervision of notaries within the DOJ indicated that additional training would be beneficial.

4.3.2. Recommendations and Comments

1256. It is recommended that authorities:

- Undertake AML/CFT supervision in the casino, accountant and DPMS sectors.
- Establish provisions to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino.

- Establish supervisory power for an accounting body responsible supervision in the accounting sector, including a funding source for supervisory activities as well as the definition of clear expectations on the number of inspections to be conducted.

- Establish effective, proportionate and dissuasive sanctions that can be applied when monitoring entities fail to comply with AML/CFT obligations for casinos; dealers in precious metals and stones; and accountants.

- Broaden range of sanctions available to Ministry of Justice to establish an effective, proportionate and dissuasive sanctioning regime for notaries.

- Issue guidance and provide feedback on reporting to DNFBPs.

- Undertake supervision of all AML/CFT requirements in the notaries sector.

4.3.3. Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• No supervision of casinos, accountants, and dealers in precious and stones. • No effective, proportionate and dissuasive sanctions for casinos, dealers in precious metals and stones, and accountants. • Sanctioning regime for notaries is not effective, proportionate or dissuasive. • No mechanisms to prevent criminals and their associates to own or control a casino. • No supervisory powers for accounting sector supervisor. **Implementation:** • Supervision undertaken by the Ministry of Justice for notaries does not cover all AML/CFT obligations. **Effectiveness:** • Effectiveness of supervisory measures for accountants could not be assessed.
R.25	**NC**	• Guidance for notaries is not comprehensive and no guidance has been issued for casinos, accountants and DPMS.No feedback on reporting is provided to DNFBPs other than an acknowledgement of the receipt of the report.

4.4. Other Non-Financial Businesses and Professions—Modern, Secure Transaction Techniques (R.20)

Recommendation 20 (rated LC in the third round report)

4.4.1. Description and Analysis

Legal Framework:

Other Vulnerable DNFBPs (applying R.5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

1257. Article 3 of the AML/CFT Law extends AML/CFT obligations to: entities organizing lotteries and commercial games; entities engaged in activities related to antiques; and entities engaged in the extension of grants and charity assistance.

1258. The extension of obligations to these sectors was not based on risk. Obligations were extended to antiques dealers in relation to jewelers and precious stones as the risks were seen as similar to DPMS, and the market is not considered very big. The extension to the lottery sector was to include all activities covered by the Law on Organizing Games of Chance and Winning Games. The extension of obligations to entities engaged to the extension of grants and charity assistance was to align the AML/CFT Law with the Civil Code which obliges NPOs to register with the Revenue Service if they want to obtain charitable status.

1259. All these entities are subject to the preventive measures outlined for monitoring entities. The FMS has not received any reports, and authorities believe that awareness of and compliance with other obligations are very low. The Ministry of Finance has been designated the supervisory authority for entities organizing lotteries and other commercial games; antiques dealers and charitable organizations; however no examinations have been undertaken regarding AML/CFT obligations.

Modernization of Conduct of Financial Transactions (c. 20.2):

1260. The largest Georgian banknote was GEL 500 (approx. EUR 215), but the NBG has indicated that the banknotes have never been circulated and have been destroyed. The share of banknotes with highest nominal value (GEL 200) in total cash in circulation has decreased from 8,65 percent in 2007 to 7,5 percent in 2010. In contrast for the RTGS system (the main interbank payment system in Georgia), the turnover to nominal GDP ratio increased from 2.15 percent in 2007 to 3.62 percent in 2010, which reflects increasing reliance of non-cash interbank payment.

1261. In December 2010, a new RTGS system was introduced. The new RTGS System provides significant improvement in secured automated transfer systems and conforms to the highest level of international security standards by using PKI based security. Data access security is provided through both digital signature and encryption technology based on Public Key Technology. In addition, a new system enables its participants to provide to the public more effective, safe, and competitive non-cash payment facilities. The RTGS turnover to Nominal GDP ratio reached 3,75 for first quarter 2011.

1262. The payment cards market in Georgia is rapidly growing. The number of payment cards increased by 278 percent from 965,032 as of January 2007 up to 3,459,418 as of July 2011. During 2007, there were two cards per capita on average, while the same key figure for 2010 reached eight

cards. According to the Decree No. 607 of Minister of Education dated August 4, 2010, all public schools must accept only non-cash payments at their cafeterias. Furthermore, all state aid and social programs are delivered through bank accounts.

1263. During the last three years, the number of payment cards accepting points has been steadily increasing. At the end of July 2011, the number of ATMs in Georgia increased to 1,488 (a rise of 72 percent from December 2007), as well as the number of POS-terminals at the merchants–8,062 (79 percent more than at the end of 2007). In 2010, the volume and value of Georgian cards operations have increased compared to the 2007 by 123 percent and 97 percent respectively.

1264. Regarding the improvements to security of payment card transactions, most of banks have started to issue chip based cards. Some acquirers have also developed E-commerce Security technologies (Verified by Visa and MC Secure Code). Two major Georgian card processing centers–Georgian Card and UFC have successfully completed an assessment against the Payment Card Industry Data Security Standards (PCI DSS) and were validated as being PCIDSS compliant. Other two in-house processing centers will finish this process at the end of the current year.

1265. A change to the registration process for real estate transactions came into force on January 1, 2012. Real estate transactions will now need to be settled through a bank account with payment in cash being prohibited.

Implementation:

1266. No analysis has been conducted to identify sectors that could potentially be vulnerable to ML or FT.

1267. Efforts have been made by the authorities to minimize the use of cash in Georgia. The destruction of GEL 500 banknotes and efforts to promote the use of non-cash based payment mechanism have resulted in the decrease of circulation of the GEL 200 note and the increased use of non-cash interbank payments and ATM machines.

1268. The requirement to settle real estate transactions through bank accounts will also assist in reducing the prevalence of cash in a key sector. Compliance with this measure will be helped by the fact that details of real estate transactions must be registered with the National Agency of Public Registry.

Effectiveness:

1269. The extension of requirements to other reporting sectors has minimal impact on strengthening the national AML/CFT framework as the designation was not based on risk. No reporting has been received by the FMS, and compliance with the AML/CFT obligations are low.

1270. A 2007 World Bank analysis conducted of remittances channels indicated that the majority were using informal channels such as friends traveling home to send remittances. This is a sign that despite efforts made by authorities, the use of cash remains prevalent in Georgian society.

4.4.2. Recommendations and Comments

1271. The authorities are recommended to:

- Conduct an analysis of ML vulnerabilities and consider extending obligations to vulnerable sectors identified in the analysis.
- Continue their efforts to reduce the prevalence of cash in society.

1272. The authorities should consider:

- Establishing a requirement requiring taxpayers and physical or legal commercial persons not to engage in cash transactions where the amount is in excess of GEL 5,000.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• Measures taken by the authorities have not been sufficient to significantly reduce the reliance on cash.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

Recommendation 33 (Rated PC in MONEYVAL s third round MER)

5.1.1. Description and Analysis

Legal Framework:

- Law on Entrepreneurs of 2009; Articles 29 and 30 of the Civil Code; Law of Georgia on Public Registry; Instruction of Registration of Entrepreneurs and Non-entrepreneur (noncommercial) Legal Persons hereinafter "NAPR Instruction," Civil Code: Article 724 to 728.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

Georgia has improved the legal entities registration system. Since 2010, Georgian legal entities (commercial and non-commercial) are subject to registration by the National Agency of Public Registry (NAPR).[144] Prior to that date, companies were registered either by the Revenue Service of the Ministry of Finance or at the Registry of Entrepreneurs. At the time of the onsite visit, the two old registers were transferred under the management of the NAPR to be merged into one database that could be accessible online. There was no identification of beneficial owners of legal persons under the old system managed by the Registry of Entrepreneurs. The prerequisites to create an entity in Georgia and the details of what should be presented to the Registry and retained are specified in Article 5.4 of the Law on Entrepreneurs of 1995. The following table details the information required for the identification of beneficial owners.

Entity form	All types of entities (minimum information)	Special/ limited partnership	Limited Liability Companies	Limited Liability and Stock Companies
Content of	a) firm name	In addition:	In addition to general	Documents

[144] **Article 5. Entrepreneurs and Non-entrepreneur (non-commercial) Legal Persons Registry** establishes that the following persons are registered in Entrepreneurs and Non-entrepreneur (non-commercial) Legal Persons Registry:

a) Individual entrepreneur;
b) Limited liability company;
c) Joint and several liability company;
d) Limited partnership;
e) Joint-stock company;
f) Cooperative society;
g) Non-entrepreneur (non-commercial) legal person envisaged by Civil Code of Georgia; and
h) Branch office of entrepreneur and non-entrepreneur (non-commercial) legal person of foreign country (representation, permanent institution).

the application form	b) organizational-legal form c) legal address d) object of activities e) data on the commencement and termination of the company f) first name and surname, place and date of birth, profession and home address of individual entrepreneur or each founding partner g) right to give the authority to the representative	Details on the amount of deposits of each "commandite" partner	prerequisites: a) the amount of authorized capital and the document containing the information on the deposit made b) the amounts of the deposits of each founding partner, as well as the corresponding amounts of shares thereof c) first name and surname, place and date of birth, profession and home address of each director d) documents on the appointment of directors and members of supervisory council, if it exits	certifying the appointment of directors or the members of Councils

1273. In addition, individual entrepreneurs and persons representing a company should provide a notarized specimen of their signatures. The assessors were not able to ascertain how the old register has been used to identify the beneficial owners since the register ceased to exist when the NAPR was created.

1274. The representative of the NAPR informed the mission that: (i) the documents of identification were kept manually and never updated and therefore need to be verified when entered into the new system; and (ii) that the reason of creating the NAPR is the lack of transparency and efficiency of the old system.

1275. On the other hand, identification and requirements to register a foundation as a Non-entrepreneurial (Non- profit) Legal Entity or a foreign branches are described in Articles 29 and 30 of the Civil Code.

Identification of Beneficial Owners of Legal Persons by the NAPR:

1276. Since January 1, 2010, Georgian legal entities (commercial and non-commercial) have been registered by the NAPR. Pursuant Article 5 of the NAPR Instruction, the following legal persons mentioned are required to be registered in the Legal Persons Registry: Individual entrepreneur; Limited liability company; Joint and several liability company; Limited partnership; Joint-stock company; Cooperative society; Non-entrepreneur (non-commercial) legal person envisaged by Civil Code of Georgia; Branch office of entrepreneur and non-entrepreneur (non-commercial) legal person of foreign country (representation; permanent institution).

1277. In the context of registration, Article 9 of the NAPR Instruction requires a proof of identity of an interested person, his/her representative and/or applicant in order to be registered. More precisely, NAPR requires:

- For Georgian physical persons: the original or certified copy of the ID. The ID is verified through the civil service database (Article 9 of NAPR instruction) maintained by the NAPR.

- For non Georgian citizens: certified copy of the passport, which could be notarized inside or outside Georgia. Presentation of the passport is not required.

- If the representative is another legal person, the NAPR Instruction requires the identification and the registration of the legal person as a representative, an extract of its registration from the relevant State registry (in case of its existence) or a certificate of foundation (Article 9.2).

1278. When the company is registered, the NAPR issues an extract available online that indicates the legal form, name and legal address of the entity. In addition, the extract contains: (i) information on authorized persons who represents the entity and their powers; (ii) information on the governing body of the entity; (iii) Information on partners and their shares in case of limited liability company; (iv) information on identification data and requisites of authorized representative persons and registered partners; (v) information on registered lien, tax lien and hypothec, date of registration and scope, requisites of certificate of lien and its issuing body; (vi) information on the date of application, registration and extract preparation, registered lien, registration of rights and obligations, registration number.

1279. Along with the extract, the entity is assigned a nine digits identification number. The term of validity of the Extract is not defined and therefore obtains the same validity as tax registration certificate. (Articles 9 and 12 of the NAPR Instruction).

1280. To a certain extent, the NAPR seems to be effective in identifying natural person's beneficial owners and control of legal persons. However, only a small percentage of the 400,000 companies registered in Georgia have been formed under the new system. NAPR staff is in the process of manually migrating the data of the legal persons registered under the old system and tries to identify their beneficial owners and controllers to complete the missing or non updated .At the time of the on-site visit, they have migrated only 40 percent of the data so far and are facing challenges in contacting owners and controllers of these companies. When proper identification is not available, the NAPR migrated the available data to the new system and contacts companies in order to complete the information. NAPR staff have indicated that many companies are not active anymore or have relocated. Consequently, the process is slow and not very successful.[145]

1281. In relation to the update of companies' data, Article 5.5 of the NAPR Instruction presumes authenticity and completeness of the existing data. However, the NAPR is required to correct any inaccurate information, detected by its staff or indicated by the entity itself. However, the NAPR has no power to require the provision of updated information.

1282. In cases gaps have been detected, and pursuant to Article 14-2 of the Law of Georgia on Entrepreneurs, for correction of the data detected as inaccurate, "the entity is given a 30-day deadline, and if the correction does not take place within this period, NAPR begins compulsory liquidation of that legal entity and if the data are still not corrected within the term set for liquidation (four months), the registration of that legal entity is cancelled by an administrative act of the registering authority.

[145] Authorities provided information to the assessment team that in May 2012, all information was migrated to the new system in NAPR but only a 40 percent of data accuracy have been checked.

Nevertheless assessors did not receive any indication that those measures have ever been applied. In addition, it appeared that the NARP is taking more than 30 days to contact the companies in order to update data during the migration process.

1283. In the case of existing suspicions concerning forgery of documents or other signs of criminal behavior, the authorities have indicated that the NAPR suspends registration. The documents are subsequently submitted to the Prosecutor's Office of Georgia for further investigation. The assessment team did not receive statistics supporting this fact.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

1284. As required by the Law on Entrepreneurs, any change in the minimum information required and in the representative of the enterprise should be updated on a voluntary declaration form. Therefore, there are neither specific mention to require beneficial owner information (although it should be implied by the information to be presented) nor obligations to update the information when the ownership or the control of the company has changed.

1285. All the information available to the NAPR is available online through its website. Therefore, all competent authorities can access the necessary information about newly formed companies on a timely fashion.

1286. However, for several reasons stated below, the information on beneficial ownership and control of legal persons is in most of the cases not adequate, inaccurate and not current:

- There is no specific requirement to obtain information on the ultimate beneficial ownership:
- The absence of strict obligation to provide and update the information in any case of change of ownership or control of the legal persons (the instruction mentions the founders only).
- The information about legal persons registered under the old system is not accurate since the old system was not efficient in identifying beneficial owners and control. Also, the information has not been updated and is therefore neither accurate nor adequate as the process of checking the information has not been completed.
- At the time of the on-site mission, only 40 percent of the information were migrated from the old system, and therefore not all the information is available online. LEAs usually send requests to the NAPR to inquire about the beneficial owners and persons controlling these companies. In these cases, the NAPR manually searches and replies to the requests.

Prevention of Misuse of Bearer Shares (c. 33.3):

1287. Articles 51 and 52 of the Law of Entrepreneurs of 1995 allow for the formation of joint stock companies with possibility of issuing bearer or registered stocks. An updated version of the mention longer the possibility of issuing bearer shares although there is no specific prohibition either or provision requesting bearer shares issued prior 2009 to be converted into nominal form.

1288. Except for the listed companies, there are no appropriate measures to ensure that bearer shares are not misused for money laundering. There is no beneficial ownership information for bearer shares companies available.

Implementation:

1289. Assessors were informed of the existence of small companies with bearer shares that are trading in the ‘ grey market’ mainly through securities registrars and brokerage companies.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions (c. 33.4):

1290. The NAPR database is accessible online for free and therefore could be used by FIs to verify their customers. However, for the reasons described above, information on the beneficial owners is not adequate, accurate, and current, especially for the companies formed under the old regime.

Implementation:

1291. NAPR staff shared the difficulties to update companies’ data as there are significant gaps in the information kept in the old registry and the challenge added in upload information that was kept in hardcopies.

1292. Regarding identification and verification of the data provided, the most challenging areas are related to foreign company’s beneficial ownership, particularly the one based in offshore territories. The difficulty to update data and confirm the business status of potentially dormant or no longer active Georgian companies was also mentioned.

Effectiveness:

1293. The system of identification of beneficial owners and control of legal persons is not effective. The information is accessible online, but is not accurate, adequate and current for the legal persons registered under the old process. There is no verification of documentation presented by foreign companies beyond the one which fall under the Apostilate agreements.[146] In the case of legal entities located in an offshore territory, the information kept relies on the register company itself and the documents presented. There are no further inquiries in the case of a legal company registered and owned by other legal entity/ies.

1294. In light of the risk that criminals integrate proceeds generated abroad in Georgia or use Georgian entities to invest abroad, the inability to ensure adequate and accurate information on the beneficial ownership is a serious weakness of the AML/CFT regime.

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[146] Apostolate treaty is an international treaty drafted by the Hague Conference on Private International Law. It specifies the modalities through which a document issued in one of the signatory countries can be certified for legal purposes in all the other signatory states. Such a certification is called an apostille (*certification*). It is an international certification comparable to a notarization in domestic law.

5.1.2. Recommendations and Comments

1295. The authorities are recommended to:

- Review the entrepreneurship Law and NAPR instruction to ensure adequate transparency concerning the beneficial ownership and control of legal persons. Both laws should be consistent with the AML legal framework.

- Ensure that adequate, accurate and current information on the beneficial ownership and control of legal persons is available to competent authorities in a timely fashion.

- Regulate, or prohibit the use of bearer shares or other bearer instruments if there are not appropriate measures applied to ensure that those instruments are not misused for money laundering and financing terrorism.

1296. More precisely:

- Speed the process of migration of legal persons registered under the old regime to the new one managed by NAPR;

- Ensure that the Law of Entrepreneurs is applied in relation to the updating and registration of companies' requirements and that deadline is established for communicating any changes or missing information.

- Require the update of information in case of change of ownership or control of legal persons;

- Put in place appropriate measures to ensure that bearer shares are not misused for money laundering.

5.1.3. Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	PC	• No specific requirement to obtain data on beneficial ownership. • Absence of appropriate safeguards to ensure that bearer shares and other bearer instruments are not misused for money laundering. **Implementation:** • Inaccurate and inadequate current information on beneficial ownership and control of legal persons. • Poor data verification on foreign legal persons and ownership control especially in case of a company located in an offshore territory or with a complex ownership structure of control. • Only a limited number of entities have been registered under the new system

		established in 2010. • Registry still in construction, some of the information is not reliable and out of date. • Concerns about the updating process of the information. **Effectiveness:** • In light of the risk that criminals integrate proceeds generated abroad in Georgia or use Georgian entities to invest abroad, the inability to ensure adequate and accurate information on the beneficial ownership is a serious weakness.

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

Recommendation 34 (Rated NA in MONEYVAL's third round MER)

5.2.1. Description and Analysis

Legal framework:

- Article 724 to 729 of the Civil Code.
- Article 1.n and 20.g of the law on commercial banks.

1297. The assessors had to determine if Recommendation 34 is applicable in Georgia. The recommendation has been rated non-applicable in 2007 and the authorities have indicated that no Georgian residents act as trustees for foreign trusts. Furthermore, Georgia has not signed the Hague Convention on the Law applicable to trusts and on their recognition.

1298. The assessors took into consideration the following elements:

- Pursuant to Article 20.g of the law on commercial banks, commercial banks are authorized to engage in "trust operations on behalf of clients". Article 1.n of the same law defines trust as "fiduciary capacity", and Article 1.q defines fiduciary operation as "trust services on behalf and at expenses of a customer, which a bank or trust company carries out (generally for management of investments); the customer is liable for all risks while the bank receives fees".

- The concept of trust is described in Article 724 of the civil code as follows: "Under a contract of property trust, the Settlor transfers property to the trustee, who holds and manages it in accordance with the interests of the settlor". In addition, pursuant to Article 725[147] the trustee

[147] Article 6.6 of the recently amended AML/CFT Law.

should be bound to manage the property held in trust in his own name and enjoys the owner's entitlement in relation with third persons. Finally and pursuant to Article 729 of the Civil Code, the rules governing a contract of mandate shall apply to the contract of property trust.

- The AML/CFT law, as amended on December 20, 2011, identifies legal arrangements as "organizational formation not representing a legal entity".

1299. However, taking into consideration that pursuant to Article 729 of the Civil Code and Article 20.g of the law on commercial banks the contract of mandate applies to the property trust which means that there are no transfer of the ownership of the property, and that similar provisions are in place in other civil law countries in the region where this Recommendation has been rated non-applicable (e.g. Latvia, Russia), it has been decided that Recommendation 34 is not applicable in the case of Georgia.

5.2.2. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NA	

5.3. Non-Profit Organizations (SR.VIII)

Special Recommendation VIII (rated PC in the 3rd round report)

5.3.1. Description and Analysis

Legal Framework:

1300. The Civil Code outlines the procedures for registration of non-entrepreneurial (non-profit) legal entities including the terms of registration, the registration of changes introduced by the NPO. The procedures for rescinding registration of an NPO are outlined in the Law of Georgia on Entrepreneurs and the Civil Code.

1301. Order #241 of the Ministry of Justice of Georgia on the Registration of Entrepreneurs and Non-entrepreneur (non-commercial) Legal Persons outlines the procedures to register NPOs including the process by which the National Agency on Public Registry (Agency) makes a decision on registration.

1302. Article 32 of the Tax Code outlines the requirements for charitable organizations. Article 33 further specifies that religious organizations should be registered according to procedures prescribed by legislation.

1303. Article 3.g of the AML/CFT Law specifies that monitoring entities include entities engaged in the extension of grants and charity assistance.

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

1304. Authorities have access to information on NPOs through the National Agency of Public Registry. The registry indicates that there are 15,045 local NPOs and 129 branches of foreign NPOs.

1305. NPOs can also obtain charitable status with the Revenue Service. Seventy-two NPOs have obtained charitable status through the Revenue Service.

1306. Registration requirements for NPOs include information on the goals and activities of the NPO, an annual program report for the activities of the past year, including a description of activities undertaken, a financial report of received revenues, indicating the sources and the function of incurred expenses and the past year's financial documents verified by an independent auditor. No detailed information on the NPO sector appears to be available, hindering the capacity to conduct specific analysis to identify the features and types of NPOs that are at risk of being misused for FT.

1307. No formal review of the adequacy of laws and regulations related to NPOs has been undertaken. Statistics or consolidated information are not easily accessible through the Public Registry and the Revenue Service to identify features and types of non-profit organizations that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. As no initial assessment has been conducted, no reassessment reviewing new sectoral information has been undertaken.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

1308. The FMS has published on its website the FATF International Best Practice Paper on Combating Abuse in NPOs. No other outreach has been undertaken to raise awareness about the risks of terrorist abuse and the available measures to protect against such abuse.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):

1309. Article 4.b of the AML/CFT Law identifies the Ministry of Finance of Georgia as the entity responsible for supervising entities engaged in the extension of grants and charity assistance. The Revenue Service inside the Ministry of Finance is also responsible for ensuring that charitable organizations are complying with requirements outlined in Article 32 of the Tax Code regarding charitable status.

Implementation:

1310. Some inspections of charitable organizations have been undertaken to determine their compliance with the Tax Code but no monitoring of NPOs having a significant portion of financial resources under control of the sector or a substantial share of the sector's international activities are specifically targeted as part of these inspections.

Information Maintained by NPOs and Availability to the Public thereof (c. VIII.3.1):

1311. Article 5 of the Law on Entrepreneurs outlines the information required to register with the National Agency of Public registry. The information to be submitted includes:

"In the event of requesting registration of an enterprise a registration application, representing simultaneously a part of partners' agreement, signed by all partners and duly certified shall be submitted to the registration body. The application shall include: name of the enterprise/firm name; legal form of the enterprise; legal address of the enterprise; the name, surname, place of residence and personal number of each founding partner; if the founder is a legal entity – its firm name, legal form, legal address, registration date, identification number and details of its representatives are to be indicated; governance body of the enterprise, procedure of decision making, and in case of limited liability company or limited partnership – details on share participation of partners; name and surname of a person (persons) authorized for management and representation of an enterprise, his/her place of residence and personal number, as well as term of office; name and surname of a representative (if any) authorized for representation of an enterprise, his/her place of residence and personal number; if there are several persons authorized for enterprise representation - it needs to be indicated whether they represent the enterprise jointly or severely; in the event of a natural person authorized for registration of an amendment in a registration application – name and surname, place of residence and personal number are to be indicated, and if a person authorized for registration of an amendment in the registration application is a legal entity – its firm name, legal form, legal address, registration date, identification number and data on its representatives need to be recorded; if an actual place of residence of an enterprise partner, person (persons) authorized for management and representation of a company, share administrator, person authorized for registration of changes in the registered data differs from its registered place of residence, indication of an actual place of residence in the registration documents shall be mandatory: registration documents required for appointment/registration of a person (persons) authorized for management and representation of the company shall be proving will of such person (persons)".

1312. In addition to the above information, Article 29.2 of the Civil Code of Georgia requires that for the purposes of registration, a NPO foundation documents shall also state:

- Purpose of activity of non-profit legal entity;
- Procedure for admission, resignation and expulsion of the member of non-entrepreneurial (non - commercial) legal entity, if it is a non-entrepreneurial (non – commercial) legal entity based on a membership;
- Name of the authority responsible for decision making on reorganization and liquidation, regulation and procedure of decision making;
- Procedure for establishing (electing) governing body of non-entrepreneurial (non-commercial) legal entity and period of its authority.

1313. Pursuant to Article 4 of the Law of Georgia on Entrepreneurs, the National Agency of Public Registration carries out the registration of entities including NPOs. The role of the Agency is limited to ensuring that the information submitted is comprehensive. The Agency is responsible for maintaining a registry that is publicly available on its website.

1314. The NPOs information, gathered as part of the requirements of Law on Entrepreneurs and the Civil Code, appears to be partially in line with the standard. It includes information on the purpose of the NPO activities as well as the identity of the person who owns, controls or directs the activities

of the NPO through the concept of "authority responsible for decision making on reorganization and liquidation, regulation and procedure of decision making" outlined in Article 29.2 of the Civil Code. This information is publicly available through the NAPR's website. This information is publicly available through the NPAR's website. However there is no specific requirement to state the activity of the NPO.

1315. Although information on NPOs is publicly available through the NAPR, website information on NPOs registered prior to 2010 has not been migrated to the public registry. Information is available through requests to the NAPR but authorities indicate that the quality of information available is inconsistent.

1316. For charitable organizations, the status is granted by the Revenue Service on the basis of a written application by an organization. According to Article 32 of the Tax Code of Georgia, the following details about the organization must be indicated in the application: a) name; b) organizational-legal form; c) main objectives; d) main fields of activities for the past year; e) the addresses of a management body and the branches. The following must also be attached to the application: a copy of the charter of the organization; a copy of state and/or tax registration certificate; a report for the past year's activities that shall be composed of the description of activities (projects, services); last year's financial documents (balance and the profit-and loss statement) verified by an independent auditor.

1317. In addition, Article 32.17 of the Tax Code requires the Revenue Service to maintain a unified registry of the charitable organizations. The registry contains the following information: a) name of the organization; b) addresses of head office, branches, and representations; c) main objectives; d) date of granting the status and the number; e) names and addresses of all members of the highest management body. Highest management body is not defined in the Tax Code. The Revenue Service considers the persons responsible for managing the funds including all board members as the highest management body. The National Agency of Public Registry Office also maintains registry of NPOs electronically.

1318. As noted in the above provisions, NPOs and charitable organizations are obliged to maintain information on the purpose and objective of their stated activities. There is a requirement for NPOs to identify the founding partners; the persons authorized for management and representation of an enterprise and the person authorized for representation as well as record the name of the authority responsible for decision making on reorganization; liquidation, regulation and procedure of decision making.

Implementation:

1319. Charities registered with the Revenue Service are required to maintain a registry which includes the name and addresses of all members of the highest management body but there is no identification requirement. Based on the interpretation of the concept by the Revenue Service, the highest management body would not include individuals who are not involved in the management of the NPO's funds; however, this information would be captured by the Public Registry. There is a contrast between "highest management body" required for obtaining charitable status and focused on individuals who control the funds and "the authority responsible for decision making on reorganization; liquidation, regulation and procedure of decision making" which is collected for

NPOs as part of the registration process with the NAPR. This category of persons speaks more directly to persons who direct or control the NPO and is required to be documented for all NPOs.

1320. The presence of this information is reviewed by both the National Agency of Public Registry and the Revenue Service respectively before the registration of entities is granted. However, the NAPR does not have any powers to impose a fine on individuals/organizations that do not update their information but it does have the ability to revoke their registration. Compliance with initial registration requirements is high but compliance with maintain information current in the registry varies. All of the information above is available on the websites of the Ministry of Justice for NPOs and the Ministry of Finance for charities.

Measures in Place to Sanction Violations of Oversight Rules by NPOs (c. VIII.3.2):

1321. Limited provision to revoke the registration of NPOs and charitable organizations are in place. With respect to de-registration of non-entrepreneurial legal entities (including NPOs), the relevant provisions are enshrined in Civil Code of Georgia and Tax Code of Georgia. Namely, the decision on suspension or prohibition of activity of non-entrepreneurial legal entity is adopted by the court in cases and due to the procedure established under the organic law of Georgia on "Suspension of Activity of Civil Associations and their Prohibition". After the adoption of decision on prohibition of activity of non-entrepreneurial legal entity, the Agency should cancel the registration of the relevant non-entrepreneurial legal entity.

1322. In case of charitable organizations, according to Article 32 of Tax Code, the charitable status shall be deprived of a charitable organization's status, if it has violated the requirements of Tax Code or its state and/or tax registration has been cancelled.

1323. The above deregistration mechanisms do not appear to apply to violation of oversight measures or rules by NPOs. No sanctions other than deregistration is available for NPOs and charities, including sanctions for persons acting on behalf of NPOs.

Licensing or Registration of NPOs and Availability of this Information (c. VIII.3.3):

1324. Pursuant to Article 28 of the Civil Code of Georgia, NPOs are required to be registered by the National Agency of Public Registry – legal entity of public law at the Ministry of Justice of Georgia. The Registry is publicly available including the documentation that the registration of the legal entity is based on.

1325. The Georgia Revenue Service is responsible for conferring charitable status pursuant to Article 32 of the Tax Code. Registering as a charitable organization is not mandatory. A unified registry of charitable organizations is also maintained by the Georgia Revenue Service. The registry is available at http://www.seragency.gov.ge.

Information Collected as Part of both Registration Processes is Outlined in Greater Detail under Criterion VIII.3.1:

1326. Article 33 of the Tax Code stipulates that religious organization shall be an organization that has been established for the purpose of carrying out religious activity and has been registered as such according to the procedure prescribed by legislation. There is not an explicit requirements for

religious organizations engaged in raising or disbursing of funds for purposes such as charitable, religious, cultural, education, social or fraternal purposes to be registered with the Revenue Service or National Agency of Public Registry.

Implementation:

1327. All NPOs must be registered with the National Agency of Public Registry. Compliance with registration requirements are considered high by the authorities. Entities wanting charitable status for tax purposes must also register with the Revenue Agency. Only a small number of entities (72) have obtained charitable status and are required to comply with the requirements related to Article 32 of the Tax Code.

Maintenance of Records by NPOs and Availability to Appropriate Authorities (c. VIII. 3.4):

1328. Article 136.3 of the Tax Code stipulates that "a taxpayer shall be obligated to completely record all transactions related to its activity, in order to guarantee control over their commencement, implementation, and completion." Pursuant to Article 43.1.f of the Tax Code tax payers must ensure the retention of the document for six years.

1329. Pursuant to Article 6.4[148] of the AML/CFT Law monitoring entities, including entities engaged in the extension of grants and charitable assistance, are obligated for transactions subject to monitoring: "to record/retain the following information (documents) on the transactions subject to monitoring under this Law: a) content of transaction (operation); b) date and place of conclusion of a transaction, as well as the amount of money needed for the transaction and the currency thereof; c) information (documents), as prescribed by this Law, presented for the identification of a person involved in the transaction; d) information (documents) necessary for the identification of the person at whose order the transaction is concluded or undertaken; and e) information (documents) necessary for the identification of the person by whom the transaction is being concluded or undertaken on the basis of the order of third or other person".

1330. This requirement is not entirely in line with the standard as charities are not required to keep information on transactions under GEL 3,000 and wire transfers under GEL 1,500. This may impact the authorities' ability to verify whether funds have been spent in a manner consistent with the purpose and objectives of the organization.

1331. Article 7.3 of the AML/CFT Law requires entities engaged in the extension of grants and charitable assistance to "retain information (documents) on transactions, as well as records provided for in Article 5.9 for not less than six years from the moment of concluding or implementing transaction, if there is no request from the respective supervisory authority for retaining those for a longer period or/and if longer period for retention of such information (documents) is not set under the Georgian legislation".

1332. For charitable organizations registered with the Revenue Service, there is an annual reporting requirement outlined in Article 32.9 of the Tax Code that requires the submission of the

[148] Article 6.6 of the recently amended AML/CFT Law.

following: a) program report for the activities for the past year, indicating the description of activities (including economic activities); b) financial report about received revenues, indicating the sources and the function of incurred expenses; and c) past year's financial documents (balance, profit and loss statement) verified by an independent auditor.

1333. These reporting requirements for charities will assist authorities in determining whether funds have been spent in a manner that is consistent with the purpose and objective of the organization.

Implementation:

1334. Although NPOs do not appear to be aware of record keeping obligations regarding the AML/CFT Law, some appear to maintain transaction records in order to comply with requirements of the Tax Code. With record keeping methods varying from one organization to another, it is unclear whether it is possible to determine whether the transactions are in line with the purpose and objectives of the organization.

Measures to Ensure Effective Investigation and Gathering of Information (c. VIII.4):

1335. As described below, law enforcement has the powers in place to conduct investigation and gather information from NPOs. The FMS also has the authority to request information from NPOs pursuant to the AML/CFT Law. Although information on NPOs for NPOs registered since 2010 is available on-line, information on NPO registered previously is kept manually and has not been migrated in the new registration system. This may impede law enforcement's ability to gather information on NPOs.

Domestic Cooperation, Coordination, and Information Sharing on NPOs (c. VIII.4.1):

1336. No coordination mechanisms are in place to facilitate information sharing between authorities that hold relevant information on NPOs.

Access to Information on Administration and Management of NPOs during Investigations (c. VIII.4.2):

1337. Article 123 of the CPP outlines the procedure for search, seizure and arrest of property at the offices of public organizations. The article stipulates that:

- "Objects, documents, articles or other items containing scientific or educational information may not be searched, seized or arrested from the offices of mass-media, or from the premises of publishing houses, scientific, educational religious, public organizations or political parties, toward which reasonable expectation of public release exists;

- The restriction referred to in Para. 1 of this Article shall not apply if there is a probable cause that the object, document, substance or other item containing information to be seized represents the subject or tool of a crime;

- A court is authorized to adopt ruling regarding the search, seizure and/or arrest only in a case, when there is obvious and reasonable ground that the conduct of an investigative action

would not violate right to freedom of speech, opinion, conscience belief, religion, or right to union guaranteed under the Georgian constitution. The investigative action shall be conducted in an effective form to provide for most minimal restriction of these rights".

1338. The FMS can request and obtain from monitoring entities additional information and documents (original or copy) available to them, including confidential information, on any transaction and parties to it, for the purpose of revealing the facts of illicit income legalization or FT pursuant to Article 10.4.

1339. Information on NPOs that can also be found on through the National Agency of Public Registry. Information contained on the website includes the purpose of activity for the NPO; procedure for admission, resignation and expulsion of member of the entity; the name of the authority responsible for decision making on reorganization and liquidation, regulation and procedure of decision making; and the procedure for establishing (electing) governing body of non-entrepreneurial (noncommercial) legal entity and period of its authority. However no information on the persons owning, controlling or directing the NPO is available. The name and address of management is also collected.

1340. For entities that choose to register as charitable organization with the Revenue Service information publicly available includes: a) name; b) organizational-legal form; c) main objectives; d) main fields of activities for the past year; e) the addresses of a management body and the branches.

1341. All other information can be obtained using general investigative techniques provided by the Criminal procedure Code of Georgia and the Law of Georgia on Operative Searching Activities.

Implementation:

1342. The FMS can access information related to charities through a court order, however it has never used its powers to request this type of information. Law enforcement can obtain information related to the registration of charities or through the Public Registry; however it requires a court order to obtain information from NPOs. The Investigative Service of the Ministry of Finance conducted searches and seizures in approximately 30 NPOs on financial and ML investigations. In the framework of the above-mentioned investigations, the information has been requested from NPOs. In previous years, the Investigative Service has seized the information from the NPOs approximately five times.

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) :

1343. The FMS is obliged pursuant to Article 10.5.b in the case of suspicion of ML or FT following the analysis of relevant information to immediately submit this information to the corresponding authority of the Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia. This would apply to cases where an NPO is suspected of being involved in FT.

1344. The ACT, CTC, MIA and the Financial Investigation Unit of the Ministry of Finance can undertake investigations regarding NPOs. The competent authority to conduct the investigation will be determined according to the nature of the suspected offense with the ACT and CTC undertaking

investigations related to terrorism; the SOD investigating ML and the Financial Investigation Unit investigating fraud. The Prosecutor's Office will determine which law enforcement agency will undertake the investigation. No special investigation unit focuses on cases related to the NPO.

1345. As discussed in Recommendation 27 and 28 knowledge of FT within law enforcement agencies could be strengthened. This assessment also applies to TF investigations that involve links to NPOs.

Implementation:

1346. The Financial Investigations Unit of the Ministry of Finance jointly with the Prosecutor's Office has initiated an investigation with respect to an NPO suspected of bringing goods intended to charitable purposes and selling them for profit. This case was brought to the attention of Georgian authorities by a foreign jurisdiction that suspects a link between the NPO and organized crime.

1347. The FMS has not had any cases related to NPOs.

Responding to International Requests regarding NPOs—Points of Contact and Procedures (c. VIII.5):

1348. Mechanism for responding for international requests are the same as those outlined in Recommendation 36, 38, SR.V and 40.

1349. No special point of contact has been designated to address international requests regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support. None of the mechanisms outlined in this report touch directly the Revenue Service or the National Agency of Public Registry limiting the ability of foreign counterparts to obtain information in a timely basis.

Implementation:

1350. Most criteria of the recommendation have not been implemented resulting in an overall lack of effectiveness in fighting NPOs' vulnerabilities to terrorist financing. No government authority appears responsible for taking a holistic view at the NPO sector. All organizations that interact with NPOs look at them narrowly through their respective mandate without anyone taking responsibility or even considering the potential vulnerabilities related to FT. There are no information mechanisms in place to discuss NPOs generally or their link to FT specifically, and no review of the adequacy of NPO laws has been undertaken. There is very little understanding about the size of the sector, its key activities or how it could potentially be used for FT. No information has been shared with international counterparts on NPOs.

1351. NPOs are not aware and have not implemented obligations related to the AML/CFT Law. No outreach has been conducted to raise awareness about these obligations or how the NPO could potentially be abused by terrorist financiers. This lack of awareness is partially due to the absence of supervision in the sector. The Ministry of Finance is not conducting inspections with respect to the AML/CFT Law and the audits that are conducted are part of the regular cycle of tax audits which do not focus of AML requirements. It should be noted that some of the information required either for registration or tax purposes can be helpful in obtaining some information on the administration and management of NPOs. However it may be difficult to obtain information on NPOs registered prior to

2010, as information contained in the previous registration system has not been migrated in the new registration system accessible through the internet.

Analysis of Effectiveness

1352. Requirements to register NPOs through the National Agency of Public Registry and the registration process for charitable organization does provide some transparency with respect to NPOs that operate and the type of activity undertaken although there are limitations due to the absence of pre-2010 data in the internet registry.

1353. The lack of effective implementation enhances the risk of NPOs being used for FT in Georgia. Authorities have expressed concerns regarding terrorism from external sources. Some investigations have been undertaken on NPOs using their status to import goods intended for charitable distribution and then selling these goods at full market value pocketing the profits. Another similar scheme of diverted charitable funds has the proceeds financing political activities. Studies have highlighted this as an issue in the past pointing to the lack of supervision as a factor in the ability of NPOs to abuse their status.

5.3.2. Recommendations and Comments

1354. The authorities are recommended to:

- Conduct a review of the adequacy of laws and regulations that relate to non-profit organizations.
- Identify types and features of NPOs that are at risk of FT.
- Conduct a reassessment of NPOs risk by reviewing information on the sector's potential vulnerabilities.
- Conduct outreach to raise awareness in the NPO sector about the risks of terrorist abuse.
- Establish effective supervision or monitoring of NPOs.
- Establish a requirement for NPOs to state the activity they undertake.
- Establish appropriate measures to sanction violations of oversight measures or rules by NPOs.
- Expand requirement to keep information on transactions above GEL 3,000 to all transactions.
- Migrate pre-2010 NPO registration data in publicly available registry.
- Establish domestic coordination mechanisms regarding NPOs.
- Establish point of contact for receipt of information queries on NPOs within the Revenue Service and the National Agency of Public Registry.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• No review of the adequacy of law and regulations related to NPOs. • No identification of types and features of NPOs that are vulnerable to FT. • No periodic reassessment of NPO risks. • No outreach conducted other than the publication of the FATF best practices paper to raise awareness about the risks of terrorist abuse. • No publicly available registration data for NPOs registered prior to 2009. • No supervision or monitoring of NPOs. • No requirement to keep transactional information below GEL 3,000. • No appropriate point of contact and procedures to respond to international requests related to NPOs. **Implementation:** • Lack of domestic cooperation and sharing of information related to NPOs between appropriate authorities. **Effectiveness:** • Measures in place do not address the TF vulnerabilities that exist in the sector.

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1. National Cooperation and Coordination (R.31 & R.32)

6.1.1. Description and Analysis

Legal Framework:

1355. The legal basis for national cooperation and coordination between relevant competent authorities is provided for in the AML/CFT Law and MOUs concluded between the FMS, supervisory bodies, and law enforcement agencies.

1356. Article 11(2) of the AML/CFT Law provides that "the supervisory bodies shall be obligated to collaborate with each other, with competent Georgian and other countries' authorized agencies and international organizations through exchanging information and experience, and assist law enforcement agencies, within the scope of their competence".

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

1357. At the time of the on-site visit, no AML/CFT coordination Committee had been set up in Georgia to develop 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/terrorist financing.

1358. After the on-site visit, the AML/CFT Law was amended on November 25, 2011 where a committee has now been set up to coordinate policy and implementation of the relevant UNSCRs. This committee is chaired by the Minister of Justice and comprises senior officials of relevant ministries and agencies. The legal basis for the committee and its task force is provided in Article 13.2 of the AML/CFT Law which provides that:

- The Commission shall be authorized to file motion on freezing the property of the persons designated by the UN Resolutions at the Court under the Administrative Procedure Legislation;

- The Commission shall be entitled to draft the list of persons related to terrorism upon the reference of foreign and/or national competent authorities and submit motion on freezing or unfreezing property owned by the individuals referred to the list at the Court under the Administrative Procedure Legislation; and

- The Task Force of the Commission shall be authorized to apply to the competent state authorities for imposing certain restrictions in order to carry out sanctions determined by the UN Resolutions. The reference of the Commission shall be binding to execute by the competent state authorities.

1359. Georgia established an Anti-Corruption Council (ACC) comprising senior officials to coordinate the efforts of relevant ministries and agencies and develop a strategy and an action plan to implement the United Nations Convention against Corruption (UNCAC). Some members of the Council are also involved in the fight against ML and FT, notably the FMS, NBG, MOJ, and MIA.

1360. The Council holds meetings every two months to discuss anti-corruption issues; at times the discussion tackled AML issues. It has developed a Strategy and Action Plan against corruption with the participation of civil society and international organizations to work toward conformity with the UNCAC requirements.

Bilateral Cooperation:

1361. The FMS has concluded MOUs with the following concerned agencies: NBG in May 2006, MIA in June 2008; MOJ including the CPO in January 2009 and MOF in 2009. These MOUs are signed with the aim of coordinating the activities and exchange of information between FMS and concerned agencies.

Cooperation between the FMS and LEAs

1362. By virtue of these MOUs, some databases of the: (i) MOJ (public and civil registry, Bureau of Data on Public Officials Financial Disclosure); (ii) MOF (databases of Customs and Revenue Service) are accessible by the FMS. Please refer to R.26 for more details about the databases available to the FMS. However, the FMS is not receiving feedback from LEAs on trends, methodologies and typologies developed by relevant LEAs.

Cooperation between LEAs

1363. Several LEAs are responsible for conducting ML and FT investigations. CPO coordinates the investigations conducted under his supervision by the MIA (SOD and CTC) and MOF.

Cooperation between FMS and Supervisory Bodies

1364. Supervisory bodies are required to inform the FMS about their monitoring entities' compliance with the AML/CFT Law, including information on inspection results, statistical data reflecting activities of respective monitoring entities. The MOU between FMS and NGB sets out that these two agencies shall coordinate in the areas of issue of regulatory requirements, guidance documents and training. The MOU also sets out the exchange of information between the two agencies where FMS will share information with NGB on information on reporting while NBG will share information on licensing/registration data, inspection findings including violations with FMS. The MOU also provides for the representatives of the two agencies to organize meetings at least once a year or when it is necessary in order to analyze compliance of activities of monitoring entities with the AML/CFT Law, define the strategy of cooperation, hold discussions and make decisions on issues provided for in the MOUs. In practice, the Georgian authorities indicated that meetings between NBG (Banking and Non Banking Supervision Departments) and the FMS are held very often per year. The focus of such meetings is to discuss implementation of the AML/CFT Law requirements by monitoring entities.

1365. There is consultation between NBG and FMS to the extent that FMS would inform NBG about financial institutions which do not comply with the requirement to register with FMS. However, there is no systematic consultation on identifying financial institutions and prioritizing on-site inspections. The FMS has a store of information which should be analyzed and provided to the NBG for targeting potentially high risk financial institutions for inspection. Such inputs from the FMS would be useful information for identifying financial institutions which pose risks from the AML/CFT perspective.

Cooperation between NBG and LEAs

1366. In accordance with Article 48(5) of the Organic Law of Georgia on NBG, a new provision has been introduced in February 2012 to clearly provide for NBG's power to cooperate with national supervisory and LEAs.

Cooperation between Supervisory Bodies

1367. There is no mechanism allowing the cooperation between supervisory agencies of FIs and DNFBPs notably, NBG, MOJ, and MOF.

1368. Additional Element—Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c. 31.2):

1369. The FMS, in close cooperation with relevant competent supervisory bodies, regularly organizes meetings and consultations with monitoring entities. Consultations generally are carried out in order to:

- Review current AML/CFT legislation and practical problems related to its implementation;
- Discuss the results achieved since the previous meeting; and
- Discuss AML/CFT draft laws and relevant legislation.

Statistics (applying R.32)

1370. Although the authorities are maintaining the relevant statistics, they are not reviewing the effectiveness of the AML/CFT system on a regular basis.

Implementation and Effectiveness:

1371. Georgia has not set up an AML/CFT Coordination Committee to 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 ML and TF.

1372. An Inter-Agency Committee on implementing UNSCRs has now been established. Additionally, an Anti-corruption Council has been created for coordinating anti-corruption policies and implementing the requirements of the UNCAC. It includes the membership of agencies involved in the fight again ML, more precisely the FMS, NBG, MOF, and MOJ. While AML/CFT issues were said to be regularly discussed at the Council's meetings, the discussions were expected to be more in

relation to the Council's mandate in fighting corruption. A similar council to steer and coordinate AML/CFT issues is highly advised.

6.1.2. Recommendations and Comments

The authorities are recommended to:

- Put in place effective mechanisms between policy makers, the FMS, LEAs and supervisors which enable them to cooperate and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF. An AML/CFT Council similar to the one for Anti Corruption that could develop a strategy and action plan is highly advised.

- Review statistics in the relevant areas of the fight against ML and TF on a regular basis to assess the effectiveness of the AML/CFT regime.

- Establish a mechanism allowing the cooperation between supervisory agencies of FIs and DNFBPs notably, NBG, MOJ, and MOF.

6.1.3. Compliance with Recommendation 31

(Rec 31 rated as PC and Rec 32 as PC in the 2007 MER)

	Rating	Summary of factors underlying rating
R.31	**PC**	• Lack of a central coordinating body/committee to steer and coordinate the development and implementation of policies and activities to combat ML and TF. **Implementation:** • There is no mechanism allowing the cooperation between supervisory agencies of FIs and DNFBPs notably, NBG, MOJ, and MOF.
R. 32	**LC**	• The effectiveness of Georgia's AML/CFT systems is not being reviewed on a regular basis.

6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

Recommendation 35 and Special Recommendation I (both rated PC in the 3rd mutual evaluation)

Legal Framework:

1373. Under Georgian law, Conventions that have been ratified by parliament are self-executing to the extent that the Convention provisions are specific enough to be applied without transposition into national law.

Ratification of AML-Related UN Conventions (c. 35.1):

1374. Georgia has signed the Palermo Convention on December 13, 2000, and subsequently ratified the Convention on September 5, 2006. Georgia is also a member to the Vienna Convention, which it ratified on January 8, 1998.

Ratification of CFT-Related UN Conventions (c. I.1):

1375. Georgia has ratified the International Convention for the Suppression of the Financing of Terrorism ("FT Convention") on September 27, 2002, and has ratified twelve out of the remaining fifteen international legal instruments on terrorism, including all nine Conventions and Protocols listed in the Annex to the TF Convention. The Convention on the Marking of Plastic Explosives for the Purpose of Detection, the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, and the Convention for the Suppression of Acts of Nuclear Terrorism. The Amendments to the Nuclear Material Convention, the Protocol to the Maritime Convention, and the Protocol to the Protocol on Fixed Platforms have been signed but not yet ratified.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):

1376. Georgian law complies with many provisions of the Vienna Convention. ML is criminalized largely in line with the Vienna Convention; confiscation and seizing measures are available for all offenses under the Convention; and the power of law enforcement agencies to identify and trace property that is or may become subject to confiscation is generally not hindered by financial secrecy. Access to information held by lawyers and other legal professionals is however limited. Georgia may also provide a wide range of MLA with respect to drug related ML offenses and grant extradition for such crimes.

Implementation of FT Convention (Articles 2-18, c. 35.1 & c. I.1):

1377. Georgian law criminalizes terrorist financing broadly in line with the requirements under the FT Convention and allows for the application of comprehensive confiscation and provisional measures in the context of such offenses.

1378. Preventive measures are in place for banks and nonbank financial institutions. However, the legal framework setting out the various obligations is still subject to a number of shortcomings as discussed under section 3 of this report. In particular, customer due diligence measures, record keeping, and STR reporting requirements could be strengthened further. TF is an extraditable offense under Georgian law as indicated under Recommendation 39 below.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):

1379. Georgian law complies with most provisions of the Palermo Convention. ML offenses involving organized crime are criminalized largely in line with the Palermo Convention and

confiscation and seizing measures in relation to proceeds obtained through the commission of such offenses are available. Georgia may also provide a wide range of different types of MLA with respect to ML offenses involving transnational organized crime, including in searching for and/or seizing property or evidence in relation to such offenses.

1380. Preventive measures and a supervisory regime are in place for banks and nonbank financial institutions. However, the legal framework setting out the various obligations is still subject to a number of shortcomings as discussed under section 3 of this report. In particular, customer due diligence measures, record keeping, and STR reporting requirements could be strengthened further.

1381. Georgia has established an FIU and has in place a cross-border declaration system but significant shortcomings have been identified in relation to both.

Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2):

1382. As outlined in detail under SR III, Georgia's new mechanism to implement its requirements under UNSCR 1267 and 1373 suffer from a number of significant shortcomings and does not implement all aspects of the requirements under the Resolutions.

Additional Element—Ratification or Implementation of other Relevant International Conventions (c. 35.2):

1383. Georgia has signed and ratified a large number of international and regional treaties and conventions, including the Merida Convention, the European Convention on Corruption, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

6.2.2. Recommendations and Comments

- Fully implement the Vienna, Palermo, and FT Conventions.
- Address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Georgia has ratified and implemented most but not all provisions of the Palermo, Vienna, and FT Conventions.
SR.I	**PC**	• Georgia has ratified and implemented many but not all provisions of the CFT Convention as outlined in the various sections of this report. In particular, shortcomings remain with respect to the FT offense. • Some shortcomings remain in respect of the implementation of UNSCR 1267 and 1373.

6.3. Mutual Legal Assistance (R.36-38, SR.V)

6.3.1. Description and Analysis

Recommendation 36 (rated LC in the 3rd mutual evaluation): Recommendation 37 (rated C in the 3rd mutual evaluation): Recommendations 38 (rated PC in the 3rd mutual evaluation): and Special Recommendation V (rated LC in the 3rd mutual evaluation)

Legal Framework:

1384. Georgia's mutual legal assistance ("MLA") framework is set out in the Law of Georgia on International Cooperation in the Field of Criminal Law ("MLA Law"). Before the MLA Law came into force in 2010, Georgia did not have any relevant and overarching legislation in place but provided assistance in criminal matters exclusively on the basis of the treaties and agreements it had signed.

1385. Georgia has entered into bilateral MLA treaties with Bulgaria, Turkey, Ukraine, Turkmenistan, Kazakhstan, Azerbaijan, and Greece. In addition, it has ratified a large number of international and regional treaties relevant in relation to MLA, including the European Convention on Mutual Assistance in Criminal Matters, and the Merida, FT, Palermo, and Vienna Conventions.

Widest Possible Range of Mutual Assistance (c. 36.1):

1386. Georgia may provide MLA in criminal cases based on a multilateral or bilateral agreement or (with the exception of extradition and enforcement of foreign judgments) on the basis of the principle of reciprocity. Dual criminality is only required to carry out coercive measures upon foreign request. For all other forms of assistance, dual criminality is not a precondition.

1387. The authorities confirmed that MLA may be provided already during the investigative stages of a case. Before a case has reached the trial stage in the requesting country, coercive measures such searches or seizures may however only be ordered by a Georgian court if procedural requirements under the law of the requesting country have been met, i.e. if a court or another competent authority such as the prosecutor of the requesting country has issued a decision to this effect. Once the case abroad has entered the trial stages, such measures may be ordered by the Georgian courts directly based on the foreign request, including in the absence of a foreign court order or prosecutorial decision.

1388. Pursuant to Article 11 of the MLA Law, Georgia may provide assistance in criminal matters whenever there are "relevant legal grounds" to do so. The authorities indicated that this requirement would be considered to be met whenever the conditions under Article 2 MLA Law are deemed fulfilled, i.e., whenever there is a legal basis for implementation of a specific request.

1389. The MLA Law does not list explicitly the types of assistance that Georgia may provide but states more generally in Article 11 that requests for assistance are to be executed in accordance with the legislation of Georgia. According to the authorities, all investigative measures available under Georgian law are, therefore, also available upon foreign request. For a detailed discussion of the various provisions referenced below, see Recommendations 27 and 28 of this report. In summary, Georgia may provide the widest range of MLA to foreign countries, including to assist in:

- The production, search and seizure of information and evidence, including financial records from financial institutions, DNFBPS and other persons or legal entities (Article 17 of the Law of Georgia on Activities of Commercial Banks; Article 10.2 of the Law on Microfinance Institutions; Article 7 related to professional secrecy in the Law on Advocacy, Articles 120, 121, 151, and 152 CPC). As indicated under Recommendation 28 of this report, LEAs power to access information held by lawyers is however limited due to the application of legal privilege.

- Article 12 (2) of the MLA Law provides that measures involving search and seizure may only be carried out upon request of a foreign country if: (1) a treaty or agreement provides for it; or (2) the principle of dual criminality is met in relation to the crime in question; (3) the crime is an extraditable offense under Georgian law; and (4) the execution of such a measure complies with the legislation of Georgia. All ML, FT, and predicate offenses are extraditable offenses pursuant to Article 18 of the MLA Law. For cases that are still at the pre-trial stage in the requesting country, the Georgian prosecutor must submit a foreign court decision or other procedural document authorizing the conduct of the requested investigative actions to the local Georgian court. Once a case has entered the trial stage abroad, the prosecutor's motion may be based only on the MLA request of the respective foreign court.

- The taking of evidence or statements from persons (Articles 114, 115, 116, 117, 118 of the Criminal Procedure Code).

- Providing originals or copies of relevant documents and records, or other information or evidence (Chapter IV of the MLA Law are executed in accordance with the provisions of the Criminal Procedure Code of Georgia. As for Chapter IV of the MLA Law, it defines procedures related to the transfer of criminal proceedings. Information and evidence obtained or compelled by law enforcement authorities based on a court order may be provided to the requesting authorities without any restrictions or conditions. Copies of financial transaction records may thus also be provided in such cases. Judicial consent is required for cases that have not yet entered the trial stage in the requesting country;

- Effecting service of judicial documents: Persons present in Georgia may be summoned as defendants, witnesses, experts, victims in regard of a foreign criminal case in accordance with the rules established by the relevant international treaties, ad hoc agreements or under the conditions of reciprocal cooperation. Authorities confirmed that they could also effect service of judicial documents not involving a summons, such for example of criminal judgments;

- The voluntary appearance of persons for the purpose of providing information or testimony to the requesting country can be facilitated in accordance with the rules established by the relevant international treaties, *ad hoc* agreements or under the conditions of reciprocal cooperation (Article 94 of the CPC); and

- Identification, freezing, seizure or confiscation of proceeds or instrumentalities of crime (Article 151 CPC and Article 52 CC). For a more detailed discussion, see Recommendation 38 below.

Provision of Assistance in Timely, Constructive, and Effective Manner (c. 36.1.1):

1390. The Ministry of Justice is the central authority in charge of receiving, processing and responding to MLA requests from foreign countries that are based on letter rogatory. In cases where MLA is requested based on an international or bilateral treaty, direct channels may be utilized. Pursuant to Article 11 of the MLA Law, where information provided by the requesting country is found to be insufficient to execute the request, the Ministry of Justice may ask for additional information from the foreign state.

1391. All MLA requests are submitted to the International Cooperation Unit of the Legal Department of the Office of the Chief Prosecutor, Ministry of Justice of Georgia ("International Cooperation Unit"). The latter examines whether a submitted request is consistent with the relevant international agreement, *ad hoc* agreement or the conditions of the reciprocal cooperation, and that there are no grounds for refusal of the request. Execution of the request is initiated either by transmitting the request to local prosecution or police officers (for cases at the pre-trial stage) or by forwarding it to the local courts (for cases at the trial stage and with some exceptions). The official competent to implement a specific request must report any measures taken in relation to a specific request to the International Cooperation Unit within forty days of receipt of the request. Evidence or information obtained is sent to the appropriate authority in the requesting state through the International Cooperation Unit.

1392. At the time of the assessment, the International Cooperation Unit is was staffed with two prosecutors, one adviser, two English language translators, two Russian language translators, and one professional to keep a register of all MLA requests received, granted, denied etc. The International Cooperation Unit is funded from the regular state budget. The authorities stated that the Unit has sufficient resources and know-how to enable Georgia to provide MLA in an effective and timely manner.

1393. There are no formal timeframes in place for the processing of MLA requests. However, the authorities stated that MLA requests have in the past been executed within two to three months.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

1394. As indicated above, with the exception of enforcement of foreign judgments, Georgia may provide all forms of MLA based on reciprocity, including in the absence of treaty. Article 2 (4) of the MLA Law provides that reciprocity conditions shall be determined "based on the minimum guarantees under the MLA Law," but that introducing a higher standard would not be precluded. The authorities indicated that "minimum guarantees" are considered to have been provided based on a written commitment of reciprocity by the requesting state or could be provided for on the basis of an ad hoc agreement.

1395. Article 12 of the MLA Law provides for an exhausting list of grounds for refusal of MLA requests that are based on reciprocity, namely if:

- The execution of the request would prejudice the sovereignty, security, public order or other vital interest of Georgia (mandatory);

- The execution of the request would violate Georgian law (discretionary);
- The crime in relation to which the request was made is considered a political offense under Georgian law, which means that "the goal, motive, form, methods or other circumstances do not outweigh the political aspects of committing an offense" (mandatory). The authorities stated that FT was not considered a political offense under this provision. The authorities supported their view by reference to the various FT conventions and treaties Georgia has ratified, based on which it is under an obligation to provide MLA also in relation to FT offenses. The same approach is adopted under Article 12 of the MLA Law;
- The execution of the request would violate human rights and fundamental freedoms (mandatory);
- The execution of the request would incur double jeopardy (mandatory);
- The crime in relation to which the request was made is considered a military offense under Georgian law and double criminality is not met (discretionary); or
- The transmission of the requested evidence would delay criminal proceedings domestically (discretionary).

1396. The existence of grounds for refusal of a specific request is determined by the International Cooperation Unit.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

1397. The potential involvement of a fiscal offense is not included under Article 12 of the MLA Law as a ground for refusal of MLA. The authorities pointed out that tax evasion was a predicate offense for ML under Georgian law and that MLA could therefore also be provided in relation to such crimes. The authorities indicated that requests involving tax offenses have never been denied in the past.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

1398. There is no limitation in domestic legislation preventing the Georgian authorities from complying with foreign MLA requests where the law imposes secrecy or confidentiality requirements on financial institutions. The authorities confirmed that they are in a position to provide foreign authorities with any evidence and information obtained by financial institutions. As indicated under Recommendation 28 of this report, however, in relation to DNFBPs, some limitations exist due to the wide definition of legal privilege.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6): Additional Element—Availability of Powers of Competent Authorities Required under R.28 (c. 36.8):

1399. Article 11 of the MLA Law provides that requests for assistance are to be executed in accordance with the legislation of Georgia and that all measures available under Georgian criminal

procedures as discussed under Recommendations 3 and 28 of this report are also available upon foreign request.

Avoiding Conflicts of Jurisdiction (c. 36.7):

1400. There is no formal mechanisms for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country. However, should such conflict arise, it may be solved on the basis of an *ad hoc* agreement. One case in which coordination efforts resulted in a prosecution both in Georgia and France is discussed below.

International Cooperation under SR.V (applying c. 36.1-36.6 in R.36, c. V.1):

1401. The analysis under Recommendation 36 applies equally to TF cases.

Additional Element under SR.V (applying c. 36.7 & 36.8 in R.36, c. V.6):

1402. The analysis under Recommendation 36 applies equally to TF cases.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

1403. Dual criminality is a precondition only for the execution of a request to search and/or seize property and to enforce foreign criminal judgments. All other forms of MLA may be provided even in the absence of dual criminality.

1404. The authorities stated that in establishing whether a request meets the dual criminality requirements, mere technical differences between the law of the requesting state and Georgian law would not pose an impediment to the provision of MLA. Rather, the International Cooperation Unit would review the facts of the case and determine whether the described conduct would be criminalized in Georgia.

International Cooperation under SR.V (applying c. 37.1-37.2 in R.37, c. V.2):

1405. The analysis under Recommendation 37 applies equally to TF cases.

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):

1406. As indicated above, Article 11 of the MLA Law provides that requests for assistance are to be executed in accordance with the legislation of Georgia and that all investigative measures available under Georgian law, including seizing measures under Article 151 of the CPC, are also available upon foreign request.

1407. Foreign judgments may be executed in Georgia only on the basis of an applicable treaty. In specific cases, a country which is not already a party to an existing treaty with Georgia may enter in such an arrangement on an *ad hoc* basis. The authorities indicated that this has never been necessary in practice.

Request for Execution of Foreign Confiscation Order

1408. Article 52 of the MLA Law provides that where a foreign court has issued a confiscation of property as part of a criminal sanction, an authorized Georgian district court may issue an order for confiscation of the property located in Georgia. Once executed, the confiscated property is to be transferred into ownership of Georgia. In case the requesting state has special interest with regard to the confiscated property, however, the competent Georgian court is also authorized to transfer the confiscated property to that state.

1409. Article 55 of the MLA Law sets out discretionary grounds for refusal of a foreign confiscation order, namely:

- Lack of dual criminality;
- Enforcing the judgment would be against fundamental principles of Georgian law;
- The judgment is in relation to a political or military offense under Georgian law;
- There is probably cause to believe that the judgment was rendered based on the convict's race, nationality, ethnicity, religious or political opinions or similar circumstances;
- Criminal proceedings are pending, have been refused or terminated in Georgia for the same offense;
- Georgia is "not able" to enforce the judgment. The authorities indicated that this would cover situations where no property is available in Georgia for confiscation;
- The statute of limitation has expired; and
- Or there are any other grounds set out in an applicable treaty based on which the judgment may not be enforced.

Request for Execution of a Foreign Seizing Order or for Issuance of a Domestic Seizing Order

1410. As indicated above, seizing measures requested during the pre-trial stages may only be taken based on a decision by a foreign competent authority or court. Seizing orders upon foreign request are subject to the same conditions as orders in a domestic criminal case. In addition, dual criminality is required for such an order to be available in the context of MLA. For a detailed discussion of the requirements for a seizing order under Article 151 of the CPC see Recommendation 3 of this report.

1411. Once the foreign case has entered the trial stage, freezing or seizing orders may be applied in Georgia without the need for a corresponding foreign order. The rights of bona fide third parties are to be observed.

Property of Corresponding Value (c. 38.2):

1412. As in the domestic context, Article 151 of the CPC allows for the seizing and Article 52 of the CCG for the confiscation of property corresponding in value to proceeds of crime in cases where the latter cannot be located. See Recommendation 3 of this report for a detailed analysis for Article 52 of the CCG and Article 151 of the CPC.

Coordination of Seizure and Confiscation Actions (c. 38.3):

1413. No formal procedures are in place to coordinate seizure and confiscation actions with other countries. However, the authorities stated that if such case was to arise, Georgia may cooperate and liaise with other countries on an *ad hoc* basis.

International Cooperation under SR.V (applying c. 38.1-38.3 in R.38, c. V.3):

1414. The analysis under Recommendation 38 applies equally to ML and TF conduct.

Asset Forfeiture Fund (c. 38.4):

1415. Georgia has not considered setting up a designated asset forfeiture fund. All assets confiscated in Georgia are managed by the Service Agency of the Ministry of Finance, which has the power to allocate the assets for law enforcement, health, education or other appropriate purposes.

Sharing of Confiscated Assets (c. 38.5):

1416. There is no legal provision in place dealing with the sharing of confiscated assets. However, the authorities indicated that the court dealing with a specific case may decide that the confiscated property should be remitted (in full or part) to the requesting state. The Ministry of Justice can also decide to share confiscated assets with other countries on a case by case basis.

Implementation and Statistics (applying R.32):

1417. Since 2007, Georgia has received 1102 requests for assistance in criminal matters, of which 918 were executed and only 17 (or 1.5 percent) were rejected. Of the 1102 request received, eight related to cases of ML. Of these eight cases, two were received from Spain, one from Germany, one from France, one from Belarus, two from the Ukraine, and one from Russia. The authorities indicated **t**hat the request from Russia was still pending at the time of the assessment due to the political situation and the lack of diplomatic relationship between Georgia and Russia. The remaining seven requests have been executed. No case was ever received in the context of a foreign FT offense. The measures requested to be taken included the seizure of evidence, the obtaining of information from Georgian public agencies such as for example criminal records, and for identification and interrogation of natural persons. No request was ever received for the seizing or confiscation of property. The average time to respond to requests was two to three months.

1418. For the seventeen cases that had been rejected, the most common grounds for refusal of MLA was that the person in relation to whom a measure was requested could not be identified or located (seven cases) followed by lack of implementation due to withdrawal of the request by the foreign country (four cases); the measure requested was not envisaged by the Georgian criminal

procedure (one case); evidence was sought in relation to an offense sanctioned with the death penalty and the requesting state did not provide assurance that the death penalty would in fact not be imposed (one case); the political situation would not allow for execution of the request (three cases received from Russia); or lack of sufficient information to execute the request (one case).

Total Number of MLA Requests Received by Georgia

	2007	2008	2009	2010	2011 (until June)	TOTAL
Total	391	230	224	169	88	1102
Executed	375	215	193	112	57	952
Refused	7	1	5	3	1	17
Pending	9	14	26	54	30	133
Av. Response time	2-3 months	2-3 months	2-3 months	2-3 months	2-3 months	

Total Number of MLA requests received by Georgia for ML offenses

	2007	2008	2009	2010	2011 (until June)	TOTAL
Nr. of Requests	1	2	1	4	-	8
Requests to freeze	-	-	-	-	-	-
Requests to seize	-	1	1	-	-	2
Requests to confiscate	-	-	-	-	-	-
Executed	1	2	1	3	-	7
Rejected	-	-	-	-	-	-
Pending	-	-	-	1	-	1
Av. Time	2-3 months	2-3 months	2-3 months	2-3 months	-	

1419. As indicated in the table below, Georgia has previously received MLA requests for the freezing of property, albeit not in the context of a ML or FT case. The first request was received by France and related to a case of fraud. The measures requested by France involved the seizing of transaction records from a Georgian bank as well as the freezing of any relevant bank accounts that may be identified in Georgia. In response to this request, the Georgian authorities provided the requested banking documents to the French authorities but did not freeze any property, as no property was identified in Georgia.

1420. In the second case, Armenia requested MLA in a theft case involving a Georgian citizen. In the context of this request, Armenia requested that Georgia identify and freeze any property belonging to the suspect in Georgia.

Total Number of MLA requests received by Georgia for offenses other than ML and FT

	2007	2008	2009	2010	2011 (until June)	TOTAL
Nr. of Requests	390	228	223	165	88	1094
Requests to freeze	-	-	1	1	-	2
Requests to seize	12	12	-	8	2	34
Requests to confiscate	-	-	-	-	-	-
Executed	347	213	192	109	57	918
Rejected	7	1	5	3	1	17
Pending	9	14	26	53	30	132
Av. Time	2-3 months	2-3 months	2-3 months	2-3 months	2-3 months	

Effectiveness:

1421. Georgia's MLA framework is solid and allows for the provision of a wide range of assistance to foreign countries in the context of criminal investigations and prosecutions, and such assistance does not seem to be subject to any unduly restrictive or unreasonable requirements.

1422. While some of the grounds for refusal under Article 12 of the MLA Law are drafted in a rather general manner, the low number of rejected requests leads to the conclusion that in practice these provisions are interpreted in a narrow manner. The authorities stated that the vast majority of all MLA requests sent to Georgia would be implemented.

1423. In the specific context of AML, only a very limited number of requests have so far been received by Georgia, which makes it difficult to assess the effective implementation of the MLA framework. In particular, the lack of requests to seize or confiscate property based on foreign proceedings makes it difficult to confirm the authorities' interpretations of the relevant legal provisions. However, to illustrate their willingness to cooperate with other countries, the authorities referenced one case in 2009 in which MLA was requested by France based on letter rogatory in relation to a ML case involving Georgian natural and legal persons. In this case, Georgian authorities conducted interrogations, seized information on bank accounts and transactions from a Georgian financial institution, and provided all materials and information to the French authorities. French investigators participated in a number of procedural actions in Georgia. The coordinated actions eventually also led to the initiation of a criminal case in both France and Georgia, whereby the domestic case was still pending at the time of the assessment.

1424. With respect to FT, no MLA requests have ever been received by Georgia. However, for requests involving coercive measures, the requirement of dual criminality could potentially limit Georgia's ability to provide mutual legal assistance due to the limited scope of the FT offense as

discussed under Special Recommendation II. The authorities held the view that this would not be the case in practice, as the dual criminality principle would be interpreted broadly. In the absence of a specific offense criminalizing the conduct in relation to which a request was made, the authorities would still provide assistance as long as a combination of offenses criminalizes the relevant act. For example, an ancillary offense combined with a terrorist offense could serve as a basis for the dual criminality to be met. The assessors agree that this approach could be applied in many cases. However, certain legal limitations still remain, for example in cases where the foreign case involves the financing of a person or organization that is considered a "terrorist" or "terrorist organization" under the law of the requesting country but not Georgia.

1425. From the information provided, it seems that Georgia is willing to cooperate and has provided MLA in a number of cases, including by seizing of information from a financial institution and providing the evidence seized to the requesting authorities. Due to the crucial role Georgia plays in assisting foreign authorities in combating organized crime abroad, in particular activities by the thieves-in-law organization carried out in European countries, the authorities' willingness to provide MLA in an effective and comprehensive manner in all cases is crucial. However, the effectiveness of the MLA framework seems to be negatively impacted by the complete absence of international cooperation in criminal matters between Georgia and Russia, especially given the rather significant number of Georgian citizens located in Russia and the fact that Georgian criminal organizations are operating there.

6.3.2. Recommendations and Comments

- Review the scope of legal privilege to ensure that LEAs' powers to trace proceeds and instrumentalities of crime are not negatively affected, including where such measures are requested by a foreign state.

- Define the FT offense fully in line with the FATF standard to ensure that Georgia's ability to provide MLA is not limited in cases where dual criminality is required.

- Consider establishing an asset forfeiture fund.

- Consider mechanisms that would allow the provisions of MLA to all countries, including Russia.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**	• Lack of clear legal basis for the compelled production of records and documents from lawyers. • There are challenges for cooperation with Russia.
R.37	**C**	• This Recommendation is fully met.
R.38	**LC**	• Lack of clear legal basis for the compelled production of records and

		documents from lawyers. • The establishment of an asset forfeiture fund has not been considered. • There are challenges for cooperation with Russia.
SR.V	**PC**	• Lack of clear legal basis for the compelled production of l records and documents from lawyers. • The legal shortcomings identified with respect to the FT offense may limit Georgia's ability to provide MLA in cases where dual criminality is required. • There are challenges for cooperation with Russia.

6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Recommendations 37 and 39 (both rated C in the 3rd mutual evaluation) and Special Recommendation V (rated PC in the 3rd mutual evaluation)

Legal Framework:

1426. Georgia's extradition framework is set out in Chapter III of the MLA Law. In all cases, extradition may only take place on the basis of an applicable international or bilateral treaty, including *ad hoc* treaties. Extradition based on reciprocity alone is not permitted. Georgia has entered into a number of bilateral and multilateral extradition treaties:

- European Convention on Extradition (Paris, 13.XII.1957);
- Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975);
- Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978);
- Treaty between Georgia and the Republic of Armenia on Extradition (3.V.1997);
- Treaty between Georgia and the Republic of Turkey on Mutual Legal Assistance in Civil, Commercial and Criminal Matters (4.IV.1996);
- Treaty between Georgia and Turkmenistan on Mutual Assistance in Civil and Criminal Matters (20.III.1996);
- Treaty between the Republic of Georgia and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters (9.I.1995);

- Treaty between Georgia and the Republic of Kazakhstan on Mutual Legal Assistance in Civil and Criminal matters (17.IX.1996);

- Protocol to the Treaty between Georgia and the Republic of Kazakhstan on Mutual Legal Assistance in Civil and Criminal matters (31.III.2005);

- Treaty between Georgia and the Republic of Azerbaijan on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (12.VI.1996); and

- Agreement between Georgia and the Hellenic Republic on Legal Assistance in Civil and Criminal Matters (10.V.1999).

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

1427. Based on Article 18 of the MLA Law, extradition from Georgia is only possible for conduct that meets the requirement of dual criminality. The authorities indicated that the dual criminality requirement would be established based on the conduct in question rather than the criminal offense referenced in the request. Mere technical differences between the law of the requesting state and Georgian law would not pose an impediment to extradition.

1428. The grounds to refuse a request for extradition are set out in Articles 19 to 29 of the MLA Law and include:

- Requests involving a political or military offense;

- Requests pertaining to a Georgian national;

- Requests relating to offenses that are subject to capital punishment in the requesting state;

- The verdict underlying the extradition request was issued in absentia, the convicted person was not informed about the court hearings, and the proceedings did not satisfy the minimum rights of defense;

- The statute of limitations has expired in relation to the offense for which extradition is requested;

- Extradition would result in double jeopardy;

- Criminal proceedings are pending domestically in relation to the conduct for which extradition is sought.

Money Laundering as Extraditable Offense (c. 39.1):

1429. According to Article 18 of the MLA Law, any crime punishable with deprivation of liberty for at least one year under both Georgian Law and the law of the requesting country is considered an extraditable offense. The authorities indicated that this threshold would be determined based on the lowest sanction available in relation to a specific case. All ML, FT and predicate offenses under

Georgian law are punishable with at least one year imprisonment and are therefore extraditable offenses.

Extradition of Nationals (c. 39.2):

1430. Pursuant to Article 21 of the MLA Law, Georgian nationals may not be extradited unless extradition is provided for under an applicable international agreement. There is no requirement to initiate a criminal prosecution domestically in cases where extradition is denied based on nationality.

1431. Article 42 of the MLA Law requires that the Ministry of Justice of Georgia transfers case files received from a foreign state for the purpose of conducting criminal proceedings in Georgia to the relevant prosecution or police authorities. It also refers to cases where Georgia denies foreign extradition request on the basis of the Georgian nationality of the person requested to be extradited. The provision states that evidence obtained in a foreign state and kept in the transferred case files have equal legal basis as evidence collected in Georgia. The final decision regarding the transferred case files is communicated to the requesting state through the Ministry of Justice.

1432. The authorities indicated that in practice, however, they have had cases where extradition was denied based on nationality and where a domestic prosecution was initiated based on the case file transferred from the foreign authority.

Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

1433. The authorities indicated that the evidence contained in a transferred case file has equal legal force as the evidence obtained in the territory of Georgia. In case the transferred evidence is insufficient for the prosecution of the relevant person, the Ministry of Justice is authorized to obtain additional materials from the foreign state.

Efficiency of Extradition Process (c. 39.4):

1434. As all other MLA requests, extradition requests are to be channeled through the International Cooperation Unit, which examines whether the requirements of both international and domestic laws are met, and subsequently prepares the relevant decree for the Minister of Justice to grant or reject a specific extradition request.

1435. Pursuant to Article 34 of the MLA Law, unless there are valid grounds for refusal, the Minister of Justice or a person authorized by him/her must grant extradition. The authorities indicated that the Minister of Justice has always followed the advice by the International Cooperation Unit. In theory, the Minister could however use his discretion under Article 34 of the MLA Law to deny a request, for example due to the poor health of the person to be extradited.

1436. In case a request for extradition is granted but appealed, the prosecutors of the International Cooperation Unit are authorized to appear before the relevant courts and support the decision to extradite.

1437. Specific timeframes to process extradition requests are not provided for under the MLA Law but the authorities stated that in the past, extradition proceedings have taken no longer than nine months to be processed.

Implementation and Statistics (R.32):

1438. Since 2007, Georgia has received 90 requests for extradition, of which 52 were granted, seven were pending at the time of the assessment and 23 had been denied. Georgia has not received any requests for extradition in relation to a ML offense. In 2010, one extradition request was received from Russia in relation to an FT offense. At the time of the assessment, this request was still pending. The authorities indicated that this was due to the complicated diplomatic relationship with Russia, as well as the fact that proceedings against the person requested to be extradited are still ongoing in Georgia.

Total Number of Extradition Requests Received by Georgia

	2007	2008	2009	2010	2011 (until June)	TOTAL
Total	26	10	25	23	6	90
Executed	20	1	11	18	2	52
Refused	2	8	10	2	1	23
Pending	-	-	2	2	3	7
Av. Response time	5-6 months	5-6 months	5-6 months	5-6 months	5-6 months	

Effectiveness:

1439. Due to the lack of requests for extradition in ML and (other than the pending) FT cases, it is not possible for the assessors to gauge the effectiveness of the extradition framework in this context. The provisions of Chapter III of the MLA Law have however been applied effectively in a number of instances in relation to other crimes. The assessors have no grounds to believe that this would not be the case in the context of an extradition request for ML.

1440. As indicated under Recommendation 36, with respect to FT, the requirement of dual criminality could potentially limit Georgia's ability to extradite due to the limited scope of the FT offense. The authorities maintain that this would not be the case based on a liberal application of the requirement of dual criminality. While the assessors agree that the authorities' approach could be applied in many cases, certain legal limitations still remain.

6.4.2. Recommendations and Comments

- Define the FT offense fully in line with the FATF standard to ensure that Georgia's ability to extradite a person is not limited due to the requirement of dual criminality.

- Set out mechanisms and procedures to ensure timely handling of extradition requests.

6.4.3. Compliance with Recommendations 37 and 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**LC**	• Absence of clear procedures to ensure timely handling of extradition requests.
R.37	**C**	• This Recommendation is fully met.
SR.V	**PC**	• Shortcomings identified with respect to the FT offense may limit Georgia's ability to extradite a person due to the requirement of dual criminality. • Absence of clear procedures to ensure timely handling of extradition requests.

6.5. Other Forms of International Cooperation (R.40 & SR.V)

Recommendation 40 (rated LC in the 3rd round report)

6.5.1 Description and Analysis

Legal Framework:

1441. Article 13.1 of the AML/CFT Law provides relevant AML agencies to cooperate with foreign counterparts and international organizations. Article13.2 also outlines the FMS' right to conclude agreements related to ML and FT with corresponding agencies of other countries. Article 13.3 provides the FMS the ability to forward and respond to request related to ML and FT.

1442. The Law on International Cooperation in Criminal Matters of July 2010 provides for the establishment of international treaties, agreements or on the principle of reciprocity for LEAs including the MOF's Investigative Service. Additionally, the Law on Operative Searching Activities of 1999 provides the grounds to initiate operative searching measure at the request of law enforcement agencies of foreign countries or international law enforcement organizations. Provisions in the following Acts also provide the basis for the exchange of information between LEAs:

1443. Criminal Procedure Code of Georgia; Law of Georgia on the Investigation Service of the Ministry of Finance of Georgia; Law of Georgia on Intelligence Activities; Law of Georgia on International Cooperation in Criminal Matters; and, the Presidential Decree N99 of February 12, 2007 on the Adoption of Rules for the Activities of the National Central Bureau of Interpol of the Ministry of Internal Affairs of Georgia.

1444. Article 5 of the Organic Law of Georgia on the National Bank of Georgia allows the NBG to exchange information with its counterparts within the scope of its competence provided that the counterparts keep the confidentiality of the information provided.

Widest Range of International Cooperation (c. 40.1)

1445. Pursuant to Article 13.1 of the AML/CFT Law, "Georgian bodies authorized to work on issues related to legalization of illicit income and terrorism financing, shall cooperate, with domestic and foreign competent agencies and international organizations, in affairs such as the receipt of information, preliminary investigations, court hearings and execution of resolutions".

1446. Article 13.1 of the AML/CFT Law could be viewed as being narrow as it refers to "receipt of information" rather than exchange of information. Despite the phrasing of the provision this does not appear to impede the ability of authority to exchange information.

FMS

1447. In addition to Article 13.1 which outlines conditions for cooperation with international counterparts, the FMS can pursuant to Article 13.2 of the AML/CFT Law conclude agreements on illicit income legalization, FT and other issues of competence with foreign counterparts. Article 13.2 further specifies that "the FMS, without permission from any other entity or organ, should forward requests for submission of necessary information on issues related to legalization of illicit income and FT to authorized agencies of other countries and international organizations, and respond to such requests." It should be noted that although the FMS has the authority to sign MOUs it does not require one to exchange information with foreign counterparts.

Law Enforcement Agencies

1448. In addition to MLA channels described in Recommendation 36, additional measures are in place to facilitate cooperation by LEAs. Article 2 and 2.1. of the Law on International Cooperation in Criminal Matters stipulates that international cooperation in the field of criminal law is usually carried out on the basis of international agreements. It further stipulates that in certain cases international cooperation may be carried out on the basis of an individual agreement or by principle of reciprocity.

1449. Article 8.1.f of the Law on Operative Searching Activities provides the basis for conducting searches when a request is received by a foreign counterpart or an international law enforcement organization.

Supervisors

1450. Article 11.2 of the AML/CFT Law stipulates that "supervisory bodies shall be obliged to collaborate with each other, with competent and other countries' authorized agencies and international organizations through exchanging information and experience, and assist law enforcement agencies, within the scope of their competence".

1451. In addition, the NBG has the authority to cooperate with its foreign counterparts in accordance with Article 5 of the Organic Law of NBG. Pursuant to this article and within the scope of its competence, the NBG "shall cooperate with other country's competent financial sector supervision authorities. Such cooperation may cover exchange of information between the National Bank and

other country's competent financial sector supervision authorities provided that these authorities will keep the confidentiality of information obtained in this manner".

Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):

FMS

1452. As noted above, the AML/CFT Law of Georgia defines the mechanism of providing assistance by the FMS.

Implementation:

1453. The FMS responds to inquiries from foreign FIUs usually within two weeks unless information is required by a third party. For requests where this additional information is sought, responses are provided and have taken up to two and a half months, which is outside the one month Egmont best practice for information exchange. More consistent timeliness would enhance the effectiveness of cooperation.

1454. The FMS responds directly to almost all requests. However, the FIU has responded to 107 ML requests out of 112 from 2007 to July 2011. One request is pending; two requests were left unanswered in 2008 and 2010. The remaining unanswered requests pertained to voluntary disseminations where the foreign FIU asked whether any additional information was available and the FMS did not respond. Disclosures sent to foreign FIUs include information on persons including associates, criminal background, account numbers, turnover of accounts, information on real estate transactions, legal entities, and information on loans in held in Georgia. Banking statements are summarized in an information table. It should be noted that information on legal entities provided by the FMS can be incomplete due to the fact that the Public Registry used as a reference tool by the FMS does not systematically contain beneficial ownership information, and legal entities registered prior to 2010 are not systematically included in the registry. Although the information prior 2010 can be retrieved manually, the NAPR has indicated that the information recorded prior to 2010 was not always complete.

1455. The feedback received from Moneyval counterparts highlight mutually useful cooperation from the six jurisdictions that provided feedback on FIU cooperation. Comments provided indicated that information was timely, constructive and effective and provided without delay.

Law Enforcement Agencies

MIA

1456. Through the agreements, the MIA cooperates principally with neighboring countries such as Azerbaijan, Armenia, and Turkey. Joint working groups meet to establish action plans and exchange criminal intelligence information and contact points. The sub-group on combating against

Corruption and Money Laundering of GUAM[149] states provides a forum where both best practices and operational information can be shared.

1457. In addition, the MLA cooperates with police attachés of EU member states represented in Georgia (France, Germany, Austria, Poland, Hungary, and Netherlands). The forms of cooperation include exchange of relevant information, best practices, statistics, joint measures, adoption and implementation of annual assistance and cooperation plan, trainings and study visits. In February 2010, a Georgian Police Liaison Officer was stationed in Austria to enhance cooperation and the exchange of information with EU member States.

MOF, Investigative Service

1458. The Investigative Service has exchanged information and established productive cooperation related to ML with: Holland, the United States, Italy, France, Poland, Austria, Belgium, Czech Republic, and England. Information has also been shared with Interpol and Europol. The Investigative Service has also joined Amon (International Anti-Money Laundering Operational Network) and Carin (The Camden Asset Recovery Inter-Agency Network) networks in 2012.

Implementation:

1459. The MIA and the MOF Investigative Service can provide assistance to countries with which they have agreements. A number of liaison officers based in Georgia are in place to respond to requests for assistance in a timely manner. Law enforcement also have challenges providing information on legal entities given the limitations of the Public Registry as listed above.

Supervisors

1460. Pursuant to Article 5 of the Organic Law on NBG, the NBG exchanges information through the establishment of MOUs. Article 9 of the template MOU used by the NBG stipulates that: "the NBG and the ----banking supervisors will endeavor to inform each other, in good time and to the extent reasonable, about any event which has the potential to endanger the stability of authorized institutions having Cross-Border Establishments in the respective other jurisdiction. The authorities will also endeavor to notify each other of administrative penalties which they have imposed or any other action which they have taken in respect of such a Cross-Border Establishment as host supervisor or on the parent institution as home supervisor if the information in their judgment is likely to be important to the other Authority to assist that other Authority in the exercise of its functions".

1461. The Ministry of Justice exchanges best practices and lessons learned regarding AML/CFT supervisory practices with regional counterparts. It should be noted that information exchanged does not involve specific notaries as very few (if any) notaries operate in multiple jurisdictions.

[149] The GUAM Organization for Democracy and Economic Development is a regional organization of which Georgia, Ukraine, Azerbaijan and Moldova are members.

Implementation:

1462. The NBG has only exchanged AML/CFT information with two jurisdictions following requests from the MOU signatories over the past few years. The information shared included the results of examination findings; ratings on financial condition including AML issues. A third request was received regarding compliance with fit and proper requirements. The NBG is in the process of answering this request. No proactive information has ever been spontaneously shared by the NBG. The NBG does not systematically share examination findings with counterparts in jurisdictions where the financial institution operates. No information on ML or fit and proper information has ever been requested from a foreign counterpart.

Clear and Effective Gateways for Exchange of Information (c. 40.2):

FMS

1463. Georgia became a member of the Egmont Group on June 23, 2004. Since that date, FMS cooperates actively with foreign FIUs of whatever type. Although it does not need MOUs to share information with foreign counterparts, the FMS has the right to conclude agreements with foreign authorities on AML/CFT issues and requires such agreements to exchange information with foreign counterparts. The MOUs signed by the FMS refer to both AML and CFT.

1464. At the present moment, the FMS has concluded MOUs on exchanging of information with foreign FIUs from 30 countries: Andorra, Armenia, Aruba, Belarus, Belgium, Bulgaria, China, Croatia, Cyprus, Czech Republic, Estonia, Finland, India, Indonesia, Israel, Latvia, Lebanon, Lichtenstein, Macedonia, Moldova, Panama, Poland, Romania, San-Marino, Serbia, Slovenia, Sweden, Thailand, Turkey, Ukraine. The FMS' strategy is to proactively sign MOUs with countries where ML standards are weak. To this end, the FMS has signed agreements with three of the forty-two countries listed in the August 2011 NBG watch list. They are India, Indonesia and Lebanon. The FMS has never refused to sign a cooperation agreement.

1465. The modalities of information exchange by the FMS with its foreign counterparts are outlined in Egmont Group's "Principles for Information Exchange between Financial Intelligence Units for Money Laundering ad FT Cases" (Statement of Purpose; June 13, 2001).

Implementation:

1466. While the FMS responds to requests from foreign FIUs, a limited number of requests have been sent by the FMS. The number of requests sent in 2007 was 27 ML requests (no FT). This has decreased to 3 ML requests in 2010 and two requests in 2011. No justification has been provided by the authorities to explain the sharp decline in external requests for information. Please refer to the effectiveness section for further discussion of this issue.

1467. Following requests received by foreign FIU 30-50 percent will result in initiating of domestic cases with 15-25 percent of total information requests resulting in domestic disclosures.

Law Enforcement Agencies

1468. LEAs establish direct contact with their foreign counterparts under the international agreements on cooperation. As mentioned previously, the Law on International Cooperation in Criminal Matters provides the possibility for international cooperation on the basis of reciprocity.

1469. Under the aforementioned Agreement on cooperation among the Governments of GUAM Participating States in the field of combating against terrorism, organized crime and other dangerous types of crimes, a Sub-Group for Combating Against Corruption and Money Laundering has been established in 2009 and is currently chaired by Georgia. The group meets twice a year. In addition, national virtual law-enforcement centers have been established in GUAM member states including Georgia. The centers facilitate the rapid exchange of information through protected channels and direct communications during joint operations.

1470. The MIA also cooperates with the respective law-enforcement agencies of the BSEC Member States within the framework of the Agreement among the Governments of the Black Sea Economic Cooperation (BSEC) Participating States on cooperation in combating crime. The requests on cooperation introduced to the MIA from the law-enforcement agencies of other BSEC Member States are dealt with, responded and implemented in accordance with the agreement and its protocols.

1471. There is also a functioning network of liaison officers established by an additional protocol to the BSEC agreement signed on March 15, 2002, which facilitates the communication of requests on cooperation and relevant information between the law enforcement agencies of the BSEC Member States. The objectives of the network are to enhance cooperation in the field of crime control and provide for coordination of interaction between the competent bodies of the Member States and to establish an information exchange network among the law enforcement bodies of the Member States to effectively fight against crimes and criminals in accordance with the provisions of the BSEC Agreement on Cooperation in Combating Crime, in particular organized crime.

1472. The National Central Bureau of Interpol Tbilisi is the cooperation centre which links national law enforcement agencies and state authorities to the worldwide INTERPOL community. Its activities are governed by the Constitution of Interpol and the Regulation on Activities and Cooperation of National Central Bureau of Interpol of the MIA adopted by Presidential Order No. 99 dated December 2, 2007.

1473. Georgia has concluded international agreements with Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Estonia, France, Italy, Latvia, Malta, Moldova, Poland, Romania, Turkey, Ukraine, United Kingdom, and Uzbekistan on cooperation in the field of combating crime and police cooperation and agreements with Austria, Azerbaijan, Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, and Ukraine in the exchange and mutual protection of classified information.

1474. On October 20, 2011, the MIA signed bilateral agreements with the law enforcement agencies of Armenia, Azerbaijan, Moldova, and Ukraine in the sphere of operative-searching cooperation, which also includes the cooperation in the fight against money laundering and FT.

1475. These agreements have facilitated cooperation between Georgian law enforcement authorities with their foreign counterparts in the following areas: exchange of data and information

related to the prevention, detection, investigation and suppression of crimes (including money laundering and FT); exchange of experience and experts; sharing information on respective national laws and regulations; cooperation in the field of training and capacity building of the personnel of respective law enforcement authorities; arrangement of joint seminars, conferences, meetings and workshops; cooperation in other areas of mutual interest.

1476. A memorandum of cooperation has been signed between Georgia and Great Britain and Northern Ireland. The memorandum includes the Georgian Ministry of State Security, the Prosecutor General's Office, the Ministry of Internal Affairs and the Tax Revenue of Georgia with the Great Britain and Northern Ireland's Head of the Police Officers' Association, Royal Prosecutor's Office of the England and Wales, Financial and Economic Crimes Office, His Majesty's customs and excise office, the crime of subdivision and the National Criminal Investigation Service. The memorandum addresses cooperation related to serious crime, organized crime, drug trafficking and other issues of common interest.

Contracting state	Name (Agreement)	Entry into force
Armenia	On mutual administrative assistance in customs matters	02.19.08
Azerbaijan	On cooperation in customs work	07.10.95
China	On cooperation and mutual assistance	06.03.93
Estonia	On cooperation and mutual assistance in customs matters	06.16.05
Greece	On cooperation and mutual assistance in customs matters	01.14.99
Iran	On cooperation in customs matters	11.03.96
Israel	On mutual assistance in customs matters	09.09.98
Kyrgyz Republic	On cooperation in customs matters	04.22.97
Latvia	On cooperation and mutual assistance in customs matters	06.16.05
Lithuania	On cooperation and mutual assistance in customs work	11.12.00

Turkey	On cooperation and mutual assistance in customs matters	05.16.94
Turkmenistan	On cooperation and mutual assistance in customs matters	08.17.93
Ukraine	On cooperation in customs matters	02.14.97
Uzbekistan	On cooperation and mutual assistance in customs matters	05.28.96

1477. The MOF has the following agreements in place which allows its Investigative Service to exchange information.

Implementation:

MIA

1478. MIA makes use of established regional fora to share experiences and best practices with foreign counterparts. It chairs the GUAM Sub-Group for Combating against Corruption and Money Laundering and has received training from the United States and European Union. The GUAM virtual law enforcement centre allows member countries to exchange information through a secure portal. This portal became active during the on-site mission. Through this mechanism, the MIA exchanged information with Ukraine regarding 11 Georgians who created legal entities to launder money in Ukraine.

1479. The MIA has also provided information on its police reform and best practices in the fight against crime and money laundering to a number of countries, including: Armenia, Azerbaijan, Belarus, Kazakhstan, Kirgizstan, Uzbekistan, Moldova, Turkey, and Ukraine.

1480. MIA also actively uses the network of BSEC liaison officers as a means to receive and send requests on cooperation, however no requests have been sent or received relating to ML or FT. The Network also meets regularly, at least once a year.

1481. The SOD received 20 requests regarding ML related issues since 2007. Three of these requests were refused because of the lack of substantiation. The Special Operative Department (SOD) has never used the gateways in place to request information regarding ML investigations.

MOF, Investigative Service

1482. During 2008 to 2012, the IS received 90 requests from foreign counterparts and requested information 63 times regarding financial crimes. The requested information mostly concerned the identification of legal entities, registration of data, accounting information, and the identification of persons.

1483. From 2008 to 2012, information was exchanged with: Armenia, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Cyprus, Czech Republic, England, Germany, Greece, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Luxembourg, Netherlands, New Zealand, Panama, Poland, Serbia, Slovakia, Spain, Switzerland, Turkey, United States, and Ukraine.

Supervisors

1484. The NBG has concluded a Memorandum of Understanding with the following countries: Armenia, Azerbaijan, Belarus, Germany, Kazakhstan, Lithuania, Turkey, and Ukraine.

1485. The MOU strategy of the NBG is to focus on countries where foreign banks have subsidiaries or branches in Georgia. The NBG has agreements in place with Belarus and Ukraine where financial institutions have subsidiaries. Most of the MOUs signed were initiated by the NBG. The NBG is currently in negotiations with France and Qatar. No request for a MOU has ever been refused.

1486. The Minister of Justice and the Georgia Revenue Service have not signed any agreements with respect to information sharing related to AML/CFT. It should be noted that the opportunity to exchange notary specific information is limited given that notaries customarily do not operate in multiple jurisdiction. This reduces the need for an agreement to share entity specific information.

Implementation:

1487. The NBG has never made use of existing MOUs to request information from foreign counterparts. No information has ever been exchanged outside of MOUs.

1488. The Ministry of Justice, as supervisor of notaries, participates in the exchange of best practices regarding AML/CFT supervision with Armenia; Azerbaijan; Estonia, and Ukraine. Discussion topics include how supervisions are conducted; how notaries send information to the FIU and the comparison of guidelines. Exchanges are conducted both bilaterally and multilaterally. No specific information on notaries is exchanged.

Spontaneous Exchange of Information (c. 40.3):

FMS

1489. Article 13.3 mandates the FMS to forward requests for information related issues related to legalization of illicit income and FT to authorized agencies of other countries and international organizations as well as respond to them. No provision specifies that spontaneous exchanges of information are permitted or that exchanges of information are permitted in relation to predicate offenses. However, all MOUs concluded by the FMS include provisions on exchanging information upon request or spontaneously.

Implementation:

1490. The FMS has not used its power to spontaneously disseminate information to foreign FIUs. Predicate offense information has not been provided as the information was not available for the cases subject to exchange with foreign FIUs.

Law Enforcement Agencies

1491. Agreements described earlier in the section provide the mechanism by which law enforcement can share information with foreign counterparts. In addition, law enforcement can provide spontaneous information to foreign jurisdictions pursuant to Article 102 of the Criminal Procedure Code which stipulates that "if the investigation shows that the investigation of a criminal case falls under the jurisdiction of a different body, upon completing any urgent investigative actions the prosecutor shall immediately refer the case to the appropriate jurisdiction." No examples of spontaneous exchange were provided for the IS.

Implementation:

1492. The MIA has exchanged information with foreign counterparts in relation to both money laundering and predicate offense upon request. Authorities also indicated that information was exchanged spontaneously regarding 20 cases of possible ML conducted via liaison officers. The information was mainly related to members of Georgian organized crime who reside in European countries.

Supervisors

The NBG can respond to inquiries both spontaneously and upon request. The NBG's template MOU allows for both responses to queries as well as spontaneous transmittal of information. The template MOU does not mention specifically money laundering or underlying predicate offenses, however a provision states that: "supervisors will endeavor to inform each other about any event which has the potential to endanger the stability of an authorized institution having cross-border establishments in respect to the other jurisdiction".

Implementation:

1493. The NBG has never shared information spontaneously regarding AML/CFT issues. Instances of responsive information exchange have been described in criteria 40.1.1.

Making Inquiries on Behalf of Foreign Counterparts (c. 40.4 and c.40.4.1):

FMS

1494. According to Article 13.3 of the AML/CFT Law of Georgia the FMS can respond to information requests related to ML and TF. In making inquiries on behalf of foreign counterparts, the FMS can search its own databases, including with respect of information related to STRs. Similarly, it can search other databases, administrative databases, and commercially available databases. Please consult Recommendation 26 of an exhaustive list of databases available to the FMS. The FMS can also send a request to any government and private institution based on Article 10, para. 4(a) and (e) of the AML/CFT Law.

Implementation:

1495. When responding to requests from foreign FIUs, the FMS conducts searches in a number of administrative and commercially available databases (refer to R.26 for a complete list). The FMS will

also usually contact the banks for additional information to obtain corporate documents; account information; financial transactions as well as any other information that the banks have in their records. The FMS has never contacted nonbank sectors part of their efforts to respond to a foreign request. The FMS indicates to undertake queries on behalf of foreign counterparts as a standard procedure when responding to international requests for information by querying banks to obtain any information that the banks might have on interested parties. However, the assessors note that this practice is not applied systematically as the total number of requests received by foreign FIUs and of open cases, which are both supposed to trigger enquiries to banks, are much higher than the number of requests sent to banks.

Law Enforcement Agencies

1496. Article 8.1.f of the Law of Georgia on Operative-Searching Activities and on the basis of international agreements, the law enforcement agencies of Georgia are authorized to conduct operative-searching activities (including inquires) upon request of foreign counterparts.

Implementation:

1497. MIA has conducted inquiries on behalf of foreign counterparts in one instance with respect to a request from the Ukraine as described in criteria 40.2. It should be noted that when the MIA receives a request from a foreign counterpart regarding financial details, some officers believe that it must refer the request to the Prosecutor's Office for further investigation. The MIA has clarified that the requirement to refer the request only applies where investigative measures, such as search and seizure, need to be conducted in accordance with the Criminal Procedural Code of Georgia, but this distinction was not understood by the officers that were met during the on-site mission.

Supervisors

1498. The NBG can inquire on behalf of MOU partners. This authority is limited to the competency of both parties.

Implementation:

1499. The NBG has received requests from counterparts to conduct inquiries. The NBG has for example contacted banks to obtain fit and proper information including information on administrators and shareholders, their addresses and other relevant details. This inquiry was following a request from a foreign counterpart.

Conducting of Investigations on behalf of Foreign Counterparts (c. 40.5):

1500. As described in Recommendations 36-38, the framework for MLA authorizes law enforcement to conduct investigations on behalf of foreign counterparts. Please see the detailed information in the above-mentioned sections.

1501. Article 100 (1) of the CPC requires an investigator and/or prosecutor to initiate an investigation when he/she receives information about a crime. Article 100 (2) further specifies that "within three days from the initiation of the investigation, the investigator, prosecutor is required to

provide written notice about the initiation of investigation to the person who reported the crime." These provisions therefore allow for the initiation of investigations on behalf of foreign counterparts.

1502. Supervisors do not have the authority to conduct investigations.

Implementation:

1503. The MIA can conduct investigations when an agreement is in place, however the presence of an MOU is not mandatory. The MIA has conducted investigations including questioning individuals and gathering criminal intelligence information in response to requests regarding ML cases sent by foreign counterparts, mainly from EU countries and Ukraine. There were more than 20 such requests.

No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):

1504. Information on personal data is exchanged in accordance with the provisions of international agreements and national legislation on data protection. International agreements of Georgia stipulate several conditions to be met in order to ensure the protection of information and personal data, namely:

- Personal data and information exchanged between the competent authorities shall be processed and protected in compliance with the Parties' relevant national legislation on data and information protection;

- Personal data and information may be retransmitted to third parties only by the authorities competent for the implementation of this Agreement and only by written authorization of the sending competent authority;

- Transmitted personal data and information shall not be used for other purposes than those it has been provided for without prior consent of the sending competent authority;

- The receiving competent authority shall inform, on request, the sending competent authority about how the transmitted data was used; and

- The receiving competent authority shall effectively protect the received data from unauthorized access, changes or distribution.

1505. If it appears that the transmitted data is incorrect or that its transmission was not allowed, the receiving competent authority shall correct or destroy them and immediately notify the sending competent authority about that. The transmitted data, which has been used, should be destroyed by the receiving competent authority.

1506. The NBG is unable to share information related to state secrets and commercially sensitive information. Discretion can be exercised with respect to the relevance of the request and if it is outside the scope of MOU.

1507. Some MOU signed by the FMS include provisions that state: "authorities are under no obligation to give assistance if judicial proceedings have already been initiated concerning the same

facts as the request is related to." The clause further stipulates that "if an Authority decides not to respond to a request, the Authority received the request for information will notify the requesting Authority of its decision with a brief justification".

1508. Most restrictions above appear to be reasonable in the context of protecting the confidentiality of information and protecting judicial proceedings, however the refusal based on the relevance of the request could be interpreted broadly and contribute to limiting the sharing of information.

Implementation:

FMS

1509. Although most MOUs signed by the FMS contain a clause regarding the ability to refuse a request if a judicial proceeding has been initiated, this exception has never been invoked.

Law Enforcement Agencies

1510. Agreements include clauses regarding the protection of state interest but they must justify the refusal if invoked. This clause has not been used regarding ML/FT requests.

Supervisors

1511. Discretion was invoked in one instance by the NBG as it determined that the request was outside of its competence.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):

1512. There is no specific provision in international agreements or in the national legislation on refusal on the sole ground that the request involves fiscal matters.

FMS

The FMS can provide information including when it is related to fiscal matters including tax evasion. As outlined in section 1, tax evasion is a predicate offense in Georgian Law.

Law Enforcement Agencies

1513. There are no restrictions for the MIA to share information regarding fiscal matters, however they believe that such requests would not be of their competence and would refer the matter to the Revenue Service.

Supervisors

1514. MOU include the ability to share information on the prevention of Illicit Income Legalization. Illicit income legalization includes tax evasion (as it is a predicate offense). Therefore the supervisor can share information on tax evasion and fiscal matters.

Implementation:

1515. There has never been a request refused on the basis that the matter involved tax evasion or fiscal matters. However there has never been an instance where this type of information has been exchanged.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):

1516. Financial secrecy is protected by several layers of legislative documents, from Constitution of Georgia, to the sectoral laws regulating activities of financial institutions. Article 20 of the Constitution stipulates that: "Everyone's private life, place of personal activity, personal records, correspondence, and communication by telephone or other technical means, as well as messages received through technical means shall be inviolable".

1517. Specific provision ensuring confidentiality of information obtained by the employees of the National Bank of Georgia is also envisaged in Article 20, para. 3 of the Organic Law on the National Bank of Georgia which states: "Notices on accounts and/or transactions of Natural and legal entities may be issued only on the basis of court decision".

1518. The hierarchy of normative acts is outlined in Section 1. Article 5 of the NBG Organic Law sets out the legal capacity of the NBG to be, within its competence, involved in international cooperation. Article 5, para. 2 specifically authorizes NBG to share confidential information with the foreign counterparts, on the condition, that the recipient party will maintain the confidentiality of the transferred information. It must also be noted, that the confidentiality shall not be deemed to be breached in case such information is transferred to the law enforcement or investigative authorities in case of court order.

1519. The Organic Law on the National Bank of Georgia is of superior legal power to the laws applicable to the activities of the financial institutions; therefore, the provisions of the organic law, specifically related to international cooperation and/or exchange of information, shall prevail over financial secrecy provisions contained in sectoral laws.

1520. Article 7.1 of the Law on Advocates stipulates that "An advocate shall be obligated to keep a professional secret regardless of the elapsed amount of time." A member of the Bar Association indicated that revealing beneficial ownership would be in violation of professional secrecy. The Ministry of the Attorney General indicated that based on Article 50 of the CPCG the law enforcement bodies of Georgia have powers to access the information detained by lawyers when conducting financial activities on behalf of their clients and that in practice information has been requested from lawyers.

1521. The restrictions related to the constitutional protection of personal privacy and the requirement to obtain a court order for transactional information appears to be reasonable in the context of a democratic society. However, the broad interpretation of professional secrecy could limit the ability of law enforcement to access financial information. Discussions with the Bar Association confirmed that the scope of professional secrecy is interpreted broadly and would apply to instances where the lawyer is not representing the client in court. More specifically the representative of the Bar Association indicated that professional secrecy would be invoked in instances where a request for

information pertained to financial transactions that had been conducted by the lawyer on behalf of a client. Although the scope of professional secrecy is interpreted broadly, law enforcement has not indicated that this presents a significant impediment to exchanging information.

Implementation:

1522. Based on the above provisions the NBG has indicated that it would not share information related to a client's accounts or transactions based on the privacy provision of the Constitution and Article 20, para. 3 of the Organic Law on the National Bank of Georgia. No request has ever been refused on the basis of secrecy or confidentiality laws. No requests related to ML or FT have been made to lawyers offices on behalf of a foreign jurisdiction.

Safeguards in Use of Exchanged Information (c. 40.9):

FMS

1523. Article 13.4 of the AML/CFT Law of Georgia stipulates that Georgian bodies, authorized to work on issues related to legalization of illicit income, are required to ensure the confidentiality of relevant information provided by foreign authorities and use it only for the purposes indicated in the forwarded request. Recent amendments to the AML/CFT Law include a reference to TF in Article 13.4

1524. Article 12.3 further stipulates that the FMS, the supervisory and law-enforcement bodies, their management and employees, shall ensure protection of the information obtained pursuant to the AML/CFT Law.

1525. Data protection provisions of cooperation agreements and the provisions of agreements on the exchange and mutual protection of classified information establish controls and safeguards on the protection/confidentiality of personal data/classified information (see criterion 40.6 for examples of such safeguards). According to these provisions, the parties are obliged to afford the same level of protection to personal data/classified information received from the other party as they afford to personal data/classified information obtained from domestic sources. These provisions are included in all MOUs signed by the FMS.

1526. Access to such information is limited to those persons who are respectively authorized, appropriately cleared and have "need-to-know" (the principle, according to which access to classified information may only be granted to a person who has a verified need to know such information in connection with his official duties, within the framework of which the information was released to the receiving party).

Implementation:

1527. Access to the Egmont Secure website is limited to the Director of the Analysis Unit. Once he reviews the information, he informs the Head of the FIU and assigns the case to an analyst. The information received is only seen by the analyst working on the case that prepares the disclosure package and submits it to the Director of the Analysis Unit for review. The disclosure package is approved by the Head of the FIU and submitted to the foreign FIU via Egmont Secure Web. The

information is subject to the same information protection protocols as all other information held by the FMS.

Law Enforcement Agencies

1528. All agreements include a clause regarding the protection of information.

Implementation:

1529. Secret information is only shared through secure, encrypted networks or diplomatic channels. Information received from counterparts is subject to the same confidentiality and security safeguards that the MIA implements for domestic information.

Supervisors

1530. All MOUs signed by the NBG have a clause regarding the protection of information. The standard clause included in the NBG's template MOU stipulates: "Compliance with the obligation of professional secrecy and confidentiality by all employees who receive confidential information from the other Authority in the course of their activities is a necessary condition for a successful co-operation between the Authorities".

Implementation:

1531. Secret information is only shared through secure, encrypted networks or diplomatic channels. Information received from counterparts is subject to the same confidentiality and security safeguards that the MIA implements for domestic information.

Supervisors

1532. The same standard that is applied to domestic information by the NBG is also applied to information received by foreign counterparts. The transmission to third parties will depend on the content of the MOU with foreign counterparts. Unless the MOU stipulates otherwise, advance consent is sought before the information is transmitted to third parties.

Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1):

1533. No provisions are in place to allow information exchange via non-counterparts. Non-counterparts can exchange information with their respective counterparts. In the case where the implementation of the request is not in the jurisdiction of the requested competent authority, it will submit the request to the relevant competent authority of its country and inform the requesting competent authority.

1534. International agreements on cooperation stipulate that the requesting party should indicate in the request the purpose of the request and the name of the requesting competent authority. There is also a requirement for the receiving party not to use transmitted personal data and information for purposes other than the purposes it has been provided for, without the prior consent of the sending party.

Implementation:

FMS

1535. The FIU indicated that if it received a request from a non-counterpart, it would seek the permission of the non-counterpart to contact the FIU in their country and ask the FIU to submit a request. No such request has been received.

Law enforcement

1536. The MIA indicated that if it received for a non-counterpart, it would refer the request to the relevant competent authority. No such request has been received.

Supervisors

1537. The NBG would channel the request of the non-counterpart to law enforcement. No such request has been received.

Additional Element—Provision of Information to FIU by Other Competent Authorities Pursuant to Request from Foreign FIU (c. 40.11):

1538. The FMS is authorized to obtain relevant information from other competent authorities or other persons requested by a foreign counterpart FIU. Pursuant to Article 10.4 (a) and (e) of the AML/CFT Law of Georgia, the FMS is empowered to "request and obtain from monitoring entities additional information and documents available to them, including confidential information, on any transaction and parties to it, for the purpose of revealing the facts of illicit income legalization or FT".

1539. Article 10.4.e further specifies that "for the purpose of implementing the assigned functions, the FMS is entitled to forward questions and obtain information from all state or local self-government and government bodies and agencies, as well as from any individual or legal entity, which exercises public legal authority granted by the legislation".

Implementation:

1540. Although the FIU has the ability to obtain information from other competent authorities and reporting entities the FIU has only used this authority with banks.

International Cooperation under SR.V (applying c. 40.1-40.9 in R.40, c. V.5):

1541. Article 13.2 of the AML/CFT Law gives the FMS the right to conclude agreements with corresponding agencies of other countries concerning the prevention of illicit income legalization and FT.

1542. As noted above, Article 13.3 of the AML/CFT Law of Georgia states that the FMS "without permission from any other entity or organ, shall forward requests for submission of necessary information on issues related to legalization of illicit income and the financing of terrorism to authorized agencies of other countries and international organizations, and respond to such

requests." Provisions outlined in Recommendation 40 relating to law enforcement appear to apply equally to FT.

1543. Article 11.2 of the AML/CFT Law obligating supervisors to collaborate with other countries' competent authorities within the scope of their competence, which would appear to allow the exchange of FT information given that these supervisors are mandated to ensure compliance with counter FT obligations.

Implementation:

1544. The FMS has requested information on FT in four instances from 2008 to 2011 and responded to three TF related requests. All responses where provided within eight days of receiving the request.

1545. The NBG has not shared information regarding the financing of terrorism as no request on FT was received. No spontaneous information was exchanged on FT. Requests for information regarding FT were made by MIA via police attaché channels and within the frames of joint working groups established by bilateral international treaties (Turkey, Azerbaijan, Armenia, Ukraine), which meet annually or when necessary. No specific statistics on these exchanges were provided.

Additional Element under SR.V (applying c. 40.10-40.11 in R.40, c. V.9):

1546. Answers provided for criterion 40.1 – 40.9 (in R.40) also apply to the obligations under SR.V.

Statistics (R.32)

1547. FMS keeps regular statistics coming from subjects of ML/FT Law. The following table provides statistics about the requests made or received from 2007 to July 2011.

	Sent Requests	**Received Replies**	**Received Requests**	**Sent Replies**
2007	27	33	24	24
2008	(4 ML +1 TF)+1 request to all FIUs	4+1 from all FIUs	24	22
2009	3 ML + 1 TF	2 ML + 1 TF	22 ML + 1 TF	21 ML + 1 TF
2010	3	3	23	22
2011	2ML	2ML	33 ML + 1 TF	33 ML + 1 TF
	38ML / 2 TF	43 ML / 1 TF	124 ML / 2 TF	119 ML +3 TF

1548. The NBG has maintained statistics on information exchange with foreign counterparts but does not appear to maintain information on the timeliness of responses.

1549. Statistics for received requests by the AML division of the SOD are the following:

YEAR	RECEIVED DIRECTLY	RECEIVED THROUGH INTERPOL
2007	4	4
2008	2	3
2009	2	1
2010	1	-
2011	3	-

1550. Three of the abovementioned requests were refused because of the lack of substantiation. No requests were made by the AML division of the SOD to foreign authorities in these years.

1551. GUAM law enforcement centre conducted inquiries on 11 cases of possible ML cases in the year 2010-2011 and more than 20 requests via police attaché channels from foreign counterparts.

1552. The MIA has received a total of 11 requests from GUAM partners most notably 3 requests in 2009, 6 in 2010 and 2 in 2011. The MIA has also received information requests as well as requested information through police attaché channels for a total of 22 information exchanges. The table below outlines the breakdown by year.

Breakdown of requests received and sent by MIA via police attachés regarding ML (2008-2011)

Year	Requests received	Requests sent
2008	3	1
2009	4	2
2010	5	2
2011	4	1
Total	**16**	**6**

1553. The MoF IS maintains statistics on incoming and outgoing requests related to financial crime. No requests have been received or sent pertaining to ML or FT.

Effectiveness:

1554. The FMS has seen a dramatic decrease in the number of requests that it submits to foreign FIUs. In 2007, 27 requests had been submitted compared to three requests in 2010 and two in 2011. The conflict in Abkhazia and the Tskhinvali Region/South Ossetia was explained as the cause of the decrease in 2008 and 2009. However, there was no explanation given for the low amount of requests in 2010 an 2011. The FMS has indicated that half their cases involve transactions from foreign jurisdictions; yet they do not use the agreements at their disposal. The dramatic drop in the use of MOUs impacts the effectiveness of their analysis by not benefiting from the information held by foreign FIUs.

1555. MOUs are in place with some key neighboring countries. However, no agreements are in place with some offshore jurisdictions commonly identified by the Georgian authorities as being difficult to obtain beneficial ownership information. These include BVI and Seychelles.

1556. The NBG has also failed to use the agreements that it has in place. MOU partners are not contacted when trying to determine the backgrounds of owners, directors and senior management. The fact that 80 percent of banks are owned by foreign interest requires enhanced vigilance on the part of the supervisor when conducting fit and proper tests. The NBG does not spontaneously provide AML/CFT examination reports to foreign supervisors where Georgian subsidiaries or bank headquarters are located. The absence of agreements with the majority of countries where shareholders are located as well as the absence of information requests by the NBG puts into question the effectiveness of international cooperation mechanisms for the banking sector.

1557. The FIU has never exchanged information spontaneously. With Georgian organized crime operating in other European countries (please refer to Section 1 and 2), the absence of spontaneous information exchange from the FMS to FIU foreign counterparts denotes a lack of effective use of the gateways that are provided by the legal framework.

1558. The scope of legal privilege is too broad, limiting the ability of competent authorities to obtain information regarding financial transactions conducted or facilitated by lawyers.

1559. The central authorities are not able to receive or access information held by financial institutions and DNFBPs in Abkhazia and Tskhinvali Region/South Ossetia. This creates an environment that is highly vulnerable to ML due to the lack of transparency regarding activities that are undertaken in these territories. Georgia has taken steps to advise some counterparts, namely through Moneyval, about the situation in Abkhazia and Tskhinvali Region/South Ossetia. However, other jurisdictions and foreign bank supervisors have not been contacted.

1560. The conflict has also resulted in strained relations with certain countries that have recognized Abkhazia and Tskhinvali Region/South Ossetia's independence. Some information requests received from these countries have remained unanswered. The absence of the information exchange between Georgia and these countries exacerbates the risk that ML activities can take place undetected, especially as it can undermine cooperation with regard to Georgian criminal organizations operating abroad.

6.5.2. Recommendations and Comments

1561. It is recommended that:

- Authorities provide a clear legal basis that allows compelling production by LEAs of financial transactions detained by lawyers based on international requests.
- FMS be more proactive in requesting information from foreign counterparts.
- NBG uses MOUs to determine compliance with fit and proper criteria.
- FMS and NBG share information spontaneously with counterparts.
- FMS negotiates agreements with FIUs and financial supervisors located in off-shore jurisdictions, most commonly found in financial investigations.
- Maintain comprehensive statistics on international cooperation.

1562. The authorities should consider:

- Contacting foreign counterparts to inform them that financial activity undertaken in Abkhazia and Tskhinvali Region/South Ossetia are not subject to supervision or monitoring by Georgian authorities.

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	**LC**	• Lack of clear legal basis that allows compelling production by LEAs of financial transactions detained by lawyers based on international requests. **Implementation:** • FIU responses to request of information from foreign counterparts are not always timely. • No information requested from foreign supervisors to ensure that fit and proper criteria are met. **Effectiveness:** • Despite existing risks of foreign proceeds being laundered in Georgia, the absence of spontaneous exchange of information by the FMS and supervisors and the decreasing number of requests from the FMS to foreign counterparts, raise doubts on the overall effectiveness of the regime.
SR.V	**LC**	• Lack of clear legal basis that allows compelling production by LEAs of

		financial transactions detained by lawyers based on international requests. **Implementation:** • No information requested from foreign supervisors to ensure that fit and proper criteria are met. • The NBG has never exchanged information regarding FT. **Effectiveness:** • Despite existing risks related to terrorism financing in Georgia, the absence of spontaneous exchange of information by the FMS and supervisors and the decreasing number of requests from the FMS to foreign counterparts, raise doubts on the overall effectiveness of the regime.

7. OTHER ISSUES

7.1. Recommendations and Comments - Resources and Statistics

1563. The authorities are recommended to:

- Provide competent authorities with adequate, relevant and specialized trainings on a regular basis. Trainings on the risks and vulnerabilities of ML and FT, information technology and other resources relevant to the execution of their functions, and assets management are necessary.
- Increase the human and financial resources for the FMS and ensure full independence of LEAs.
- Develop comprehensive and reliable statistics on property frozen or seized for each type of predicate offense.
- Review the effectiveness of Georgia's AML/CFT systems on a regular basis.
- Maintain in a systematic fashion comprehensive statistics on international cooperation by LEAs and supervisors, including whether the request was granted or refused

	Rating	Summary of factors underlying rating
R.30	**PC**	• Overall, staff of competent agencies should be provided with adequate, relevant and specialized trainings on a regular basis. Trainings on the risks and vulnerabilities of ML and FT, information technology and other resources relevant to the execution of their functions, and assets management are necessary. • Increase in the workload without a corresponding increase in the budget of the FMS. The limited financial resources and decrease in human resources (around 40 percent since 2007) combined with increased level of reporting affect the effectiveness of the core functions of the FMS, mainly the analysis and dissemination of reports. • No sufficient safeguards are in place to warrant LEAs operational independence and autonomy
R.32	**LC**	• Competent authorities have yet to develop comprehensive statistics on property frozen or seized for each type of predicate offense. • The effectiveness of Georgia's AML/CFT systems is not being reviewed on a regular basis.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[150]
Legal systems		
1. ML offense	**LC**	**Effectiveness:** • The ML provisions are not applied in a sufficiently effective manner, both in relation to domestic and transnational predicate crimes.
2. ML offense—mental element and corporate liability	**LC**	• Due to the frequent use of plea agreements, the sanctions regime for ML is not applied in a sufficiently dissuasive and effective manner. **Effectiveness:** • The ML provisions are not applied effectively to legal persons.
3. Confiscation and provisional measures	**LC**	• There is a lack of clear legal basis for the compelled production of financial records from lawyers. **Effectiveness:** • The confiscation framework does not seem to be implemented in a fully effective manner.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• No specific provision allowing financial institutions to exchange and share information for the purpose of Recommendation 9 and Special Recommendation VII.
5. Customer due diligence	**PC**	• Electronic money institutions not covered. • No regulation developed for leasing companies (FMS decrees). • Numbered accounts neither regulated nor prohibited • Existence of a minimum threshold for customer identification and verification.

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

		• No requirement to terminate the business relationship where the financial institution has commenced the business relationship and is unable to comply with CDD requirements. • No specific prohibition to apply simplified CDD or regulation developed when it applies. • No specific prohibition to apply simplified CDD in cases of suspicion of ML/FT or high-risk scenarios. • Exception in the time of verification of customer's identity not regulated. • No requirement to apply CDD measures to existing customers it on the basis of materiality and risk, and to conduct CDD on such relationship at appropriate times. **Implementation:** • Limited scope of implementation of ongoing due diligence measures. • Concerns about the identification and verification of legal persons due to the deficiencies identified in Recommendation 33 and NAPR. • Poor compliance with the obligation to understand the ownership and control structure of the customer in all circumstances regardless of the amount of transaction or ownership control. • Banks applying simplified CDD in some cases of opening current accounts, including with countries not compliant with FATF standards. • Poor implementation of enhanced due-diligence requirements to risky customers. • Very poor implementation of measures applied to identify legal arrangements. • Poor implementation of the measures on information of purpose and nature of business. • Poor compliance with the provision established for the timing of verification of the legal person's

		identity. • Concerns on the CDD applied on brokerage and other intermediaries 'companies' customers operating through banks with omnibus accounts. • Impossible to assess implementation of the new AML/CFT framework (as amended on December 20, 2011), especially related to: o requirement to determine whether the customer is acting on behalf of another person; o requirement to incorporate those persons who exercise ultimate effective control over a legal person or arrangement; o ongoing due diligence; o timing on verification after starting the business relationship; o identification and verification of CDD procedures on a risk-sensitive basis; and o application of the new requirement to the existing customers. • Concerns on the adequacy of CDD measures when it is performed in banks' offices of representation. • No identification carried out when legal entity representatives operate with money remittance companies.
6. Politically exposed persons	**LC**	• The definition of close business relationship with PEPs does not cover legal arrangements. **Implementation:** • Concerns about the risk procedures applied for the identification of PEPS in medium/small banks and in non-banking financial entities. • Poor implementation on the approval by a senior

		management. • Poor verification of funds and wealth. • The absence of enhanced ongoing due diligence measures applied to PEPs, in conjunction with the time-frame constriction of the AML/CFT Law, restrict Georgian financial institutions effective management of the ML/FT risks related to that segment of customers. • Impossible to assess implementation of the measures introduced by the AML law amendments to apply to PEPs potential customers and PEPs as beneficial owners.
7. Correspondent banking	**PC**	• No requirement to document the respective AML responsibilities of each institution. **Implementation:** • Poor implementation for a correspondent relationship to be approved by a senior manager. • Poor assessment that the respondent institution's AML/CFT controls are adequate and effective. • No information about whether the institution has been subject to an ML/FT investigation, prior the establishment of the correspondent relationship. • In the case of a respondent bank involved in a ML/FT investigation no actions taken by the correspondent institution. • Concerns whether banks ascertain ML/FT risks in correspondent relationships.
8. New technologies & non face-to-face business	**PC**	• Electronic payment system no covered by the AML/CFT Law, including pay box and electronic money institutions. **Implementation:** • Non existence of special procedures applied by

		FIs to manage the risk of new technologies and of non-face to face transactions. • Possibility to open a non-face to face account, de facto, in the case of pre existence of an account in Georgia or in an OECD country. • Concerns about the implementation and the scope of ongoing CDD measures. • Concerns about the possible misuse of some electronic payment systems that are no under NBG supervision.
9. Third parties and introducers	**PC**	• No requirement to immediately obtain from the third party necessary information related to all elements of the CDD process. • No requirement to grant access to other relevant documents relating to all elements of CDD. • No requirement to grant access to information related to beneficial owner. • No requirement that FIs are satisfied that the third party has measures in place to comply with the CDD requirements. • No requirement that competent authorities take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.
10. Record-keeping	**LC**	• No other competent authorities, apart from NBG, are empowered to request an extension of the record-keeping obligations. **Implementation:** • No proper implementation of the record keeping measures of FIs specifically related to the time reference used for retaining and kept different type of documents such identifications or transactions. • No specific guidance on "the key documents" to

		be kept in order to ensure the reconstruction of the cycle of transactions. • No record-keeping obligations applied to electronic money institutions. Regarding the maintenance of records of account files and business correspondence, it was no possible to check the implementation of the new provisions. **Effectiveness:** • Shortcomings noted with **r**egard to the implementation of the CDD measures, and particularly the obligation to identify and verify the ultimate beneficial owner has an impact on the effective implementation of the record keeping requirements.
11. Unusual transactions	**PC**	• Unusual pattern of transactions is not covered under the current definition of unusual transactions. • No clear requirement in the AML Law or FMS Decrees to make unusual transactions available to auditors. **Effectiveness:** • Obligation to pay special attention to unusual transactions is confusing and leading to reporting which appears to be counter-productive, as it discourages to better understand these transactions.
12. DNFBP–R.5, 6, 8–11	**NC**	• Customer due diligence measures and record keeping obligations do not apply to lawyers, real estate agents, and trust and company service providers. • Unclear scope of accounting activities that are covered by the legislation. • Absence of definition of "precious metals and precious stones" • No implementing regulations for DPMS.

		Recommendation 5: • Existence of minimum threshold for customer identification for accountants. • No CDD requirement when establishing a business relationship for sectors other than notaries. • Absence of requirements regarding the identification and verification of legal arrangements. • No obligation for DPMS requiring the verification of the authority of the person purporting to act on behalf of the legal entity or the customer. • No provisions that require accountants and DPMS to understand the ownership and control structure of the legal entity. • No requirement to obtain information on the purpose or intended nature of business relationships other than for notaries and accountants. • No regulations that govern cases where DNFBPs may complete the verification of the identity of customers and beneficial owners after the establishment of the relationship. • No requirement for DPMS to terminate the business relationship and to consider making an STR when the DNFBP has commenced the business relationship and is unable to comply with CDD requirements. • No specific prohibition to apply simplified CDD when there is a suspicion of ML/FT or in cases of high risk and no regulation indicating when simplified measures are appropriate. • No requirement to conduct due diligence on existing relationships on the basis of materiality and risk at appropriate times.

		Recommendation 6 • Definition of close business relationship does not include legal arrangements. Recommendation 9 • No requirement that DNFBPs relying on a third party immediately obtain information related to all elements of the CDD process. • No requirement that DNFBPs are satisfied that the third party has measures in place to comply with all elements of the CDD requirements. • No requirement for third party to grant access to other relevant documents relating to CDD and beneficial ownership. Recommendation 10 • No ability for other competent authorities other than the respective supervisor to request an extension of the record keeping period. Recommendation 11 • Unusual pattern of transactions is not covered under the current definition of unusual transaction. • No clear requirement in the AML/CFT Law or FMS Decrees to make unusual transactions available to external auditors. • No specific requirement to examine the background of transaction that have no apparent or visible economic or lawful purpose for casinos or DPMS. **Implementation:** • Beneficial ownership requirements by notaries are not effectively implemented. • CDD measures by casinos are not effectively

		implemented. • Senior management approval and source of wealth and funds are not obtained when establishing a PEP relationship. • No ongoing due diligence is applied with PEP relationships. • No procedures implemented to mitigate the risks associated with non-face-to- face transactions in internet casinos. **Effectiveness:** • Poor CDD measures in casinos increase the risk of laundering occurring undetected. • Effectiveness and implementation of the following obligations could not be assessed due to their recent coming into force: o All obligations applying to accountants. o Conducting ongoing due diligence of business relationships. o Implementation of policies and procedures to mitigate the risk of non- face-to-face transactions. o Monitoring of risks associated with new technologies. o Conducting enhanced due diligence of high risk customers, business relationships and transactions. o Not carrying out transactions or ceasing business relationships if beneficial owner cannot be subject to identification and verification.
13. Suspicious transaction reporting	**LC**	• ML reporting requirements do not extend to electronic money institutions. **Effectiveness:**

		• Important sectors such as exchange bureaus and insurance companies are filing very low numbers of STRs. • Effectiveness was not established: weak quality of suspicious reporting with respect to money laundering as a consequence of defensive filing. Also, the scope of the STR requirement is not clear and confused with other types of reporting. • None of the STRs were related to FT cases.
14. Protection & no tipping-off	**LC**	• Protection of information and tipping-off requirements do not extend to temporary or long term establishment situation of staff. • The protection against liability does not apply to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision. Also, this protection should be available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
15. Internal controls, compliance & audit	**PC**	• For money remittance operators and currency exchange bureaus, there was no provision to ensure that the AML officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • There was no provision for money remittance operators and currency exchange bureaus on employee screening procedures. • Lack of requirement for financial institutions to have an adequately resourced and independent audit function to test the compliance with AML/CFT policies, procedures and controls. • For money remittance operators and currency exchange bureaus, lack of specific provision on the scope of AML training to indicate that the training should be provided on an ongoing basis and to ensure that employees are kept informed of

		new developments, including information on current ML and FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. **Implementation:** • Wording on internal controls to cover CFT aspect was recently included and effectiveness cannot be assessed.
16. DNFBP–R.13–15 & 21	**PC**	Recommendation 13 and SRIV • ML and FT suspicious transaction reporting and the implementation of internal controls do not apply to lawyers, real estate agents and trust, and company service providers. Recommendation 14 • Protection of information and tipping-off requirements do not extend to temporary or long term establishment situation of staff. • The protection against liability does not apply to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision. • Protection should be available even if individual did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. Recommendation 15 • No screening procedures requirements for the hiring of employees for casinos, accountants and DPMS. • Lack of requirement for DNFBPs to have an adequately resourced and independent audit function.

		Recommendation 21 • No ability for DNFBPs to apply countermeasures in cases where a country continues to not apply or insufficiently applies the FATF Recommendations. • Requirement to give special attention to business relationships and transactions with persons from some countries is confusing and limited to certain number of transaction over GEL 30,000 and should be enlarged to countries which do not or insufficiently apply FAFT recommendations. • No requirement to make information on transactions with no apparent economic or visible lawful purpose available to auditors. • The requirement of examining the purpose of the transaction for transactions with no apparent economic or visible lawful purpose does not extend to examining its background for casinos and DPMS. **Implementation:** • Policies and procedures are not developed by DNFBPs. • Training programs targeted to employees are not delivered by DNFBPs. • Audit functions to test compliance with policies and procedures are not established by DNFBPs. • Background and purpose of transaction conducted in countries that insufficiently apply FATF standards are not examined and documented. • Despite the very real threat of terrorism and TF activity in Georgia, no STRs relating to terrorist financing have been received from any DNFBP. • No attempted transactions reported by DNFBPs.

		Effectiveness: • STR reporting level is not commensurate with the level of risk associated with casino and notary sector (i.e. no reporting of STRs by casinos).
17. Sanctions	**LC**	• Fines are too low in nominal terms to be punitive and dissuasive for some categories of violations. Electronic money institutions are not subject to sanctions. • Effectiveness relating to implementation of several categories of sanctions cannot be tested as the sanctions were introduced only in February 2012. This includes sanctions for failure to maintain internal controls, updated sanctions for credit unions, and sanctions for officers of financial institutions.
18. Shell banks	**LC**	• Lack of a specific provision that explicitly requires financial institutions to satisfy themselves that their respondent financial institutions do not permit their accounts to be used by shell banks.
19. Other forms of reporting	**C**	• This Recommendation is fully met.
20. Other NFBP & secure transaction techniques	**LC**	• Insufficient measures taken by the authorities to significantly reduce the reliance on cash.
21. Special attention for higher risk countries	**PC**	• 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. **Effectiveness:** • The framework is confusing, neither comprehensive nor properly implemented, and it does not target all the relevant jurisdictions. • Requirement to give special attention to business relationships and transactions with persons from some countries is confusing and limited to a certain number of transactions above the threshold of GEL 30,000, and should be enlarged

		to countries which do not or insufficiently apply the FATF recommendations. • Absence of effectiveness of the measures in place, notably because of the long list of watch zone countries and limitation to a number of transactions above threshold.
22. Foreign branches & subsidiaries	**C**	• This Recommendation is fully met.
23. Regulation, supervision and monitoring	**PC**	• The supervisory cycle is relatively long for some institutions such as currency exchange bureaus and money remittance operators, even though their risk profile warrants a more intensive approach. • Electronic money institutions are not subject to AML/CFT supervision. • The effective implementation of significant reforms introduced in February 2012 (such as fit and proper tests for several categories of financial institutions; establishing a systematic AML off-site function, and developing a supervisory plan for on-site inspections) could not be tested. • Reform in the fit and proper tests will not apply retrospectively to the existing 1485 currency exchange bureaus and money remitters.
24. DNFBP—regulation, supervision and monitoring	**NC**	• No supervision of casinos, accountants, and dealers in precious and stones. • No effective, proportionate and dissuasive sanctions for casinos, dealers in precious metals and stones, and accountants. • Sanctioning regime for notaries is not effective, proportionate or dissuasive. • No mechanisms to prevent criminals and their associates to own or control a casino. • No supervisory powers for accounting sector supervisor.

		Implementation: • Supervision undertaken by the Ministry of Justice for notaries does not cover all AML/CFT obligations. **Effectiveness:** • Effectiveness of supervisory measures for accountants could not be assessed.
25. Guidelines & Feedback	**PC**	• Limited guidelines and feedback are only predominately orientated towards the banking and insurance sector; no account is taken of other reporting entities. • Guidance for notaries is not comprehensive and no guidance has been issued for casinos, accountants and DPMS to assist with their compliance with non-reporting AML/CFT obligations. • There is no effective feedback being offered via the FMS or other competent body to reporting institutions, including general and specific or case-by-case feedback. **Effectiveness:** • The industry would benefit from more clarity and guidance from NBG on actual implementation of preventive measures, especially on identification of beneficial ownership.
Institutional and other measures		
26. The FIU	**PC**	• Only one annual report is available online (published in January 2012), and it does not include ML/FT typologies and trends. **Implementation:** • Lack of guidance on the manner of reporting including with respect to reporting forms which are complicated and confusing to reporting entities. • No requests for additional/follow-up information have been addressed to nonbank financial

		institutions and DNFBPs. **Effectiveness:** • Lack of effectiveness in the receipt of STRs regarding potential terrorist financing and ML/FT STRs from several sectors (i.e. bureaux de change). Effectiveness has not been established regarding some new reporting entities (e.g., leasing companies and accountants). • Lack of use of the FMS powers to access some law enforcement information (i.e., investigation, prosecution, and trial records). • Poor quality of analysis of STRs and other information mostly due to lack of analytical tools and weak quality of reporting. • Low level of dissemination to PO and MIA (between 5 to 15 cases a year). • Increase in the workload without a corresponding increase in the budget. The limited financial resources and decrease in human resources (around 40 percent since 2007) combined with increased level of reporting affect the effectiveness of the core functions of the FMS, mainly the analysis and dissemination of reports.
27. Law enforcement authorities	**LC**	**Effectiveness:** • Law enforcement investigation and prosecution of money laundering and terrorist financing is not fully effective, in particular, in respect to standalone investigations into money laundering and autonomous money laundering cases related to predicate crimes committed abroad.
28. Powers of competent authorities	**LC**	• Lack of powers of LEAs to access the information detained by lawyers when conducting financial activities on behalf of their clients. **Effectiveness:** • Lack of effectiveness in ML and FT investigations, more precisely, limited use of the powers to compel production of financial information from lawyers and lack of sharing of

		information between concerned agencies in order to properly investigate the ML and associated predicate crimes and FT.
29. Supervisors	**LC**	• Electronic money institutions are not subjected to the AML Law and supervision. • Effectiveness of the power to supervise leasing companies cannot be tested as they have only been subjected to the AML Law in January 2012.
30. Resources, integrity, and training	**PC**	• Overall, staff of competent agencies should be provided with adequate, relevant and specialized trainings on a regular basis. Trainings on the risks and vulnerabilities of ML and FT, information technology and other resources relevant to the execution of their functions, and assets management are necessary. • Increase in the workload without a corresponding increase in the budget of the FMS. The limited financial resources and decrease in human resources (around 40 percent since 2007) combined with increased level of reporting affect the effectiveness of the core functions of the FMS, mainly the analysis and dissemination of reports. • No sufficient safeguards are in place to warrant LEAs operational independence and autonomy
31. National co-operation	**PC**	• Lack of a central coordinating body/committee to steer and coordinate the development and implementation of policies and activities to combat ML and TF. **Implementation:** • There is no mechanism allowing the cooperation between supervisory agencies of FIs and DNFBPs notably, NBG, MOJ, and MOF.
32. Statistics	**LC**	• Competent authorities have yet to develop comprehensive statistics on property frozen or

		seized for each type of predicate offense. • The effectiveness of Georgia's AML/CFT systems is not being reviewed on a regular basis.
33. Legal persons–beneficial owners	**PC**	• No specific requirement to obtain data on beneficial ownership. • Absence of appropriate safeguards to ensure that bearer shares and other bearer instruments are not misused for money laundering. **Implementation:** • Inaccurate and inadequate current information on beneficial ownership and control of legal persons. • Poor data verification on foreign legal persons and ownership control especially in case of a company located in an offshore territory or with a complex ownership structure of control. • Only a limited number of entities have been registered under the new system established in 2010. • Registry still in construction, some of the information is not reliable and out of date. • Concerns about the updating process of the information. **Effectiveness:** • In light of the risk that criminals integrate proceeds generated abroad in Georgia or use Georgian entities to invest abroad, the inability to ensure adequate and accurate information on the beneficial ownership is a serious weakness.
34. Legal arrangements – beneficial owners	**NA**	•
International Cooperation		
35. Conventions	**LC**	• Georgia has ratified and implemented most but not all provisions of the Palermo, Vienna, and FT

		Conventions.
36. Mutual legal assistance (MLA)	**LC**	• Lack of clear legal basis for the compelled production of records and documents from lawyers. • There are challenges for cooperation with Russia.
37. Dual criminality	**C**	• This Recommendation is fully met.
38. MLA on confiscation and freezing	**LC**	• Lack of clear legal basis for the compelled production of records and documents from lawyers. • The establishment of an asset forfeiture fund has not been considered. • There are challenges for cooperation with Russia.
39. Extradition	**LC**	• Absence of clear procedures to ensure timely handling of extradition requests.
40. Other forms of co-operation	**LC**	• Lack of clear legal basis that allows compelling production by LEAs of financial transactions detained by lawyers based on international requests. **Implementation:** • FIU responses to request of information from foreign counterparts are not always timely. • No information requested from foreign supervisors to ensure that fit and proper criteria are met. **Effectiveness:** • Despite existing risks of foreign proceeds being laundered in Georgia, the absence of spontaneous exchange of information by the FMS and supervisors and the decreasing number of requests from the FMS to foreign counterparts, raise doubts on the overall effectiveness of the regime.
Nine Special Recommendations		

SR.I	Implement UN instruments	**PC**	• Georgia has ratified and implemented many but not all provisions of the CFT Convention as outlined in the various sections of this report. In particular, shortcomings remain with respect to the FT offense. • Some shortcomings remain in respect of the implementation of UNSCR 1267 and 1373.
SR.II	Criminalize terrorist financing	**PC**	• The requirement for an act to "infringe upon public safety etc." to qualify as a terrorist act unduly narrows the scope of the terrorism offense. • Scope of "terrorist acts" is too narrow. Not all offenses defined in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation are criminalized under Georgian law and are thus not within the scope of Article 331/1. The financing of offenses under the International Convention for the Suppression of Terrorist Bombings is covered only where it can be established that such acts are carried out with terrorist intent. • The definitions of the terms "terrorist" and "terrorist organization" are too narrow as they do not extend to all "terrorist acts" as defined under the FATF standard.
SR.III	Freeze and confiscate terrorist assets	**PC**	• The language of Article 21/31 of the Administrative Procedure Code allows for the courts to review the merits of each case in the context of designations under UNSCR 1267. • Freezing measures under UNSCR 1267 and 1373 may not be applied "without delay." • Court's power to lift a freezing order is not admissible under UNSCR 1267. • Unclear whether there are adequate processes in place to grant access to frozen funds for necessary or extraordinary expenses in line with the requirements under UNSCR 1452. **Implementation:** • Guidance to monitoring entities is not sufficiently

		detailed. • There is no monitoring of monitoring entities' compliance with freezing orders. • The new mechanism has been introduced only very recently and its effectiveness can therefore not be established.
SR.IV Suspicious transaction reporting	**LC**	• Reporting requirements do not extend to electronic money institutions companies • Limited scope of the FT offence affects the reporting requirement. **Effectiveness:** • The definition of FT suspicious transactions is now comprehensive after it has been amended in January 2012 to include terrorist organizations; however this additional aspect has not been tested. • FIs met during the assessment are not capable to detect FT suspicion due to the lack of guidance and awareness of FT typologies, trends and indicators. • Despite the very real threat of terrorism and TF activity in Georgia, no STRs relating to terrorist financing have been received from any financial institution.
SR.V International cooperation	**PC**	• Lack of clear legal basis for the compelled production of l records and documents from lawyers. • The legal shortcomings identified with respect to the FT offense may limit Georgia's ability to provide MLA in cases where dual criminality is required. • Shortcomings identified with respect to the FT offense may limit Georgia's ability to extradite a person due to the requirement of dual criminality. • Absence of clear procedures to ensure timely handling of extradition requests. • Lack of clear legal basis that allows compelling

		production by LEAs of financial transactions detained by lawyers based on international requests. **Implementation:** • No information requested from foreign supervisors to ensure that fit and proper criteria are met. • The NBG has never exchanged information regarding FT. • There are challenges for cooperation with Russia. **Effectiveness:** • Despite existing risks related to terrorism financing in Georgia, the absence of spontaneous exchange of information by the FMS and supervisors and the decreasing number of requests from the FMS to foreign counterparts, raise doubts on the overall effectiveness of the regime.
SR.VI AML/CFT requirements for money/value transfer services	**PC**	• There were some forms of MVTs (such as electronic money institutions, casino accounts) which were not yet subject to regulation and supervision. • Deficiencies in the AML/CFT Law relating to preventive measures, particularly on CDD, apply to MVT operators. • Amount of fines for many types of violations, such as performing services without client identification, is very small for MVT operators to be considered effective and dissuasive. • Effectiveness of implementation of reforms introduced with respect to systematic off-site monitoring and fit and proper tests could not be tested.
SR.VII Wire transfer rules	**PC**	• Ambiguous obligation for the intermediary to transmit the originator information .

		• No requirement that beneficial institutions be required to adopt effective risk-based procedures for identifying and handling missing or incomplete originator information wire transfers and to consider whether such transfer is suspicious. • No reporting obligations fulfilled for missing originator information. • No sanctions imposed for non-compliance with the reporting obligation established by the AML/CFT law in the case of missing/incomplete information. **Implementation:** • Poor FIs internal controls applied on wire transfers (national/cross-border) for AML/CFT purposes.
SR.VIII Nonprofit organizations	**PC**	• No review of the adequacy of law and regulations related to NPOs. • No identification of types and features of NPOs that are vulnerable to FT. • No periodic reassessment of NPO risks. • No outreach conducted other than the publication of the FATF best practices paper to raise awareness about the risks of terrorist abuse. • No publicly available registration data for NPOs registered prior to 2009. • No supervision or monitoring of NPOs. • No requirement to keep transactional information below GEL 3,000. • No appropriate point of contact and procedures to respond to international requests related to NPOs. **Implementation:**

		• Lack of domestic cooperation and sharing of information related to NPOs between appropriate authorities. **Effectiveness:** • Measures in place do not address the TF vulnerabilities that exist in the sector.
SR.IX Cross-Border Declaration & Disclosure	**NC**	• Lack of clear powers to request and obtain further information from the carrier with regard to the origin of the currency or the bearer negotiable instruments and their intended use. • Lack of powers to be able to stop or restrain currency and bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or FT may be found. • Lack of proportionate sanctions for false disclosure, failure to disclose, or cross-border transportation for ML and FT purposes. • The requirement for the retention of records does not extend to all kind of bearer negotiable instruments declared or otherwise detected, or the identification data of the bearer. • Absence of clear definition of "bearer negotiable instruments." • Weak implementation of the system transportation of currency and bearer negotiable instruments across all BCPs. • Insufficient statistics on number of declarations from various BCPs to assess the effectiveness of the measures in place. • Lack of training on the best practice of implementing the requirement of SR.IX. **Effectiveness:** • In a cash-based society, the declaration system is not being implemented effectively to detect the transportation of cash and negotiable instruments

		that could be transported by launderers or terrorist financiers.

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)	• Utilize the option to enter into a plea agreement in a more selective manner, in particular in the context of aggravated offenses, and ensure that in all other cases, the sanctions regime for ML is applied in a dissuasive and effective manner. • Review the approach taken in applying the ML provisions to ensure that the strong legal framework in place is used to combat predicate crime effectively both in a domestic and transnational context. In particular, a proactive approach should be put on investigating and prosecuting those persons that orchestrate and control ML schemes through Georgia. Law enforcement authorities should also address financial flows in their investigations for predicate offenses to detect any potential ML activities.
2.2 Criminalization of Terrorist Financing (SR.II)	• Amend Article 323 to remove the requirement that an act "infringes upon public safety, etc." • Criminalize all offenses defined in the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and include them within the scope of Article 331/1. • Ensure that offenses under the International Convention for the Suppression of Terrorist Bombings fall within the scope of Article 331/1 also in cases where no terroristic intent can be proven. • Define the terms "terrorist" and "terrorist organization" in line with the FATF standard by covering within the scope of "terrorist activity" all terrorist acts as defined under the FATF standard.
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	• Review the scope of legal privilege to ensure that LEAs powers to trace proceeds and instrumentalities of crime is not negatively affected. • Make more frequent use of the confiscation framework by applying the confiscation provisions in all cases, not only those where property can be located.

2.4 Freezing of funds used for terrorist financing (SR.III)	• Amend Article 21/31 of the Administrative Procedures Code in order to clarify that an application for a freezing order must be considered "grounded" by the courts whenever a person is designated by the UN Sanctions Committed under UNSCR 1267. • Ensure that freezing measures under UNSCR 1267 and 1373 are applied "without delay" including where such measures are requested by a foreign authority, and consider whether the 15-day period granted under Article 21/32 of the Administrative Procedures Code to issue a freezing order is too permissive. "Without delay" should be interpreted to mean within a matter of hours from the designation of the person. • Remove the court's power to review a freezing order in relation to UN-designated persons, groups, or entities. • Ensure that there are adequate processes in place to grant access to frozen funds for necessary or extraordinary expenses in line with the requirements under UNSCR 1452. • Issue more detailed guidance to monitoring entities on how to implement their obligations under freezing orders. • Ensure that monitoring entity's compliance with the obligations under freezing orders is appropriately monitored.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Amend the AML/CFT Law to require the real estate agents, lawyers, TCSPs, and electronic money institutions to report suspicious transactions that will enhance the receipt function of the FMS and allow it to request additional information from these sectors. • Publish periodic annual reports with comprehensive statistics, typologies, and trends of money laundering and terrorist financing as well as information regarding its activities. • Provide reporting entities with comprehensive guidance on the manner of reporting including clear reporting forms. • Ensure that FMS asks nonbank financial institutions and DNFBPs for additional information when the information is correlated to another received information. • Ensure that FMS have access to other law enforcement information like the investigation, prosecution, and trial

	records held by the MOJ. Open sources should also be used frequently. • Ensure that FMS strengthens the quality of its STRs and other information analysis, in particular, by undertaking more in-depth operational and strategic analysis that could lead to improving the quality and quantity of disseminated reports. This could be achieved by, among other things (i) introducing an automated filtering system in order to allow pre-screening of information flow and generation of red flags and treating STRs differently from other received information; (ii) integrating the FMS database with the databases the FMS can access to allow matching information and identifying patterns; (iii) introducing analytical software to visualize complex schemes, and (iv) increasing the number of analysts.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Implement more systematically the 2010 Recommendation of the CPO in order to investigate more proactively and regularly the money laundering and or terrorist financing offenses as a standalone crime irrespective of whether the source of information emanates from the FMS or any other source. Also, use ML and FT investigations proactively through specialized financial investigators; such investigations should be standard operating procedure to initiate financial investigation when investigating profit-generating crime or terrorism to determine the proceeds of crimes (type and amount) and determine the properties that can be frozen, seized, and ultimately confiscated. • Provide LEAs with the power to compel the production of documents detained by Lawyers when they prepare for or carry out business transactions for their clients. • Use more frequently financial analysis and investigation techniques to trace the origin of the illegal funds, create patterns between suspects and associates, and identify the ultimate beneficial owners of legal persons, accounts, and transactions and share this information between various LEAs. • Provide AML/CFT training to investigative agencies at all levels.
2.7 Cross-Border Declaration & Disclosure (SR IX)	• Amend the requirements so that they extend to the shipment of currency and bearer negotiable instruments through cargo containers and the mail.

	• Define clearly the term "bearer negotiable instruments" to include monetary instruments in bearer form such as: travelers cheques; negotiable instruments (including cheques, promissory notes, and money orders) that are either in bearer form, endorsed without restriction made out to a fictitious payee, or otherwise in such a form that title can pass upon delivery; and incomplete instruments (including cheques, promissory notes, and money orders) signed, but with the payee's name omitted. • Take legislative steps to align the cross-border cash and bearer negotiable instruments powers to Customs to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of ML or TF and the temporary restraint measures, and the adequate and uniform level of sanctions. • Provide competent authorities present at the BCPs with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or FT may be found, where there is a suspicion of ML or FT; or where there is a false declaration. • Once this system is established, Customs should be training on the best practices paper for SR.IX.
3. Preventive Measures–Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)	• Regulate under the AML/CFT Law factoring activities, companies issuing meaning of payments such as credit and debit cards, and electronic money institutions. • Issue regulations (FMS decrees) for leasing activities. • Pass legislation on the issuing of bearer instruments (e.g., bearer checks). • Either regulate or prohibit the use of numbered accounts. • Ensure that in the case of numbered accounts, full CDD compliance is applied. • Remove the identification threshold for customers in order to

	ensure all customers are identified and verified when establishing business relationships. • Ensure that representatives of the legal entities are identified and CDD measures applied when these entities engage in business with money remittance and money exchange services providers. • Ensure that full CDD measures are equally applied to all bank financial groups‘ customers including those from the representative’s offices.’ • Ensure that the legal status of foreign legal entities is adequately verified. • Introduce a requirement in the AML/CFT law for FIs to understand the ownership and control structure of the customer in line with the UBO guidelines. • Introduce a requirement in the AML/CFT Law to terminate the business relationship where the financial institution has commenced the business relationship and is unable to comply with CDD requirements described in criteria c.5.3. to c. 5.5 of the common assessment methodology. • Amend the guidelines to make clearer distinction between riskier financial products, services or customers and what is the operative that should be detected as a “red flag’ and as a consequence analyzed closely. • Amend the AML/CFT Law explicitly stating when simplified measures may be applied. Such measures should only be allowed for countries that effectively apply FATF recommendations. • Amend the AML/CFT Law to prohibit applying simplified CDD measures when there is a suspicion of ML/FT or in cases of high risks. • Ensure that FIs look back at all existing customers and apply CDD procedures according to the new AML/CFT Law focused on the more important business lines and clients, and risks. • With respect to trusts, ensure that trustee clients and the settlers and persons who exercise the ultimate effective

	control of the trust and beneficiaries are identified. • Ensure that all providers of financial services are identified and CDD applied when operating with banks. • Ensure that FIs identify and verify and have an understanding of the ownership and control structure of the customer in all circumstances regardless of amount of transaction or ownership control. • Ensure that the new provisions of the AML/CFT law with regard to the identification and verification of the beneficial owner are applied and that all monitoring entities, specially: o Ensure that FIs determine whether the customer is acting on behalf of another person; and o Ensure that FIs incorporate those persons who exercise ultimate effective control over a legal person or arrangement. • Ensure effective implementation of the measures on information of purpose and nature of business. • Ensure that full CDD measures are applied to all existing customers. • Regulate the cases where FIs may complete the verification of the identity of the customers and beneficial owner after the establishment of the relationship. Authorities should also consider to: • Include the prohibition of anonymous accounts in all FMS regulations, such as the ones for insurance or securities companies. • Clarify to FIs the applicability for CDD with respect to business relations and occasional transactions. • Review the legal framework to ensure that legal person's representatives are always identified no matter which type of financial entity provides the service. • Create systems in place to recognize foreign trust doing business in Georgia.

	• Grant free access to the data in the Civil Registry. • Assist FIs to extend CDD measures on a risk-sensitive basis. • Guide FIs to elaborate risk profiles on customers and products customized to Georgian economy and financial system characteristics. **Recommendation 6:** • Ensure that EDD apply when PEPs are beneficial owners of legal arrangements • Ensure that financial institutions take reasonable measures to ascertain the source of wealth of the customer and their compliance with the new AML requirements for PEPs. • Ensure that FIs apply enhanced ongoing monitoring in business relationships with PEPs. Authorities should consider to: • Clarify the definition of "reasonable measures." • Perform targeted on-site inspections to ensure that foreign PEPs (and relevant domestic PEPs) are not misusing the Georgian financial sector. • Provide guidance to FIs on the required "enhanced monitoring" measures to be applied to PEPs. • Amend the AML/CFT Law in order to introduce in the article related to PEPs the specific requirement for FIs to put in place appropriate risk-management systems, as it is mentioned in the FMS decrees, or a reference that Art 6.13 applies as PEPs are considered high-risk customers. **Recommendation 7** • Require that financial institutions that engage in correspondent banking activities document the respective responsibilities of each institution. • Ensure that correspondent relationships are approved by senior management. • Ensure that financial institutions periodically monitor their

	correspondent banking relationships with respect to AML/CFT issues and assess the possible reputational risks arising from those relationships. • Clarify that, when determining the reputation of a respondent institution, financial institutions should also determine from publicly available information if the respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action. **Recommendation 8** • Ensure that entities have in place identification and verification procedures and develop enhanced measures to control and mitigate non-face-to-face business relationships and the use of new technology risks for all FIs. • Ensure that entities apply adequate ongoing CDD to non-face-to-face customers. • Clarify and issue guidelines on the use of non-face-to-face channels. • Ensure that AML/CFT provisions cover the operations regulated in the Instruction on Opening of an Account and Foreign Currency Operation which allows under certain circumstances to open a current account without physical presence and send the documentation by postal mail. • Ensure that AML/CFT provisions cover all electronic payment systems, including electronic payment points and electronic money institutions.
3.3 Third parties and introduced business (R.9)	• Require that financial institutions are satisfied that the third party has measures in place to comply with the CDD requirements set out in R.5 and R.10. • Amend the AML/CFT law to require financial institutions relying on third parties immediately to obtain from the third party the necessary information related to all CDD process. • Require that financial institutions relying on third party immediately to obtain access to other relevant documents relating to CDD. • Require that financial institutions relying on third party to

	obtain access to information on beneficial owner. • Ensure that competent authorities take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.
3.4 Financial institution secrecy or confidentiality (R.4)	• Ensure, notwithstanding the "lex specialis principle", that the AML Law and the sectoral laws for all licensed financial institutions contain consistent provisions (and exceptions) relating to confidentiality to ensure legal clarity for the FMS' access to financial institutions' records. • Amend the sectoral laws to allow financial institutions to exchange and share information for the purpose of Recommendation 9 and Special Recommendation VII for AML purposes, even in the absence of customer consent.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	**Recommendation 10** • Empower other competent authorities than the NBG to request an extension of the record keeping obligations. • Ensure FIs implement AML requirements in an adequate way, especially regarding the time reference applied to record keeping requirements the AML Law. • Authorities should consider clarifying the requirement regarding record keeping obligation related to how the information should be kept, and provide guidance to the FIs in relation to the key information or documents to be kept in order to facilitate the reconstruction of the transactions and provide, if necessary, evidence for prosecution of criminal activity. **Special Recommendation VII** • Ensure that all domestic and cross-border transfers are adequately monitored and supervised in terms of ML/FT risk management. • Amend the AML/CFT Law and regulations (FMS Decrees) to ensure that there is an obligation for the intermediary to transmit the originator information along the messages chain without any exception. • Require beneficiary institutions to adopt effective risk-based

	procedures for identifying and handling wire transfers that are not accompanied by complete originator information, including the consideration to report to the FMS and to restrict or terminate the business relationship with counterpart financial institutions failing to meet SR.VII standards. • Ensure that nonbanking institutions carrying out wire transfer are compliance with the AML law. • Consider developing guidelines to assist FIs in understanding the relationship of wire transfers to the monitoring process and to ensure the accuracy of the data received, with regards to the originator information from incoming transfers received by the FIs.
3.6 Monitoring of transactions and relationships (R.11 & 21)	**Recommendation 11** • Ensure that the legal basis for unusual and watch zone related transaction is clear and comprehensive, more precisely by: o Amending the definition of unusual transactions to include the unusual patterns of transactions; and o Extending the watch zone related transactions to all financial institutions defined by the FATF standards to include business relationship and transactions with persons, including companies and financial institutions from countries which do not or insufficiently apply the FATF standards. This requirement should go beyond specific transactions currently determined in the AML Law to include all transactions and business relationship. • Provide FIs with guidelines on the implementation of the requirement to pay special attention to unusual and watch zone related transactions and amend the reporting forms to exclude the unusual and watch zone related transactions from the breakdown list. **Recommendation 21** • Update the watch zone list to include countries identified by FATF which do not or insufficiently apply FATF Recommendations. • Provide for the possibility to apply counter-measures in cases where a country continues to not apply or apply insufficiently

	the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	**Recommendation 13 and 14 and SRIV:** • Require electronic money institutions companies to report STRs. • Amend the FT offence to bring it in line with the FT convention. • Ensure that supervisors and FMS 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 also be implemented. • Amend Article 12 of the AML Law to ensure that protection and tipping-off requirements extend to temporary or long term establishment situation of staff and apply to both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision. Also, this protection should be available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. **Recommendation 25** Ensure that competent authorities, and particularly FMS, provide guidance to: • Clarify the different types of reporting, i.e. suspicious and threshold. • Assist the FIs in understanding the requirement on monitoring or paying special attention to unusual transactions and those related to watch zone. • 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, and require treating them differently than other types of reporting. • Strengthen the guidelines and feedback across all sectors to: (i) incorporate different examples covering sectors other than banking; and (ii) provide more Georgian examples of money laundering and terrorist financing typologies.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	**Recommendation 15** • For money remittance operators and currency exchange bureaus, introduce a provision to ensure that the AML officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • Introduce a provision for money remittance operators and currency exchange bureaus on employee screening procedures. • Establish a requirement for financial institutions to have an adequately resourced and independent audit function for AML purposes. • For money remittance operators and currency exchange bureaus, expand the provision on AML training to indicate that the training should be provided on an ongoing basis to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends, and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting. • Consider the policy decision and appropriateness of current provisions which allow for the owner of currency exchange bureau and money remittance services to also act as the AML officer.

	Recommendation 22 • In case the activity of Georgian institutions abroad further develops, the authorities should consider introducing more supervisory monitoring of financial institutions' management of overseas branches and subsidiaries.
3.9 Shell banks (R.18)	• Introduce a specific provision that explicitly requires financial institutions to satisfy themselves that their respondent financial institutions do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system– competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	**Recommendation 17** • Review and increase the amount of monetary fines for several categories of violations to ensure that the fines are punitive and dissuasive. • Include proper sanctions against electronic money institutions for non-compliance with AML/CFT requirements. **Recommendation 23** NBG is recommended to: • Initiate the practical implementation of the significant reforms introduced in February 2012 as soon as resources are available. These reforms included the introduction of fit and proper tests for several categories of financial institutions; establishing an AML off-site function; and developing a supervisory plan for on-site inspections. • Consider re-orientating its on-site inspection approach with the objective of ensuring that financial institutions have proper risk management processes to ensure compliance with AML laws and regulations and to control and mitigate ML and TF risks from the activities of the financial institutions rather than focusing its on-site inspection to detect violations which call for a monetary fine. • Impose AML/CFT requirement against electronic money institutions.
3.11 Money value transfer services (SR.VI)	• Take measures to address remittances which are taking place outside the regulated sector in Georgia. • Rectify the legal deficiencies relating to preventive measures

	that apply to MVT operators • Increase supervisory resources available to supervise MVT operators.
4. Preventive Measures– Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Extend obligations to lawyers, real estate, and company service providers. • Extend triggering activities for accountants to all AML/CFT obligations. • Define precious metals and stones. • Issue implementing regulations (FMS decree) for DPMS. **Recommendation 5** • Extend the prohibition to open anonymous accounts to DNFBPs. • Remove client identification threshold for accountants. • Establish CDD requirements when establishing a business relationship for sectors other than notaries. • Extend circumstances when "CDD" is required to all aspects of CDD, not just identification and verification. • Establish a requirement related to the identification and verification of legal arrangements. • Establish a requirement for DPMS to verify the authority of a person purporting to act on behalf of the customer or a legal entity. • Establish definition or develop guidelines on what is considered reasonable measure and reliable source. • Establish provisions that require entities to understand the ownership and control structure of the legal entity for all DNFBP sectors except notaries and casinos. • Establish a requirement to obtain information on the purpose or intended nature of business relationships for all sectors

	except notaries and accountants. • Establish regulations that govern cases where DNFBPs may complete the verification of the identity of customers and beneficial owners after the establishment of the relationship. • Establish a requirement for DPMS to terminate the business relationship and to consider making an STR when the DNFBP has commenced the business relationship and is unable to comply with CDD requirements described in c.5.3 to c.5.5 of the common assessment methodology. • Establish a requirement to conduct due diligence on existing relationships on the basis of materiality and risk at appropriate times. • Amend the AML/CFT Law to explicitly state when simplified measures may be applied. Such measures should only be allowed for countries that effectively apply FATF Recommendations. • Amend AML/CFT Law to prohibit simplified measures when there is a suspicion of ML/CFT or in cases of high risks. • Ensure that beneficial ownership information is systematically captured and verified by notaries. • Ensure that CDD measures are applied by casinos. **Recommendation 6** • Establish requirement for entities to have appropriate risk-management systems to determine whether the customer is a PEP for all sectors except accountants. • Expand definition of close business relationship to cover legal arrangements. • Ensure that senior management approval and source of wealth and funds is obtained when establishing a PEP relationship. • Ensure that DNFBPs apply ongoing due diligence with PEP relationships. • Clarify the definition of “reasonable measures”.

	• Provide guidance on the required "enhanced monitoring" measures to be applied to PEPs. **Recommendation 8** • Prescribe CDD methods for the casino sector including the timing of identification and verification as well as acceptable methods of non-face-to-face identification methods for internet casino. • Ensure that internet casinos apply adequate ongoing CDD to non-face-to-face customers. • Issue guidelines on the use of non-face-to-face channels. **Recommendation 9** • Require that DNFBPs relying on third party immediately obtain from the third party information related to all elements of the CDD process. • Require that DNFBP relying on a third party immediately obtain access to other relevant documents relating to CDD. • Require that DNFBPs relying on a third party obtain access to information on beneficial owner. • Ensure that competent authorities have an explicit requirement to take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations. **Recommendation 10** • Empower other competent authorities other than the respective supervisor to request an extension of the record keeping period. **Recommendation 11** • Ensure that the legal basis for unusual and watch zone related transaction is clear and comprehensive, more precisely by: o Amending the definition of unusual translations to include the unusual patterns of transactions; and o Extending the watch zone related transactions to all

	financial institutions and DNFBPs defined by the FATF standards to include business relationship and transactions with persons, including companies, DNFBPs and financial institutions from countries which do not or insufficiently apply the FATF standards. This requirement should go beyond specific transactions currently determined in the AML/CFT Law to include all transactions and business relationships. • Provide DNFBPs with guidelines on the implementation of the requirement to pay special attention to unusual and watch zone related transactions and amend the reporting forms to exclude the unusual and watch zone related transactions from the breakdown list.
4.2 Suspicious transaction reporting (R.16)	• Extend STR reporting and internal control requirements to lawyers, real estate agents, and TCSPs. • Provide for the possibility to apply countermeasures in cases where a country continues not to apply or to apply insufficiently the FATF recommendations. • Develop guidance regarding reporting and internal controls for DNFBPs. **Recommendation 13** • Implement an outreach program to raise awareness of ML/FT sectoral vulnerabilities and STR monitoring and reporting amongst DNFBPs. **Recommendation 14** • Amend Article 12 of the AML/CFT Law to ensure that the protection and tipping-off requirements extend to temporary and long term establishment situation. • Apply both criminal and civil protection for STR reporting. **Recommendation 15** • Establish requirement for screening procedures to ensure high standards when hiring employees for DPMS, accountants, and casinos. **Recommendation 21**

	• Update the watch zone list to include countries identified by FATF which do not or insufficiently apply FATF recommendations. • Provide for the possibility to apply countermeasures in cases where a country continues not to apply or to apply insufficiently the FATF Recommendations. • Establish a requirement to make information on transactions with no apparent economic or visible lawful purpose available to auditors.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	• Undertake AML/CFT supervision in the casino, accountant and DPMS sectors. • Establish provisions to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino. • Establish supervisory power for an accounting body responsible supervision in the accounting sector, including a funding source for supervisory activities as well as the definition of clear expectations on the number of inspections to be conducted. • Establish effective, proportionate and dissuasive sanctions that can be applied when monitoring entities fail to comply with AML/CFT obligations for casinos; dealers in precious metals and stones; and accountants. • Broaden range of sanctions available to Ministry of Justice to establish an effective, proportionate and dissuasive sanctioning regime for notaries. • Issue guidance and provide feedback on reporting to DNFBPs. • Undertake supervision of all AML/CFT requirements in the notaries sector.
4.4 Other designated non-financial businesses and professions (R.20)	• Conduct an analysis of ML vulnerabilities and consider extending obligations to vulnerable sectors identified in the analysis. • Continue their efforts to reduce the prevalence of cash in

	society.
5. Legal Persons and Arrangements & Nonprofit Organizations	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	• Review the entrepreneurship Law and NAPR instruction to ensure adequate transparency concerning the beneficial ownership and control of legal persons. Both laws should be consistent with the AML legal framework. • Ensure that adequate, accurate and current information on the beneficial ownership and control of legal persons is available to competent authorities in a timely fashion. • Regulate, or prohibit the use of bearer shares or other bearer instruments if there are not appropriate measures applied to ensure that those instruments are not misused for money laundering and financing terrorism. • Speed the process of migration of legal persons registered under the old regime to the new one managed by NAPR; • Ensure that the Law of Entrepreneurs is applied in relation to the updating and registration of companies' requirements and that deadline is established for communicating any changes or missing information. • Require the update of information in case of change of ownership or control of legal persons; • Put in place appropriate measures to ensure that bearer shares are not misused for money laundering.
5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)	• Take measures to prevent the unlawful use of trusts by money launders. In particular, Georgian legislation should ensure that there is adequate, accurate and timely information on trusts, including information on the settler, trustee and beneficiaries that can be obtained or accessed in a timely fashion by competent authorities. The authorities should consider requiring trusts to be registered in the NAPR.
5.3 Nonprofit organizations (SR.VIII)	• Conduct a review of the adequacy of laws and regulations that relate to non-profit organizations. • Identify types and features of NPOs that are at risk of FT.

	• Conduct a reassessment of NPOs risk by reviewing information on the sector's potential vulnerabilities. • Conduct outreach to raise awareness in the NPO sector about the risks of terrorist abuse. • Establish effective supervision or monitoring of NPOs. • Establish a requirement for NPOs to state the activity they undertake. • Establish appropriate measures to sanction violations of oversight measures or rules by NPOs. • Expand requirement to keep information on transactions above GEL 3,000 to all transactions. • Migrate pre-2010 NPO registration data in publicly available registry. • Establish domestic coordination mechanisms regarding NPOs. • Establish point of contact for receipt of information queries on NPOs within the Revenue Service and the National Agency of Public Registry.
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	• Put in place effective mechanisms between policy makers, the FMS, LEAs and supervisors which enable them to cooperate and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat ML and TF. An AML/CFT Council similar to the one for Anti Corruption that could develop a strategy and action plan is highly advised. • Review statistics in the relevant areas of the fight against ML and TF on a regular basis to assess the effectiveness of the AML/CFT regime. • Establish a mechanism allowing the cooperation between supervisory agencies of FIs and DNFBPs notably, NBG, MOJ, and MOF.
6.2 The Conventions and UN	• Implement fully the Vienna, Palermo, and FT Conventions.

Special Resolutions (R.35 & SR.I)	• Address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373.
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	• Review the scope of legal privilege to ensure that LEAs' powers to trace proceeds and instrumentalities of crime are not negatively affected, including where such measures are requested by a foreign state. • Define the FT offense fully in line with the FATF standard to ensure that Georgia's ability to provide MLA is not limited in cases where dual criminality is required. • Consider establishing an asset forfeiture fund. • Consider mechanisms that would allow the provisions of MLA to all countries, including all countries in the region.
6.4 Extradition (R. 39, 37 & SR.V)	• Define the FT offense fully in line with the FATF standard to ensure that Georgia's ability to extradite a person is not limited due to the requirement of dual criminality. • Set out mechanisms and procedures to ensure timely handling of extradition requests.
6.5 Other Forms of ooperation (R. 40 & SR.V)	• Authorities provide a clear legal basis that allows compelling production by LEAs of financial transactions detained by lawyers based on international requests. • FMS be more proactive in requesting information from foreign counterparts. • NBG uses MOUs to determine compliance with fit and proper criteria. • FMS and NBG share information spontaneously with counterparts. • FMS negotiates agreements with FIUs and financial supervisors located in off-shore jurisdictions, most commonly found in financial investigations. • Maintain comprehensive statistics on international cooperation. The authorities should consider: • Contacting foreign counterparts to inform them that financial activity undertaken in Abkhazia and Tskhinvali Region/South

	Ossetia are not subject to supervision or monitoring by Georgian authorities.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• Provide competent authorities with adequate, relevant and specialized trainings on a regular basis. Trainings on the risks and vulnerabilities of ML and FT, information technology and other resources relevant to the execution of their functions, and assets management are necessary. • Increase the human and financial resources for the FMS and ensure full independence of LEAs. • Develop comprehensive and reliable statistics on property frozen or seized for each type of predicate offense. • Review the effectiveness of Georgia's AML/CFT systems on a regular basis. • Maintain in a systematic fashion comprehensive statistics on international cooperation by LEAs and supervisors, including whether the request was granted or refused

Annex 1. Authorities' Response to the Assessment

Georgian authorities appreciate the time and efforts evaluators dedicated to the assessment of Georgian AML/CFT system. The authorities indicated that the recommendations of the Report have already been put into an Action Plan in order to implement appropriate corrective measures.

Georgian authorities would like to pay special attention to the instances where the opinions of the authorities and the assessors diverged. We note that out of 49 FATF Recommendations certain recommendations (e.g. R7, 11, 15, 25, 26) were rated as partially compliant without sufficient justification in the light of non-relevant interpretation of Georgian legislation.

First of all we would like to pay attention to Recommendation 7 where the large majority of essential criteria are fully met by the Georgian AML/CFT legal framework. The same situation is extended on Recommendation 11. Though, in this case evaluators' conclusions on effectiveness still remain rather subjective.

Furthermore, Georgian authorities consider that in case of Recommendation 15 the essential criteria are also fully met by the Georgian AML/CFT legislation. Only minor shortcomings are in place and they are related to currency exchange bureaus and money remittance services. It is worth to note that in most of cases these entities conduct their activities as sole entrepreneurs. Therefore, it will be a very high burden for them to introduce a requirement that they shall employee a separate person as an AML/CFT compliance officer.

As regards Recommendation 26, there are number of factual circumstances that have not been taken into consideration by the evaluators' team. Due to the requirements of the R26, such circumstances are the following:

- Publication of annual reports on the official web site of the FIU;
- Publication of guidance by the FMS for each monitoring entity on the manner of reporting (since the establishment of reporting obligations);
- For the purpose of conducting appropriately its functions the access of the FIU to the large number of databases for (list of databases are given in par 322).

Georgian authorities and the evaluators' team have also different positions on financial guarantees of the activity of the FIU. Since 2007 the budget of the FMS has only been increased that is quite obvious from paragraph 352. As regards increasing workload within the FMS, the issue has been resolved by the special software facilitating the process of data collection within FIU. This fact is also directly linked to the decreasing number of the staff of the FMS. Unfortunately, the evaluators' team did not take into account the mentioned circumstances that strictly underline the compliance of the current Georgian AML/CFT system to the relevant criteria.

Georgian authorities would like to underline once more that based on the Action Plan of the Detailed Assessment Report we will continue our efforts in order to strengthen the AML/CFT legal framework of Georgia in compliance with FATF standards.

Finally, we would like to thank once again to the Assessment Team for their cooperation.

Annex 2. Details of All Bodies Met During the On-Site Visit

1. Financial Monitoring Service (FMS)
2. Georgian Central Securities Depository
3. Georgian Stock Exchange
4. Georgian Intelligence Service
5. Law Enforcement Agencies
    a. Office of the Chief Prosecutor
        - Prosecution Service Unit for Prosecution of Illicit Income Legalization
        - Prosecution Service- Anti-corruption department
    b. Custom Border protection department (CBPD)
    c. Georgian Police
6. Ministry of Finance (MOF)
    a. Investigation Service
    b. Revenue service of Georgia
7. Ministry of Foreign Affairs (MFA)
    a. Counter Terrorism Center
    b. Special Operative Department (SOD)
8. Ministry of Justice
9. National Bank of Georgia (NBG)
10. National Agency of Public Registry (NAPR)
11. Representatives of the judiciary
12. Research/Academic Center
13. Financial Institutions
    a. Association of Georgian banks
    b. Association of Georgian insurers

c. Representatives from the banking industry

d. Representatives from the brokerage companies

e. Representatives from the credit unions

f. Representatives from the exchanges bureaus

g. Representatives from the insurance companies

h. Representatives from the insurance brokers

i. Representatives from the microcredit institutions

j. Representatives from the money remitters

k. Representatives from the registrars of securities

14. DNFBPS

a. Georgia accounting association

b. Georgia BAR association

c. Representatives from casinos (regular and internet)

d. Representatives from dealers in precious metals and precious stones

e. Representatives from gambling saloons

f. Representatives of real estate agents

g. Representatives from NPOs

Annex 3. List of All Laws, Regulations, and Other Material Received

A. Laws

1. Constitution of Georgia
2. Organic Law of Georgia on the National Bank of Georgia
3. The Law of Georgia on Activities of Commercial Banks
4. The Law of Georgia on Insurance
5. The Law of Georgia on non-bank depositary institutions – Credit Unions
6. Law of Georgia on Securities Market
7. The Law of Georgia On Microfinance Organizations
8. Law on Non-State Pension Assurance and Provision
9. The Law of Georgia on Facilitating the Prevention of Illicit Income Legalization
10. The law of Georgia on Organized Crime and Racketeering
11. Extract from the Law of Georgia on International Cooperation in the Field of Criminal Law
12. Criminal Procedure Code of Georgia
13. Criminal Code of Georgia
14. Tax Code of Georgia
15. Law on Entrepreneurs
16. The Law of Georgia on Amendment to the Administrative Procedure Code of Georgia
17. Organic Law of Georgia on Amendments to the Organic Law on National Bank of Georgia
18. Law of Georgia on amendments to certain Legal Acts
19. Law of Georgia on Operative-Searching Activity
20. Excerpt of the Civil Code of Georgia, Provisions on Transactions and Property
21. Law on Normative Acts
22. Law on State secrets (Legislative amendments 19 March 1999)

B. Decrees, Ordinances and Orders

23. Decree of the FMS of Georgia #95 of July 28, 2004 “On Approval of the Regulation on Receiving, Systemizing and Processing the Information by Commercial Banks and Forwarding to the Financial Monitoring Service of Georgia”
24. Decree of the FMS of Georgia #10 of December 15, 2008 “On Approving the Regulation on Receiving, Systemizing and Processing the Information by Microfinance Organizations and Forwarding to the Financial Monitoring Service of Georgia”

25. Decree of the FMS of Georgia #1 of February 17, 2009 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by Money Remittance Entity and Forwarding to the Financial Monitoring Service of Georgia"
26. Decree of the FMS of Georgia #100 August 3, 2004 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by the Insurance Organizations and Founders of Non-State Pension Scheme and Forwarding to the Financial Monitoring Service of Georgia"
27. Decree of the FMS of Georgia #6 September 29, 2008 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by the Brokerage Companies and Forwarding to the Financial Monitoring Service of Georgia"
28. Decree of the FMS of Georgia #7 September 29, 2008 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by the Securities Registrars and Forwarding to the Financial Monitoring Service of Georgia"
29. Decree of the FMS of Georgia #96 July 30, 2004 "On Approval of the Regulation on Receiving, Systemizing and Processing the Information by Currency Exchange Bureaus and Forwarding to the Financial Monitoring Service of Georgia"
30. Decree of the FMS of Georgia #104 August 3, 2004 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by Non-Bank Depository Institutions – Credit Unions and Forwarding to the Financial Monitoring Service of Georgia"
31. Decree of the FMS of Georgia #93 July 27, 2004 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by Notaries and Forwarding to the Financial Monitoring Service of Georgia"
32. Decree of the Head of the FMS of Georgia #2 of February 16, 2010 "On Approving the Regulation on Receiving, Systemizing and Processing the Information by the National Agency of the Public Registry - a Legal Entity of the Public Law, and Forwarding to the Financial Monitoring Service of Georgia"
33. Decree of the Head of the FMS of Georgia #94 of July 28, 2004 "On Approving the Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by the Persons Organizing Lotteries, Gambling and other Commercial Games and Forwarding to the Financial Monitoring Service of Georgia and the Regulation on Rule and Terms of Receiving, Systemizing and Processing the Information by Casinos and Forwarding to the Financial Monitoring Service of Georgia"
34. Decree of the Head of the FMS of Georgia #1 of February 8, 2011 "On Approval of the Regulation on Receiving, Systemizing and Processing the Information by Revenue Service and Forwarding to the Financial Monitoring Service of Georgia"

35. Ordinance of the President of Georgia #859 of November 26, 2009 "On Approving the Regulation of Financial Monitoring Service of Georgia – Legal Entity of the Public Law"
36. Decree of the Head of the FMS of Georgia #0611/16–1 of June 16, 2011 "On Approving Internal Regulation of the Financial Monitoring Service of Georgia"
37. Decree of the Head of the FMS of Georgia #23/1 of June 12, 2009 "On Approving the Regulation of the Department of Methodology, International Relations and Legal Affairs of the Financial Monitoring Service of Georgia".
38. Decree of the Head of the FMS of Georgia #21/1 of June 12, 2009 "On Approving the Regulation of Administrative Department of the Financial Monitoring Service of Georgia".
39. Decree of the Head of the FMS of Georgia #25/1 of June 12, 2009 "On Approving the Regulation of Analytical Department of the Financial Monitoring Service of Georgia".
40. Decree of the Head of the FMS of Georgia #24/1 of June 12, 2009 "On Approving the Regulation of Data Collection and Processing Department of the Financial Monitoring Service of Georgia".
41. Decree of the Head of the FMS of Georgia #22/1 of June 12, 2009 "On Approving the Regulation of Informational Technologies Department of the Financial Monitoring Service of Georgia".
42. Ordinance of the President of Georgia #326 of August 13, 2001 "On Approving the Regulation on Assigning the Status of Grant and Humanitarian Aid to Goods Imported to Georgia as well as on their Accounting and Use"
43. Decree of the President of the National Bank of Georgia 134/01, October 22, 2011, "Rules on External Audit of Commercial Banks"
44. Decree of the President of the National Bank of Georgia N24/01, February 22, 2010, "Rules on Establishing of a Branch/Division (Service Center) and a representative office by commercial banks"
45. Decree of the President of the National Bank of Georgia, No 71, March 17, 2008, "On Approving the Regulation on Risk Management in Commercial Banks"
46. Decree No. 95 of April 10, 2001 of the President of the National Bank of Georgia "Regulation on Supervision and Regulation of the Activities of Commercial Banks"
47. Decree of the President of the National Bank of Georgia N126/01, October 11, 2010, "Rules on Forced Administration, Liquidation, and Bankruptcy Proceedings of an Insurance Undertaking"
48. Decree of the President of the National Bank of Georgia N170/01, December 28, 2010, "Rule on Designated Stock Market List and Procedure for Public Offering of Securities Admitted to Trading on these Stock Markets"

49. Decree of the National Bank of Georgia N169/01, December 28, 2010, "Rules on Licensing, Submission of Financial Statements, and Establishment of Minimum Capital Requirements for a Stock Exchange"
50. Decree of the President of the National Bank of Georgia N16/01, February 19, 2010, "Rule on Determination of List of Developed Countries"
51. Decree of the National Bank of Georgia N171/01, December 28, 2010, "Rules on Licensing of a Central depository, Submission of Financial Statements, Establishment of Minimum Capital Requirements and Provision of Services by a Central Depository"
52. Decree of the President of the National Bank of Georgia #65/04, August 24, 2011 "On Establishing the List of Watch Zones for the Purpose of the Law of Georgia "On Facilitating the Prevention of Illicit Income Legalization"
53. Decree of the President of the National Bank of Georgia #33/01, Decree March 9, 2010 "Regulation on Licensing, Submission of Financial Statement, Establishment of Minimum Capital Requirements and Termination of Activities of Securities' Registrar"
54. The Decree of the President of National Bank #344, December 31, 2007 "on Approval of Rule of Registration and Regulation of Currency Exchange Point"
55. Decree of the President of the National Bank of Georgia #248, December 12, 2006 "Concerning the Approval of the Registration Rule of Microfinance Organization at the National Bank of Georgia"
56. Decree of the President of the National Bank of Georgia #34/01, March 9, 2010 "Concerning the Approval of the "Rule Concerning the Brokerage Company's Licensing, Definition of Minimum Capital Amount and Submission of Financial Report"
57. Decree of the President of the National Bank of Georgia #84, September 10, 1998 "Regulation on Licensing of Banking Institutions"
58. Decree of the Head of the Financial Supervisory Authority of Georgia #17, February 9, 2009 "Regulation on Registration of Entities Conducting Money Remittance"
59. Decree of the President of the National Bank of Georgia #242/01, December 25, 2009 "Regulation on Determination and Imposing Pecuniary Penalties against Commercial Banks"
60. Decree of the President of the National Bank of Georgia #18/01, February 22, 2010 "Regulation on Defining, Imposing and Collecting Pecuniary Penalties against Securities Registrars and Brokerage Companies for Violations of the Requirements of the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization"
61. Decree of the National Bank President of Georgia #19/01, February 22, 2010 "Regulation on Defining, Imposing and Collecting Pecuniary Penalties against

Founder of Non-State Pension Scheme, Assets Management Company and Specialized Depositary”
62. Decree of the President of the National Bank Georgia #23/01, February 22, 2010 “Regulation on Defining, Imposing and Collecting Pecuniary Penalties against Insurer Approved”
63. Decree of the President of the National Bank Georgia #22/01, February 22, 2010 “Regulation on Defining, Imposing and Collecting Pecuniary Penalties against Microfinance Organizations and Money Remitters”
64. Decree of the President of the National Bank of Georgia N124/01, October 11, 2010 “Regulation on the Registration and Cancellation of Registration Of Insurance Brokers”
65. Decree of the President of the National Bank Georgia #1, February 8, 2011 “On Approval of the Regulation on Receiving, Systemizing and Processing the Information by the Revenue Service and Forwarding to the Financial Monitoring Service of Georgia”
66. Decree on the Establishment of the Governmental Commission
67. Decree of the Financial Monitoring Service of Georgia January 31, 2012 "on Approving the Regulation on Receiving, Systemizing and Processing the Information by Persons Conducting Accountancy or/and Auditor and Forwarding to the Financing Monitoring Service of Georgia"
68. Order of the President of the National Bank №24/04, April 7, 2011, “On approving an instruction on opening an account and conducting transactions in foreign currency in the banking institution”
69. Minister of Justice Order No. 178, 29 September 2010 “On Determining Investigative Subordination of Criminal Cases”
70. Order of the Tbilisi City Court of February 13, 2912 Regarding the Freezing of Assets
71. Decree of the Governor of the National Bank of Georgia, 6 July 2010 “On the fulfillment of Obligations defined under the United Nations Security Council Resolutions of year 2010 N1929, year 2006 N1718 and year 2009 N1874
72. Order of the Vice-President of the National bank of Georgia December 30, 2004 “Banks’ Onsite Inspection Methodic Manual Concerning the Prevention of Illicit Income Legalization”
73. Decree of the President of the National Bank of Georgia on Amendments to the “Rule on Imposition of Pecuniary Sanctions on Non-bank Depository Institutions – Credit Unions” Approved by the Decree N257 of October 8, 2002 (Amendments as of February 7 2012)
74. Presidential Order No 542 "On Approving Document on Evaluation of Threats Faced by Georgia 2007-2009" .

75. Presidential Order No 707 "On Approving Document on Evaluation of Threats Faced by Georgia 2010- 2013".
76. Regulation approved by the Head of the Financial Unit of Georgia "On Receiving, Systemizing and Processing the n by the National Agency of Public Registry-a Legal Entity of Public Law, and Forwarding to the Financial Monitoring Service of Georgia".
77. Order #241 of Ministry of Justice of Georgia " On Approval of Regulation of Registration of Entrepreneurs and Non- Entrepreneurs (non commercial) Legal Persons".

C. Other Materials

78. Recommendation for Completing the reporting forms on Bank Operations
79. Sample of STR
80. Court Decisions as referenced throughout the report
81. Memorandums of Understanding (signed between FMS and Supervisory, also Law Enforcement Agencies)
82. Statistical information as provided throughout the report
83. Tables of statistics regarding incoming and outgoing MLA requests, Extradition and Requests for transfer of proceedings (2007 - 2011)
84. Georgian Crime Survey
85. Memorandum on Cooperation between the Financial Supervisory Agency of Georgia and the Financial Monitoring Service of Georgia
86. Memorandum on Cooperation between the Financial Supervisory Agency of Georgia and the Ministry of Internal Affairs of Georgia
87. Memorandum on Cooperation between the Financial Supervisory Agency of Georgia and the Ministry of Finance of Georgia
88. Memorandum on Cooperation between the Financial Supervisory Agency of Georgia and the Ministry of Justice of Georgia
89. Memorandum on Cooperation between the National Bank of Georgia and the Financial Supervisory Agency of Georgia
90. Excerpt NBG On-Site Inspection Manual for Electronic Funds Transfer
91. NBG Internal Rule on Imposition of Sanctions
92. Motion of February 10, 2012 by the Governmental Commission on Matters related to the Execution of the United Nations Resolutions
93. The Minutes and Decisions of the Meeting of the 1st Session of the Governmental Commission on the Matters related to the Execution of the United Nations Resolutions
94. Guidance on the risk based approach to combating illicit income legalization (February 2010)
95. List of Bank Shareholders

96. STR Indicators for Commercial banks
97. STR Indicators for Insurance companies
98. Memorandum on Cooperation between Ministry of Internal Affairs of Georgia and the National Bank of Georgia
99. Guideline For Financial Institutions "on Identification of Beneficial Owners of Customers and Verification of their Entity"
100. Memorandum on Cooperation between Prosecution Service of Georgia and the National Bank of Georgia
101. Policy of National Bank of Georgia on facilitating the prevention of illicit income legalization and terrorist financing
102. Licensing Procedure for Banking Institutions

Annex 4: Copies of Key Laws, Regulations, and Other Measures

The Law of Georgia on Facilitating the Prevention of Illicit Income Legalization

(Published in "Sakartvelos Sakanonmdeblo Macne" #17, Article 113, June 16, 2003)
Informal translation - Last updated 20.12.2011

Article 1. Purpose and Scope of the Law

1. The purpose of this Law shall be to create legal mechanisms against legalization of illicit income and financing acts of terrorism, and to protect legal rights and interests of public and state.
2. This Law shall regulate the relationship between the authorized bodies and other relevant persons under this Law related to facilitating the detection and prevention of illicit income legalization in Georgia as well as the relationship between Georgian authorized organs, on the one hand, and ones of other countries and international organizations, on the other hand.
3. This Law shall apply to Georgian resident and non-resident persons, their representatives, missions and branches, as well as to departments, institutions and organizations *(Changed under the Law of February 25, 2004).*

Article 2. Definition of Terms

As used in this Law, the following terms shall have the following meanings:
a) Illicit income – illicit or / and unjustified property in ownership or possession of a person *(Changed under the law of July 4, 2007).*
b) Property – property as considered under the Civil Code of Georgia;
c) Legalization of Illicit Income - legalization of illicit income (acquisition, use, transfer or other action), as well as concealing or disguising its true origin, proprietor or owner, or/and property rights or attempt to commit such an action; *(Changed under the Law of February 25, 2004)*
d) Monitoring – identification of a person that is party to a transaction by the entities conducting monitoring under this Law, and registration and systemization of information on the transaction and submission of such information to the Financial Monitoring Service of Georgia, pursuant to the procedures defined under this Law and other regulations adopted (issued) in compliance with this Law *(Changed under the Law of February 25, 2004);*
e) Non-cooperative or watch zone – a country or a part of the territory thereof defined by the National Bank of Georgia on the basis of proposition of the Financial Monitoring Service of Georgia (FMS). The country or territory thereof shall be identified as such on the basis of the information provided by competent international organization, or if the grounded supposition

exists that in such zone weak mechanisms for controlling illicit income legalization are effective *(Changed under the Law of July 1, 2011);*

f) Competent international organizations - Council of Europe, FATF, and other organizations recognized as such by International Community;

g) Supervision – supervision of activities of monitoring entities by the supervisory authorities provided for in Article 4 of the present Law *(Changed under law of March 19, 2008);*

h) Suspicious transaction – a transaction* (regardless its amount and operation type) supported with reasonable grounds to suspect that it had been concluded or implemented for the purpose of legalizing illicit income or/and the property (including funds) on the basis of which the transaction had been concluded or implemented is the proceeds of criminal activity or/and the transaction had been concluded or implemented for the purpose of terrorism financing (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting terrorism, or / and is likely to be connected with them, or / and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or terrorist organization or persons financing terrorism, or any involved person's legal or real address or place of residence is located in a non-cooperative zone or the transaction amount is transferred to or from such zone. *(Changed under the Law of December 20, 201; into force from January 1, 2012);*

h[1]) Unusual transaction – complex, unusual large transaction, also type of transactions, which does not have apparent or visible economic (commercial) content or lack lawful purpose and is inconsistent with the ordinary business activity of the person involved therein *(Changed under law of March 19, 2008);*

i*)(Rescinded under the Law of March 27, 2007)*

j) Non-resident person - a person who is not a resident under the Tax Code of Georgia;

k) Identification of a person – obtaining information on the person, which, when necessary, allows tracing such person and distinguishing from other person *(Changed under the Law of March 27, 2007);*

l) Financial Monitoring Service of Georgia – a legal entity of public law established pursuant to this Law, which exercises its authorities granted by this Law and other relevant legislation;

m) Monitoring entity – an entity as determined under Article 3 of this Law, which, for the purpose of facilitating the prevention of legalization of illicit income is required to undertake actions prescribed by the legislation;

n) Founder of non-state pension scheme – a legal entity defined under the Law of Georgia "on Non-State Pension Insurance and Security";

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* Georgian equivalent of the word "transaction" used in the AML/CFT Law of Georgia has the meaning as it is defined under the Article 50 of the Civil Code of Georgia and consequently, refers to not only financial operations but to any agreement concluded by the parties on the basis of the Civil Code of Georgia.

o) Suspicious zone - a country or a part of the territory thereof, identified as having weak mechanisms for controlling illicit income legalization, based on information available to the monitoring entity *(Changed under the Law of March 27, 2007);*

p) Financial institutions – institutions determined as such under the Law of Georgia on the Activities of Commercial Banks (Changed under the Law of March 27, 2007);

q) Beneficial owner – natural person(s) representing an ultimate owner(s) or controlling person(s) of a person or / and a person on whose behalf the transaction (operation) is being conducted; beneficial owner of a business legal entity (as well as of an organizational formation (arrangement) not representing a legal entity, provided for in the Georgian legislation) shall be the direct or indirect ultimate owner, holder or / and controlling natural person(s) of 25% or more of such entity's share or voting stock, or natural person(s) otherwise exercising control over the governance of the business legal entity *(Changed under the Law of December 20, 2011; into force from January 1, 2012);*

q^1) Person – any resident as well as non-resident natural person or legal entity, and an organizational formation, provided for in Georgian legislation not representing a legal entity *(Changed under the Law of March 23, 2010);*

r) Suspicious financial institution – financial institution determined as such by the National Bank of Georgia, which does not meet standards of preventing illicit income legalization *(Changed under the Law of July, 2011);*

s) Society for Worldwide Inter bank Financial Telecommunications (SWIFT) - international inter-bank network (system), is representing one of the means of inter-bank settlements and information exchange *(Changed under the Law of March 27, 2007);*

t) Shell bank – a bank, which physically is not present in the country where it is registered / licensed and which is not being controlled and supervised *(Changed under law of March 19, 2008);*

u) Entity performing money remittance services – an entity (except commercial bank and microfinance organization), which performs money remittance services *(Changed under law of March 19, 2008);*

v) Politically Exposed Person (PEP) – a foreign citizen, who has been entrusted with prominent public functions according to the legislation of a respective country or/and carries out significant public and political activities. They are: Head of State or of government, member of government, their deputies, senior official of government institution, member of parliament, member of the supreme court and constitutional court, high ranking military official, member of the central (national) bank's council, ambassador, senior executive of state owned corporation, political party (union) official and member of executive body of the political party (union), other prominent politician, their family members as well as person having close business relations with them; a person shall be considered as a politically exposed during a year following his / her resignation from the foregoing positions *(Changed under law of March 23, 2010);*

w) Family member – a spouse of a person, his / her parents, siblings, children (including step – children) and their spouses *(Changed under the Law of March 23, 2010);*

x) Person having close business relationship with the politically exposed person (PEP) – a natural person who owns or / and controls a share or voting stock of that legal entity, in which a share or voting stock is owned or / and controlled by the Politically Exposed Person (PEP); also, a person having other type of close business relationship with the Politically Exposed Person (PEP) *(Changed under the Law of March 23, 2010.)*

y) Client - any person who addresses to the monitoring entity for the service defined by the Georgian legislation as the principal activity of the latter or / and uses such service. *(Changed under the Law of December 20, 2011#5580; into force from January 1, 2012)*

z) Leasing Company – a legal entity conducting leasing activity according to the Tax Code of Georgia (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012)*

Article 3. Monitoring Entities

Monitoring entities shall include:

a) Commercial banks, currency exchange bureaus, non-bank depository institutions and microfinance organizations *(Changed under law of March 19, 2008);*

a[1]) Entities performing money remittance services;

b) Broker companies and securities' registrars;

c) Insurance companies and non-state pension scheme founders;

d) Entities, organizing lotteries and other commercial games;

e) Entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities;

f) Legal entity of public law of the Ministry of Finance of Georgia - Revenue Service (hereinafter – Revenue Service) *(12.11.2010 #3806, into force from January 1, 2011) ;*

g) Entities engaged in extension of grants and charity assistance;

h) Notaries;

h[1]) Legal entity of public law – the National Agency of Public Registry *(Changed under law of March 19, 2008);*

i) *(Rescinded under the Law of March 19, 2008).*

j) Person conducting accountancy or/and auditor activity as it is defined under the Georgian legislation; (*Changed under the Law of December 20, 2011; #5580 into force from January 1, 2012);*

k) Leasing companies (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012);*

Article 4. Supervision

Supervisory authorities shall be:

a) The National Bank of Georgia - for commercial banks, currency exchange bureaus, and non-bank depository institutions, microfinance organizations; entities performing money remittance services; broker companies and

securities' registrars; insurance companies and non-state pension scheme founders; (*Changed under the Law of 24.09.2009*);

b) The Ministry of Finance of Georgia – for entities organizing lotteries and other commercial games; entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiques; the Revenue Service; leasing companies; entities engaged in extension of grants and charity assistance. (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012);*

c) The Ministry of Justice of Georgia – for notaries and the National Agency of Public Registry;

d) Organization created on the basis of the Georgian legislation that is the member of the International Federation of Accountants - for persons conducting accountancy or/and auditor activity as it is defined by the Georgian legislation. (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012)*

Article 5. Transactions Subject to Monitoring

(Changed under the Law of March 27, 2007)

1. For the purposes of this Law, transaction subject to monitoring, shall be the transaction concluded or implemented by the person and/or the series of concluded or implemented transactions aimed at partition of the transaction (its amount) (other than transactions that are implemented through commercial banks, broker and insurance companies), if one or both of the following provisions exist:
   a) The amount of the transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) in case of cash, as well as non-cash settlements;
   b) The transaction is suspicious according to Article 2(h) of this law.
2. Subject to monitoring by commercial banks shall be transactions considered under paragraph 1(b) of this Article, as well as a transaction concluded or implemented by the person and/or series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and by content it represents the following transaction (operation):
   a) Receipt of money using bank checks, in bearer form;
   b) Trade of foreign currency in cash form;
   c) Transfer of funds by the account holder from the bank operating or registered in watch or suspicious zone to the bank account in Georgia or transfer of funds from Georgia to account in the bank operating or registered in such zone;
   d) Extension or receipt of loan by the person registered in watch or suspicious zone, or implementation of any other transaction (operation) by such person through banking institution operating in Georgia;
   e) Transfer of funds from Georgia to another country to the account of an anonymous person or transfer of funds to Georgia from the bank account of an anonymous person in another country;

f) Contribution of funds into the issued capital of an enterprise other than the purchase of stocks of accountable enterprises, as defined under the Law of Georgia on Securities Market.
g) Placement of funds in the form of cash to the bank account and following transfer by an individual (non-entrepreneur) (other than transfer of funds to the budget and transfer of funds among such person's bank accounts within Georgia);
h) Extension of a loan to bearer, secured by securities;
i) Transfer of funds from or to the account of a legal entity within 90 calendar days from the date of its registration;
j) Transfer of funds from or to the account of grant or charity assistance, except for grants transferred from the state or local self – governance budget of Georgia. *(Changed under the Law of March 23, 2010)*
k) Transaction (operation) implemented through participation of a suspicious financial institution.

2^1. Subject to broker company monitoring shall be transactions considered under paragraph 1(b) of this Article, as well as transactions concluded or implemented by a person or/and the series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and by content it represents the following transaction (operation):
a) Transactions implemented through securities, in bearer form;
b) Transaction (operation) carried out through participation of a suspicious financial institution;
c) Transactions implemented in securities by person residing and registered in watch or suspicious zone or/and through use of bank account operating in such zone.
d) Transactions implemented in cash.

2^2. Subject to insurance companies' monitoring shall be the transactions considered under paragraph 1(b) of this Article, as well as transactions concluded or implemented by a person or/and the series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and it represents the following transaction (operation):
a) Returnable life insurance;
b) Annuity or pension insurance;
c) Personal insurance with the condition of returning the premium;
d) Transactions implemented by person residing and registered in watch or suspicious zone or/and through use of bank account operating in such zone.
e) Insurance contract terminated by the initiative of an insurer within the first three months;
f) Transactions (operations) performed with the participation of a suspicious financial institution;
g) Transactions implemented in cash.

2^3. For persons conducting accountancy or / and auditorial activity subject to monitoring shall be transaction defined under subparagraph "b" paragraph 1 of this Article if this person is engaged by order of the client or on behalf of the client in the following activities/transactions: (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012)*

a) Buying and selling of real estate;

b) Management of funds, securities or other assets;

c) Management of bank, savings or securities accounts;

d) Organization of contributions for creation, operation or management of legal entity;

e) Creation, operation or management of legal entity or organizational formation;

f) Buying and selling of legal entity (share).

3. Subject to monitoring by the Revenue Service shall be import to, and export from Georgia of cash and securities exceeding GEL 30,000 (or its equivalent in other currency) *(12.11.2010 #3806 into force from January 1, 2011).*
4. Subject to monitoring shall also be an attempt to conclude or implement the transaction considered under subparagraph 1(b) of this Article and other fact (circumstance), which, pursuant to written instructions of the FMS of Georgia, may be related to legalization of illicit income or funding of acts of terrorism.
5. Except for the transactions considered under paragraphs 1- 2^3 and 4 of this Article, the Financial Monitoring Service of Georgia may determine for monitoring entities the list of concrete types of transactions on which the information shall be provided to the FMS, in certain cases, according to the procedure set by the FMS. (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012)*

5^1. Persons, conducting accountancy or/and auditorial activity as it is defined by the Georgian legislation shall submit reports on transactions subject to monitoring in cases not contradicting to the principle of professional secrecy stipulated under the legislation regulating their activity. *(Changed under the Law of December 20, 2011#5580 into force from January 1, 2012.)*

6. Irrespective of doubts about a transaction being suspicious and amount of the transaction, a monitoring entity shall not suspend implementation of a transaction (rendering services to a person (client) related to it with business relations) except for the case provided in paragraph 7 of this Article.
7. If it is impossible to identify a person intending to set business relations with a monitoring entity, as well as in the case described in subparagraph "a" of paragraph 2 of Article 6^1, when there is no permission from the management, monitoring entity shall refuse such person to carry out the transaction (to service the client). The monitoring entity shall also suspend performance of the transaction in the event where any participant of the transaction is included in the list of persons that support terrorists or acts of terrorism, and immediately send the respective reporting form to the FMS of Georgia. *(Changed under the Law of March 23, 2010)*
8. For the purpose of preventing illicit income legalization and terrorism financing monitoring entities shall take reasonable measures to ensure that due attention is allocated to all transactions (operations).

9. Monitoring entities shall pay special attention to unusual transactions, transactions determined under paragraphs 2 (c) and (d), 2^1 (c), 2^2 (d) of Article 5, which do not have apparent or visible economic (commercial) content or lack lawful purpose, in addition, ascertain purpose of the transaction within the scope of their capability and register obtained results in writing. *(Changed under the Law of March 19, 2008)*
10. For purposes of this Law, monitoring entities shall determine themselves the principles for identifying transactions of persons having business relationship with them as unusual. *(Changed under the Law of March 19, 2008)*

Article 6. Obligations of Monitoring Entities to Register Information (Documents) on Transactions and Persons Involved in

(*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012)*

1. Monitoring entity (except for entities determined under subparagraphs (e), (f) and (h^1) of Article 3 of this Law) shall identify its client (its representative and proxy, as well as the third person if a transaction is being concluded in favor of the third person) and take reasonable measures to verify its client's identity by means of reliable and independent source of information (documents) when:
   a) the amount of the transaction (operation) exceeds GEL 3000 (or its equivalent in another currency) ;
   b) The client aims to carry out domestic or/and cross-border wire transfers that exceeds GEL 1500 (or its equivalent in another currency);
   a) Doubts arise regarding the veracity or adequacy of previously obtained client identification data;
   b) This transaction is suspicious pursuant to subparagraph (h) of Article 2.

2. Persons engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities, shall carry out identification of clients if the amount (paid in cash) of transaction (operation) exceeds GEL 30 000.

3. The Revenue Service shall perform identification of persons at border carrying national and foreign currency in cash, checks and other securities in the amount above GEL 30 000 (or its equivalent in other currency).

4. Legal Entity of Public Law - the National Agency of Public Registry shall identify person (its representative and proxy, as well as the third person, if the transaction is being concluded in favor of the third person) participating in purchase – sale of real estate.

5. In the event of a transaction carried out by a brokerage company for its client through commercial bank, the brokerage company shall identify the client (In such case a commercial bank shall not be required to identify the client of the brokerage company).

6. Taking into account paragraph 1 of this Article, monitoring entity shall be obligated to record/retain the following information (documents) on transactions subject to monitoring:
   a) Content of transaction (operation);
   b) Date and place of conclusion of a transaction, as well as the amount of money needed for the transaction and the currency thereof;
   c) Information (documents), as prescribed by this Law, presented for identification of a person involved in the transaction (including a client);

d) Information (documents) necessary for the identification of the person at whose order the transaction is concluded or undertaken;
e) Information (documents) necessary for the identification of the person who concludes or implements the transaction on behalf of a third person or another person.

7. For purposes of this law, the monitoring entities shall by themselves determine the procedures (except for account opening procedures) that are necessary for identification of a client. In addition, they shall be authorized to require any other information (documents) related to the transaction (operation) and the participating persons.

8. Monitoring entities shall ensure verification of identification details minimum on the basis of ID or Passport or a document having equal legal force under the Georgian legislation, while in case of a legal entity they shall ensure examination of identification details on the basis of document issued by the state, which confirms foundation of the legal entity and authority of its representative (s).

9. Financial institutions shall be prohibited to open or / and maintain anonymous accounts or accounts in fictitious names.

10. Monitoring entity shall identify the beneficial owner of the client as well as take reasonable measures to verify his/her identity by means of reliable and independent source of documents (information) and be satisfied that it knows who the beneficial owner of the client is.

11. In the course of identification or / and verification of client (its beneficial owner) the monitoring entity may rely on a third person / intermediary, who according to the international standards carry out identification and verification of identification of a person, maintaining of documents (their copies) as it is defined under Article 7 of this Law and is subject to the respective supervision and regulation for the purpose of preventing illicit income legalization and terrorism financing. In addition, for ensuring immediate access to information (documents or copies thereof) required for identification of the client monitoring entity shall take respective action. In such a case an ultimate responsibility for identification and verification of the client according to the procedure set by this Law should remain with the monitoring entity.

12. Monitoring entity for the purpose of identifying the client (its representative and proxy, as well as the third person, if the transaction is being concluded in favor of the third person), as well as its beneficial owner in conformity with the Law, shall be entitled to use the electronic databases of identification documents provided by the Civil Registry Agency – Legal Entity of Public Law at the Ministry of Justice of Georgia according to the procedure set by the Georgian legislation.

13. Monitoring entity shall have in place the appropriate risk management systems for identification of such client whose activity may pose a high risk of legalization of illicit income and terrorism financing and shall exercise enhanced identification, verification and enhanced monitoring procedures with respect to them; Identification and verification procedure shall be conducted on a risk sensitive basis depending on the type and nature of the client, business relationship, product/service risk or the transaction or otherwise as it is prescribed by the normative act of the Financial Monitoring Service of Georgia.

14. The identification and verification of each client as well as its beneficial owner and obtaining of other information as it is defined by this Article, shall take place before carrying out of a transaction or opening of an account or establishing of another type of a business relationship, as well as prior further continuation of the business relationship if legalization of illicit income or terrorism financing is suspected or if doubts exist about the veracity or adequacy of previously-obtained client identification data. The Financial Monitoring Service of Georgia is authorised to define the circumstances in which the verification of identity of the client and its beneficial owner may be completed after the establishment of the business relationship, except the cases provided for in paragraph 7, Article 5 of this Law.

15. Monitoring entities shall exercise permanent monitoring of business relationships with their clients that includes:

a) Maintaining current information and records relating to the client and its beneficial owner;
b) Updating periodically existing identification data and ensuring their conformity with current norms;
c) Scrutiny of transactions in order to establish that the conducted transaction is consistent with their knowledge of the client, client's business and personal activity or risk profile and where necessary the source of property (including funds).

16. Monitoring entities should pay special attention to any threats that may arise from new technologies, products and service that might favor anonymity during the service and take all measures, to prevent their use in legalization of illicit income and terrorism financing. Monitoring entities should have in place such identification and verification policy and procedures that reduces the risks associated with non face to face service as it is considered under the Georgian legislation. Policy and procedures defined under this Article shall be used before the establishment of business relationship and during their permanent monitoring.

Article 6^1. Obligations of Monitoring Entities with respect to Politically Exposed Persons (PEPs) *(Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012)*

1. Monitoring entity shall identify whether the client or his / her beneficial owner belongs to the category of Politically Exposed Persons (PEPs).
2. If a client of the monitoring entity or his / her beneficial owner represents a Politically Exposed Person (PEP), in addition to the steps stipulated under the Law, the monitoring entity shall take the following actions:
   a) Obtain permission from the management to establish or to continue business relationship with such client;
   b) Take reasonable measures to establish the source of wealth (including funds) of such client or his/her beneficial owner;
   c) Perform enhanced monitoring over its business relations with such person.
3. If the client (his / her beneficial owner) becomes Politically Exposed Person (PEP) after establishing business relations with the monitoring entity, the latter shall undertake measures

provided for in paragraph 2 of this Article against such client upon availability of the aforementioned information.

Article 7. Obligations of Monitoring Entities to Retain Information (Documents) on Transactions *(Changed under the Law of March 19, 2008)*

1. Monitoring entity shall be obligated to keep information (document) presented for identification of the client as well as account files and business correspondence in an electronic or documentary form (submitted according to the procedure defined by paragraph 12, Article 6 of the present Law) for the period not less than 6 years from the moment of breaching business relationship with such person, unless the respective supervisory authority sets a longer term for the retention of such information (documents) and submit it to the competent authorities in cases defined under the Georgian legislation. (*Changed under the Law of December 20, 2011#5580; into force from January 1, 2012).*

2. Information (document) provided for in paragraph 1 of this Article and information (document) on transactions shall be kept in their original form, and where impracticable, a copy of such information (document) confirmed by a notary or a recipient person (an authorized employee) shall be maintained. Information submitted for identification of the client and verified by the monitoring entity according to the procedure provided for in paragraph 12, Article 6 of the present Law does not require notarization (certification). (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

3. Monitoring entities shall retain information (documents) on transactions provided for in this Article, as well as records provided for in Article 5 (9) for not less than 6 years from the moment of concluding or implementing transaction, if there is no request from the respective supervisory authority for retaining those for a longer period or / and if longer period for retention of such information (documents) is not set under the Georgian legislation. (*Changed under the Law of December 20, 2011#5580; into force from January 1, 2012).*

4. The information (documents) shall be recorded and filed in a way, where all its data fully reflect the concluded or implemented transactions and, when needed, can be submitted to the respective supervisory body in a timely manner, and in the event of criminal prosecution, is used as evidence.

5. Monitoring entities shall be obligated to create an electronic database (system) in order to reveal suspicious and partitioned transactions.

Article 8. Obligations of Monitoring Entities to Implement Internal Control

1. Monitoring entities shall be obligated to ensure the implementation of internal control for the purpose of preventing legalization of illicit income and terrorism financing. (*Changed under the Law of December 20, 2011#5580; into force from January 1, 2012).*

2. Monitoring entities shall be obligated to develop the internal regulations (internal control procedures) and take adequate measures for their enforcement. By these regulations shall be established rules and procedures for identification of clients and persons willing to establish business relationship, analyzing information, revealing suspicious transactions

within the monitoring entity and rules and procedures for submission of information to the Financial Monitoring Service in conformance with requirements of this Law and normative acts of the Financial Monitoring Service and with consideration of work specificity of monitoring entity. Also, an employee, or the structural unit, responsible for revealing suspicious transactions and forwarding the information and his/her duties shall be identified. The Financial Monitoring Service of Georgia shall have the right to set the list of those principles that are to be addressed by the internal regulation, to recall and review the internal regulation and indicate to the monitoring entity on incompliance of this regulation with normative acts and request its correction. *(Changed under the Law of February 25, 2004)*

3. Monitoring entities shall be obligated to systemize the information on transactions subject to monitoring, i. e. to develop the data registration system and ensure its operation.

4. To systemize information and ensure internal control, the management body of the monitoring entity shall be obligated to designate the relevant staff member in charge, or a structural unit for this particular purpose.

5. A responsible person or a structural unit considered under paragraph 4 of this Article shall be obligated to:

a) Take control over the implementation of the internal regulation, developed in accordance of this Law, in compliance with the procedure and frequency defined under the regulation;

b) Submit written information on the transactions subject to monitoring to the management body of the monitoring entity, in compliance with the procedure and frequency defined under the regulation;

6. Monitoring entities shall be obligated to provide periodic training for the employees involved in the process of detecting the facts of legalizing illicit income and terrorism financing. *(Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012)*

7. The procedures and conditions of the control over observance of this Law and normative acts adopted (issued) on the basis thereof by currency exchange bureaus, non-bank depository institutions and microfinance organizations, brokerage companies and securities' registrars, entities performing money remittance services outside the banking system, entities organizing lotteries and other commercial games (except casinos), entities engaged in activities related to precious metals, precious stones and products thereof and antiquities, persons engaged in extension of grants and charity assistance, notaries and the National Agency of Public Registry shall be determined under the normative act of the respective supervisory authority in agreement with the Financial Monitoring Service of Georgia. *(Changed under the Law of March 19, 2008)*

Article 9. Obligations of Monitoring Entities to Submit Report on Transactions Subject to Monitoring

(Changed under the Law of March 27, 2007)

1. If the monitoring entity has the suspicion regarding authenticity of identification data or identification of the client is not possible to be carried or the transaction considered under the Article 5 of this Law is present, it shall be obligated to send a notice to the Financial

Monitoring Service of Georgia about this fact according to the rule and procedure set by this Law and the normative act of the Financial Monitoring Service of Georgia. (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012).*

2. Submission of the notice to the Financial Monitoring Service of Georgia shall imply completing and forwarding by the monitoring entity of respective reporting form on transaction as well as confirmation of its submission by the Service according to the procedure set by the normative act of the Financial Monitoring Service of Georgia. The report shall be forwarded on the day of impracticability of identification or of origination of supposition on suspiciousness on identification data or transaction; if the transaction (operation) amount exceeds the threshold amount defined in Article 5 of this Law, the report shall be forwarded no later than within five working days from the moment of concluding or implementing the transaction. If any of the transaction participants is on the list of terrorists or persons supporting terrorism or/ and there is a grounded supposition that such person may be related to terrorists or persons supporting terrorism or/ and transaction funds may be related to or used for terrorism, terrorist act or by terrorists or terrorist organization or by persons financing terrorism, the monitoring entity shall be obligated to send the report to the Financial Monitoring Service of Georgia on the day the information is received, along with all relevant available materials and documents (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

3. Monitoring entity shall retain the respective reporting form (hard copy or electronic) for not less than six years, if there is no request by the respective supervisory authority for a longer retention *(Changed under the Law of March 19, 2008).*

4. The normative act of the Financial Monitoring Service of Georgia may define those exceptions, when the Financial Monitoring Service shall not be notified, even though the transaction considered under Article 5 is present. As a rule, this provision shall be used when transaction does not evoke suspicion for the purposes of this Law. (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

Article 10. Financial Monitoring Service of Georgia

1. The Financial Monitoring Service of Georgia shall be established under the National Bank of Georgia in compliance with this Law, the Law of Georgia “On the Legal Entity of Public Law" and organic Law of Georgia “On the National Bank of Georgia” and shall exercise authorities prescribed by this Law and relevant normative acts.
2. The Financial Monitoring Service of Georgia, in agreement with the relevant supervisory body, shall design a reporting form on suspicious transactions. The reporting form, along with other information shall include the information on a suspicious transaction and parties to it, as well as on bank accounts (where practicable).
3. To ascertain the suspiciousness of the transaction, the Financial Monitoring Service of Georgia shall define and forward to the monitoring entities the information (list, directives, etc) on a suspicious transaction and parties to it.

4. The Financial Monitoring Service of Georgia shall be authorized to:

a) For the purpose of revealing the facts of illicit income legalization or terrorism financing, as well as other criminal activity request and obtain, if it is necessary from monitoring entity additional information and documents (original or copy) available to them, including confidential information, on any transaction (operation) including bank account or an attempt to conclude or implement transaction (operation) and parties to it, or any other type of information necessary for execution of its activity as if is defined under this Law. (*Changed under the Law of December 20, 2011 #5580 into force from January 1, 2012).*

b) Provide the supervisory organs with the information to get their response;

c) Adopt (issue) normative acts within its competence for the purpose of implementation of this Law; (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

d) Participate in drafting laws and other normative acts and discussions thereof regarding the issues that regulate the economic sector and related authorities;

e) For the purpose of implementing the assigned functions, forward questions and obtain information from all state or local self-government and government bodies and agencies, as well as from any individual or legal entity, which exercises public legal authority granted by the legislation *(Changed under the Law of November 10, 2006).*

f) Apply to the court for the purpose of sealing the property (including bank account) or suspending a transaction (operation), if there is the grounded supposition that the property (including transaction amount) may be used for terrorism financing (in such case materials shall be immediately forwarded to the relevant authorities of the Prosecutor's Office of Georgia and the Ministry of Internal Affairs of Georgia. (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

5. The financial Monitoring Service of Georgia is obliged to:

a) Create an information network, systemize and analyze the obtained information, ensure the creation and proper functioning of the relevant database;

b) In the case of arising the grounded supposition, due to the analysis of the relevant information, that the transaction is suspicious and is implemented for legalization of illicit income or terrorism financing or for the purpose to commit other criminal act, immediately forward this information (including confidential information) and the available relevant materials to the corresponding authority of the Prosecutor's Office of Georgia and the Ministry of Internal Affaires of Georgia, without any permission from any organ or person. (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

c) Review the status of the enforcement of this law and prepare appropriate legislative proposals, when needed, to ensure the accomplishment of the goals of this Law.

6. Any person or organ shall receive the information from the FMS, regarded as confidential pursuant to the Georgian legislation, only upon submission of the relevant court resolution except for cases considered under the Constitution of Georgia, International Agreements of Georgia and Agreements concluded by the Financial

Monitoring Service of Georgia pursuant to Article 13 of this Law. No one shall have the right to assign the Financial Monitoring Service to seek for (obtain) any information *(Changed under the Law of February 25, 2004)*.

7. The issues related to the management, structure, representation, accountability and control of the Financial Monitoring Service of Georgia shall be determined by the Regulation of the Service approved by the President of Georgia.

Article 11. Responsibilities of Supervisory Bodies

1. The supervisory bodies shall be responsible for overseeing the compliance with the obligations (with respect to transactions, including the systemization, and forwarding the information for identification of parties to the transaction, and performance of internal control, etc) prescribed by this Law by the monitoring entities, in accordance with the set rules and procedures.
2. The supervisory bodies shall be obligated to collaborate with each other, with competent Georgian and other countries' authorized agencies and international organizations through exchanging information and experience, and assist law enforcement agencies, within the scope of their competence.
3. If the supervisory body reveals that the transaction is subject to monitoring and the information on this has not been forwarded to the Financial Monitoring Service of Georgia, or provisions of this law, other relevant normative acts or guidelines of the Financial Monitoring Service of Georgia have been violated, it shall immediately inform the Financial Monitoring Service and apply the appropriate sanction against the infringer. *(Changed under the Law of February 25, 2004)*

Article 11[1]. Shell Bank

(Changed under the Law of March 19, 2008)

1. Establishment and existence of the shell bank, as well as establishing business relations with such bank (including correspondent relations) shall be prohibited.
2. Representatives of financial sector shall undertake reasonable measures in order to ascertain:

a) Whether the person they have business relationship with (or person with whom they are establishing business relations) belongs to the category of the shell bank;

b) Whether the person they have business relationship with (or person with whom they are establishing business relations) has relations with the shell bank.

Article 12. Responsibility for Protection and Disclosure of Information

(Changed under the Law of March 19, 2008)

1. Management and employees of the Financial Monitoring Service of Georgia, monitoring entities and supervisory bodies shall not be authorized to inform parties to the transaction or other persons that the information on transaction has been forwarded to the relevant authority in conformance with obligations defined under this law.

2. Incompliance with requirements stated in paragraph 1 of this Article shall cause responsibility under the Georgian legislation.

3. The Financial Monitoring Service of Georgia, the supervisory and law-enforcement bodies, their management and employees, shall ensure protection of the information obtained pursuant to this Law, which contains personal, banking, commercial or professional secrets, and disclose such information in accordance with the applicable Georgian legislation.
4. When acting within the scope of their powers, the Financial Monitoring Service of Georgia, monitoring entities, supervisory bodies, their management and employees shall not be held liable for failure to observe the confidentiality of information considered under a normative act, or under an agreement, or/and for protection or referral of such information, except for the case when the crime considered under the Criminal Code of Georgia is committed.
5. The material damage inflicted to individuals and legal entities as a result of violation of the obligation to observe confidentiality of information by the officials and employees of the Financial Monitoring Service of Georgia, monitoring entities, supervisory and law-enforcement bodies in cases set under this Law and related to the protection of confidentiality of information obtained in accord with the set Law, shall be compensated by the damaging entity – correspondingly by the Financial Monitoring Service of Georgia, monitoring entity, supervisory body or law enforcement body at the amount set under the court decision.
6. Financial Monitoring Service of Georgia, monitoring entities, the management and employees thereof shall not be held liable for damages, which may be inflicted to physical person or/and legal entity for submission of information and materials to the respective authorities with observance of requirements of this law.
7. In the course of fulfillment of the obligation to submit information to the Financial Monitoring Service provided for in this Law, the identity of employees of monitoring entities shall not be disclosed.
8. The material damage inflicted to individuals and legal entities as a result of submission of information and materials on the basis of not grounded supposition - inconsistent with this law to the competent authorities of the Prosecutor's Office of Georgia and to the Ministry of Internal Affairs shall be compensated by the Financial Monitoring Service on the basis of a court decision in accordance with the relevant Georgian legislation.

Article 13. Domestic and International Cooperation

(Title Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).

1. The Georgian bodies authorized to work on issues related to legalization of illicit income and terrorism financing, shall cooperate, within their competence, with domestic and foreign competent agencies and international organizations, in affairs such as receipt of

information, preliminary investigation, court hearing and execution of resolutions. (*Changed under the Law of December 20, 2011#5580; into force from January 1, 2012))*

2. The Financial Monitoring Service of Georgia shall have the right to conclude independently agreements (covenants) with corresponding agencies of other countries, which shall regulate exchange of information on prevention of illicit income legalization and terrorism financing and other issues being within their competence. These agreements (covenants) shall provide for observance of confidentiality of information and its use only for the purpose defined under the legislation. *(Changed under the Law of February 25, 2004)*
3. The Financial Monitoring Service of Georgia, without permission from any other entity or organ, shall forward requests for submission of necessary information on issues related to legalization of illicit income and terrorism financing to authorized agencies of other countries and international organizations, and respond to such requests. *(Changed under the Law of February 25, 2004)*
4. The Georgian bodies authorized to work on issues related to legalization of illicit income and terrorism financing, shall ensure the confidentiality of relevant information and use it only for the purposes indicated in the forwarded request. (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012).*

Article 13[1]. The Governmental Commission on the Matters related to the Enforcement of the UN Resolutions *(Changed under the Law of November 11, 2011 #5353)*

1. The Governmental Commission on the Matters related to the Enforcement of the UN Resolutions (hereinafter – the Commission) shall be the Commission created by the Government of Georgia that ensures freezing the property owned by a person related to terrorism and individuals designated by the Resolutions (hereinafter- the UN Resolutions) adopted upon the Chapter 7 of the United Nations Organization Charter (hereinafter –the UN) in order to prevent from financing of terrorist or other illegal activities or its support in other forms by these persons.
2. The Commission shall cooperate with the Georgian and Foreign state authorities and International Organizations including the UN in order to fulfill its objectives and tasks.
3. The Chairman who guides the Commission shall direct the activities of the Commission, represent it in relation with third persons and sign the documents adopted by the Commission.
4. The Chairman of the Commission shall be authorized to delegate his/her powers and responsibilities or its part to the other member of the Commission.
5. The Task Force shall be created within the Commission that is guided by the Co-Chair of the Commission.
6. The Government of Georgia shall determine the composition of the Commission and from its members appoint the Chairman and Co-chair of the Commission.
7. The Structure, Powers and Rule of Activity of the Commission shall be defined by the Regulation of the Commission approved under the Decree of the Government of Georgia.

Article 13[2] Authority of the Commission and Task Force

(Changed under the Law of November 11, 2011 #5353)

1. The Commission shall be authorized to file motion on freezing the property of the persons designated by the UN Resolutions at the Court under the Administrative Procedure Legislation.
2. The Commission shall be entitled to draft the list of persons related to terrorism upon the reference of foreign and/or national competent authorities and submit motion on freezing or unfreezing property owned by the individuals referred to the list at the Court under the Administrative Procedure Legislation.
3. The Task Force of the Commission shall be authorized to apply to the competent state authorities for imposing certain restrictions in order to carry out sanctions determined by the UN Resolutions. The reference of the Commission shall be binding to execute by the competent state authorities.

Article 14.

(Rescinded under the Law of March 19, 2008)

Article 15. Transitional Provisions

1. Within ten days from the promulgation of this Law, the National Bank of Georgia shall ensure the preparation, and submission to the President of Georgia for approval, of the appropriate normative acts related to the establishment of the Financial Monitoring Service of Georgia.
2. President of Georgia shall be requested to issue, within one month after the promulgation of this Law, the decree on approval of the regulation on the Financial Monitoring Service of Georgia
3. Within three months after the promulgation of this Law, the National Bank of Georgia shall complete the legal, organizational and financial measures related to the establishment of the Financial Monitoring Service of Georgia.
4. The Financial Monitoring Service of Georgia, in agreement with supervisory bodies, shall ensure adoption (issuance) of normative acts, concerning the rule and conditions of receiving, processing and forwarding the information, and their regular elaboration; monitoring entities shall ensure development of internal regulations considered under the Article 8 *(Changed under the Law of February 25, 2004)*.
5. The Supervisory Bodies shall ensure adoption (issuance) of the regulation on definition and application of sanctions (including financial sanctions) against monitoring entities for violation of this law and normative acts adopted on its basis *(Changed under the Law of February 25, 2004)*.

5[1]. Prior to December 31, 2012 financial institutions shall ensure extension of requirements of Article 6 of this Law on those clients and their beneficial owners with whom the business relationship already exists for January 1, 2012. (*Changed under the Law of December 20, 2011 #5580; into force from January 1, 2012)*.

6. Within one year after the promulgation of this Law:
    a) The Ministry of Finance, together with the National Bank of Georgia, shall carry out necessary measures to record the movement of cash at the Georgian State

borders, in the way to ensure the conscientious use of the information received in relation to the above, and free flow of capital.

b) The National Bank of Georgia shall undertake measures to promote the use and broader application of non-cash payment, and submit the legislative suggestions to limit the control over the commercial banks by criminals.

Article 16. Conclusive Provisions

1. This Law, except for Articles 10 and 15 shall be enforced from January 1, 2004.
2. Articles 10 and 15 of this Law shall be enforced upon promulgation.

Eduard Shevardnadze
President of Georgia
Tbilisi
June 6, 2003 #2391 – IIs

Chief of Financial Monitoring Service of Georgia
Order No. 4

Tbilisi, January 18, 2012

On approval of the Statute

On the Rule of Receiving, Systematizing, and Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia

Pursuant to Article 10, Paragraph 4, No. 3 of the Georgian Law On Facilitating the Prevention of Illicit Income Legalization, I hereby order:

1. The Statute On the Rule of Receiving, Systematizing, and Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia to be approved.

2. Commercial banks shall:

(a) By March 1, 2012, in connection of implementing financial monitoring, ensure completion of adjustments of their internal instructions according to requirements of Statute On the Rule of Receiving, Systematizing, Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia;

(b) By December 31, 2012, ensure distribution of requirements considered in Article 6 of Statute On the Rule of Receiving, Systematizing, and Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia, to the clients and their beneficiary owners with who they had business relations to the date of January 1, 2012.

3. Those commercial banks, which will start functioning after enforcing this order, within 20 days of acquiring a license from Georgia National Bank, shall present registration form to Financial Monitoring Service of Georgia, according to the requirements of Statute On the Rule of Receiving, Systematizing, Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia.

4. On the date of entering into force of this Order No. 95 of the Chief of Financial Monitoring Service of Georgia, dated July 28, 2004, On Approval of the Statute On the Rule of Receiving, Systematizing, Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia, shall be considered annulled.

5. This Order shall enter into force on the day of its publication.

Chief of Financial Monitoring Service of Georgia

Mikheil Rionishvili

Statute
On the Rule of Receiving, Systematizing, an Processing Information by Commercial Banks and Submitting It to the Financial Monitoring Service of Georgia

Article 1. General Provisions

1. This Statute is created based on Georgia Law On Facilitating the Prevention of Illicit Income Legalization, and other normative acts of Georgia.

2. This Statute is created for Georgian commercial banks (hereinafter – "banks") and their branches, also for the branches (representative offices) of banks of foreign countries in Georgia.

3. This Statute regulates principles and rules of implementing financial monitoring, in order to facilitate prevention of legalization of illicit income and terrorism financing, in particular, rules and conditions of acquiring, systemizing, processing, retaining identification, and other pertinent information of clients and other involved persons, and submission of this information to Financial Monitoring Service of Georgia.

Article 2. Definition of Terms

As used in this Statute, the following terms shall have the following meanings:

(a) Illicit income – illicit or/and undocumented property in ownership or possession of a person;

(b) Property – property as considered under the Civil Code of Georgia: all objects (movable as well as immovable) and intangible property, which can be possessed, used and managed by individuals and legal entities;

(c) Legalization of Illicit Income – legalization of illicit income (acquisition, use, transfer or other action), as well as concealing or disguising its true origin, proprietor or owner, or/and property rights or the attempt to commit such an action;

(d) Monitoring – identification of persons by the banks defined by the Law On Facilitating the Prevention of Illicit Income Legalization, persons that are party to a transaction by the entities conducting monitoring under Law, and registration and systemization of information on the transaction and submission of such information to Financial Monitoring Service of Georgia, pursuant to the procedures defined under this Law and other regulations adopted (issued) in compliance with this Law;

(e) Suspicious transaction – a transaction (regardless its amount and operation type) supported with reasonable grounds to suspect that it had been concluded or implemented for the purpose of legalizing illicit income or financing terrorism (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting

terrorism, or/and is likely to be connected with them, or/and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or persons financing terrorism, or any involved person's legal or real address or place of residence is located in a non-cooperative zone, or the transaction amount is transferred to or from such zone;

(e) Unusual transaction – complex, unusually large transaction, also type of transactions, which does not have apparent or visible economic (commercial) content or lacks lawful purpose and is inconsistent with the ordinary business activity of the person involved therein;

(f) Person – any resident as well as non-resident individual or legal entity, and an organizational formation, provided for in Georgian legislation not representing a legal entity;

(g) Client – any person who addresses a bank because of the nature of its operations/ activities, seeking its services defined by the Code of Georgia, or who uses these services;

(h) Beneficiary owner – individual(s) representing an ultimate owner(s) or controlling person(s) of a person; beneficial owner of a business legal entity (as well as of an organizational formation (arrangement) not representing a legal entity, provided for in Georgian legislation) shall be the direct or indirect ultimate owner, holder or/and controlling individual(s) of 25 percent or more of such entity's share or voting stock, or individual(s) otherwise exercising control over the governance of the business legal entity;

(i) Control – term defined by original Law of Georgia On the National Bank of Georgia;

(j) Controlling person – a person exercising control;

(k) Identification of a person – obtaining information on the person, which, when necessary, allows tracing such person and distinguishing this person from other persons;

(l) Entity performing money remittance services – an entity (except commercial bank and microfinance organization), which performs money remittance services;

(m) Person participating in bank operation (transaction) – all persons who participate in a bank operation (transaction), including transaction parties, representatives, principals, third persons/parties, in benefit of who the operation (transaction) is performed;

(n) Non-cooperative or watch zone – a country or a part of the territory thereof defined by the National Bank of Georgia on the basis of proposition of the Financial Monitoring Service of Georgia (FMS). The country or territory thereof shall be identified as such on the basis of the information provided by competent international organization, or if the grounded supposition exists that in such zone weak mechanisms for controlling illicit income legalization are effective;

(o) Person responsible for monitoring – bank staff member who, based on properly registered decision, will be obligated to perform all activities in regards to conducting monitoring, and will be granted respective authorities and responsibilities. If a special structural entity is created in a bank for

performing monitoring activities, the chief of this structural entity is considered responsible for performing monitoring.

(p) Suspicious zone – a country or a part of the territory thereof identified as having weak mechanisms for controlling illicit income legalization, based on information available to the monitoring entity;

(q) Financial institutions – institutions determined as such under the Law of Georgia On the Activities of Commercial Banks;

(r) Suspicious financial institution – a financial institution determined as such by the National Bank of Georgia, which does not meet standards of preventing illicit income legalization;

(s) Customers' Guidelines – instructions for usage of web-portal on the website of Financial Monitoring Service of Georgia (www.fms.gov.ge);

(t) Competent international organizations – Council of Europe, FATF, and other organization recognized as such by international community;

(u) Fictitious bank (shell bank) – a bank which physically is not present in the country where it is registered/licensed and which is not being controlled and supervised;

(v) Politically Exposed Person (PEP) – a foreign citizen who, based on the legislation of respective country, has been entrusted with prominent public functions in such country and carries out significant public and political activities. Politically exposed persons are: head of state or of government, member of government, their deputies, senior official of government institution, member of parliament, member of the supreme court and constitutional court, high-ranking military official, member of the central (national) bank's council, ambassador, senior executive of state owned corporation, political party (union) official and member of executive body of the political party (union), other prominent politicians, their family members as well as person having close business relations with them; such person shall be considered as politically exposed in the duration of one (1) year following his/her resignation from the foregoing positions;

(w) Family member – spouse of a person, his/her parents, siblings, children (including step-children) and their spouses;

(x) Person having close business relations with a politically exposed person (PEP) – individual who owns and/or controls a share or voting stock of that legal entity, in which a share or voting stock is owned or/and controlled by the politically exposed person; also, a person having other type of close business relations with the PEP;

Article 3. Transactions (Operations) Subject to Monitoring

1. For the purposes of this Statute, a transaction subject to monitoring shall be a transaction concluded or implemented by the person and/or the series of concluded or implemented transactions aimed at partition of the transaction (its amount) (other than

transactions that are implemented through commercial banks, broker and insurance companies), if one or both of the following provisions exist:

(a) The transaction is suspicious according to Article 2(e) of this Statute, irrespective the monetary amount of this transaction;

(b) A transaction concluded or implemented by the person and/or series of concluded or implemented transactions aimed at partition of the transaction, if the amount of such transaction or the series of transactions exceeds GEL 30,000 (or its equivalent in other currency) and by content it represents the following transaction (operation):

(b.a.) Receipt of money using bank checks, in bearer form;

(b.b.) Trade of foreign currency in cash form;

(b.c.) Transfer of funds by the account holder from the bank operating or registered in watch or suspicious zone to the bank account in Georgia or transfer of funds from Georgia to account in the bank operating or registered in such zone;

(b.d.) Extension or receipt of loan by the person registered in watch or suspicious zone, or implementation of any other transaction (operation) by such person through banking institution operating in Georgia;

(b.e.) Transfer of funds from Georgia to another country to the account of an anonymous person or transfer of funds to Georgia from the bank account of an anonymous person in another country;

(b.f.) Contribution of funds into the issued capital of an enterprise other than the purchase of stocks of accountable enterprises, as defined under the Law of Georgia on Securities Market.

(b.g.) Placement of funds in the form of cash to the bank account and following transfer by an individual (non-entrepreneur) (other than transfer of funds to the budget and transfer of funds among such person's bank accounts within Georgia); the above transaction means transferring from an account, as well as transferring without opening an account;

(b.h.) Extension of a loan to bearer, secured by securities;

(b.i.) Transfer of funds from or to the account of a legal entity within 90 calendar days from the date of its registration;

(b.j.) Transfer of funds from or to the account of grant or charity assistance, except for grants transferred from the state or local self-governance budget of Georgia;

(b.k.) Transaction (operation) implemented through participation of a suspicious financial institution.

2. Subject to monitoring shall be monetary funds, defined in 1(a), irrespective whether these funds were acquired through legitimate or non-legitimate means, which may be connected or used for terrorism, for a terrorist act or by terrorists, or by a terrorist organization or entity which finances terrorism. The list of terrorists and persons supporting terrorism is published in "Sakartvelos Sakanonmdeblo Macne" (Georgia Legislation Digest);

3. Subject to monitoring shall be also attempts to conclude or implement the transaction, and/or other facts (circumstances) which, pursuant to written instructions of the FMS of Georgia, may be related to legalization of illicit income or funding of acts of terrorism.

4. Banks shall pay special attention to unusual transactions and transactions defined by 1(b.c.) and 1(b.d.) of this Article, which demonstrate vivid economical (commercial) content or vivid legitimate goal, banks shall study the aim and basis of these transactions to the best of their ability and register in written acquired results;

5. Banks, pursuant Georgia Law On Facilitating the Prevention of Illicit Income Legalization, following this Statute and regulations of Financial Monitoring Service of Georgia shall define themselves principles of considering a transaction of person connected with them through business relationship, as an uncommon or unusual transaction;

6. Pursuant to Article 5(5) of the Georgia Law On Facilitating the Prevention of Illicit Income Legalization, the Financial Monitoring Service of Georgia is authorized to define a list of particular transactions (bank operations), or their characteristics herein, such as field of activities of persons participating in bank transaction (operation), geographic area of their location (registration place), the essence of transaction (bank operation) and so on; the Financial Monitoring Service of Georgia shall be informed about such through reporting defined by this Statute;

Article 4. Responsibilities of Bank Regarding Implementing Internal Control

1. Pursuant to Article 8 of Georgia Law On Facilitating the Prevention of Illicit Income Legalization, in order to prevent facts of legalization of illicit income and financing terrorism, bank shall implement internal control.

2. The main trends in implementing internal control shall include:

(a) Identification of all persons (clients) connected with bank through business relations, their representatives or principal, beneficiary owner, in cases defined by 1(a) – (d) of Article 6 of this Statute, as well as in cases when bank transaction is implemented in benefit to the third person;

(b) Implementation of measures towards politically exposed persons as defined in this Statute ;

(c) Defining rules and conditions of implementing constant monitoring of business relations with client, according to the regulations stated in this Statute;

(d) Analyzing information acquired through identification and defining bank operations subject to monitoring;

(e) Documenting, systemizing and retaining information accordingly;

(f) Submitting information regarding bank transaction subject to monitoring to the Financial Monitoring Service of Georgia in the form of a report;

(g) Implementing training programs for bank staff in order to prevent legalization of illicit income and financing terrorism.

3. In order to define the procedures and regulations of internal control based on the Georgia Law On Facilitating the Prevention of Illicit Income Legalization and this Statute, a bank shall create internal instructions, which shall be approved by the Board of Trustees or Board of Directors of the bank. The internal instructions shall define the conditions of identifying clients of the bank (its branches and representative offices), their beneficiary owners, identification of other pertaining persons, rules of systemizing, analyzing and retaining information acquired through identification, identifying bank transactions subject to monitoring, and conditions of submitting reports to the Financial Monitoring Services of Georgia. All employees shall familiarize themselves with these instructions.

4. Internal instructions of implementing monitoring created and approved by bank shall define:

(a) Rules for identification bank clients, their beneficiary owner and other persons defined by the Georgia Law On Facilitating the Prevention of Illicit Income Legalization;

(b) Rules for identifying politically exposed persons by the bank and implementing particular measures towards them defined by legislation;

(c) Rules for submitting information acquired through identification and other pertinent information to person (special structural entity) responsible for implementing monitoring;

(d) Rules for recording, systemizing and retaining information associated with implementing monitoring;

(e) Rules for submitting report forms and other materials to the Financial Monitoring Service of Georgia;

(f) Rules and conditions for implementing constant monitoring of business relations with client;

(g) Functions, rights and responsibilities of a employee responsible for implementing monitoring (in case of creating special structural entity – functions, right and responsibilities of its chief and each employees);

(h) Functions, rights and responsibilities of other employees (structural entities) of bank, rights and responsibilities in regards to implementing monitoring, as well as rights and responsibilities of chief of the bank who shall be supervising the monitoring process;

(i) Chiefs of banks, supervisory personnel and/or employees who, according to internal instruction, shall be authorized to possess confidential information pertaining implementation of monitoring;

(j) Rules for approving copies of documents submitted by clients, and employee(s) authorized to approving such, following Article 11(2) of this Statute;

5. Internal instructions of implementing monitoring created and approved by the bank shall consider the following issues:

(a) Decisions in regards to considering a bank transaction as suspicious, uncommon and/or aimed at partition, subjecting such to monitoring and reporting to the Financial Monitoring Service of Georgia, shall be made for each particular case; decisions shall be based on information acquired by respective structures of the bank from identifying and serving clients and other pertaining persons, also based on existing information in the bank (and its different branches), (after creating general banking information network, information existing in this network shall also be used). In addition, instructions and other information given to the bank by the Financial Monitoring Service of Georgia shall be considered as well. In order to expose suspicious, uncommon transactions and/or such aimed at partition, the bank shall be obligated to create electronic database (system);

(b) The monitoring process in regards to suspicious bank transactions shall be conducted in a way that bank clients, participants of bank transaction and other respective persons shall not find out that their activities are subject to monitoring;

(c) The bank is obligated to maintain confidentiality of information acquired as a result of monitoring (among such, information acquired as a result of identifying clients, their beneficiary owners and other respective persons, materials of checking and analyzing this information; also, confidentiality of information in regards to reports and filling out forms connected to suspicious bank operations subjected to monitoring and submitting such to the Financial Monitoring Service of Georgia;

(d) One of the main principles of implementing financial monitoring is the participation of all bank employees (within the framework of their respective competencies) in the process of finding facts of legalizing illicit incomes and financing terrorism.

6. The policy of selecting of bank employees (which includes studying qualifications and reputation of the candidates), established procedures and rules according to the internal instruction shall facilitate stopping possible participation of the bank employees in the processes of legalization of illicit income and financing terrorism.

Article 5. Rights and Responsibilities of Employee Responsible for Monitoring

1. In order to implement the process of monitoring, banks shall specify the employee (or special structural entity) responsible for monitoring according to correspondingly documented decision. The position of the employee (or chief of special structural entity) responsible for monitoring in organizational structure of bank shall correspond to the upper hierarchical (managerial) level (position of the employee responsible for monitoring may vary in banks of different size).

2. The functions, rights, and responsibilities of the employee (special structural entity) responsible for monitoring shall be defined by internal instructions of the bank; also, if defined by internal rules of the bank – corresponding job description (in case of special structural entity – instructions).

3. The employee (special structural entity) responsible for monitoring shall guide his/her activities following Georgia Law On Facilitating of Preventing Illicit Income Legalization, this Statute, internal instructions of the bank, rules of the Financial Monitoring Service of Georgia, and normative acts issued by the Financial Monitoring Service of Georgia and the National Bank of Georgia.

4. The employee (special structural entity) shall be obligated by the following functions:

(a) Organizing the process of monitoring according to the Georgia Law On Facilitating of Preventing Illicit Income Legalization, this Statute, and carrying out works defined by internal instructions of the bank;

(b) Analyzing information received from different structural entities of the bank (including identification data of persons, information regarding bank transactions), identifying bank transaction subject to monitoring, reports and filling out forms regarding bank transaction subject to monitoring (in this case defined by this Statute, sending printed forms of reports, and approving such by signatures), and submitting those to the Financial Monitoring Service of Georgia according to the rules established by internal instructions of the bank; systemization and retention of information (documents) associated with the process of monitoring, (authority to consider a bank operation/transaction as suspicious, and making the decision to submit a report form to the Financial Monitoring Service of Georgia; also, the authority to fill out report forms – as defined by this Statute – signing printed forms of reports, all of the above authorities as per internal instructions of the bank can be granted to the employee (chief of special structural entity) responsible for monitoring, as well as chief executive of the bank who supervises issues connected with monitoring);

(c) Consulting bank employees and organizing training programs for them on the issues of preventing illicit income legalization and terrorism financing. The training process should be systematic to ensure that employees are familiar with all changes and updates in Georgia Law and bank internal instructions, as well as they that they are aware of new trends of legalizing illicit incomes and financing terrorism;

(d) Preparing and submitting suggestions to bank management regarding implementing monitoring process, also, if necessary, regarding improvement of internal instructions of the bank.

5. The bank employee (special structural entity) responsible for implementing monitoring according to internal instructions of the bank shall be granted authority to receive any kind of information from other employees needed for carrying out his/her functions, and he/she shall be obligated to maintain confidentiality of any kind of information connected with his/her activities.

6. The employee (special structural entity) responsible for implementing monitoring, in regards to his/her monitoring functions, shall receive orders and report to the bank management executive designated for this particular responsibility by internal instructions of the bank.

7. If the employee (special structural entity) responsible for implementing monitoring discovers that any employee of the bank is not completing his/her functions defined by internal instructions of the bank and does not participate in the process of monitoring according to his/her competencies, this employee shall notify immediately the chief of the bank who is supervising issues associated with monitoring about the facts.

8. In the absence of the employee (special structural entity) responsible for implementing monitoring, another employee shall be held responsible for completing the above task; this shall be documented in the corresponding decision of the bank.

Article 6. Bank Obligations Associated with Registering Identification and Identification Data (Documents)

1. The bank is obligated to identify a client (his/her representative and principal, also third person, if the transaction is carried out in favor of the third person) and take necessary measures to check and double-check his/her identity based on information (documents) independent and trustworthy sources, when:

(a) The transaction (operation) amount exceeds GEL 3,000 (or its equivalent in other currency);

b) Local and international operations (transfers and sending money) carried out through money funds transferring or notifying system networks, exceed GEL 1500 (or its equivalent in other currency);

(c) This transaction represents a suspicious transaction according to Article 2(e) of this Statute;

(d) Suspicion arises whether identification information of existing clients is exact and/or respective.

2. The bank is obligated to identify client’s beneficiary owner, also to take reasonable measures to double-check his/her identity based on information (documents) from independent and trustworthy sources, and make sure client’s beneficiary owner’s identity is known to the bank. Identification procedures designated to a natural person shall be applied towards the beneficiary owner.

3. When double-checking identification of a client (his/her beneficiary owner), the bank can rely on a third person/mediator, who carries out identification of client and double-checking of his/her beneficiary owner considering international standards, retains documents according to Article 11 of this Statute and is subject to supervising and regulating according to prevention of illicit income legalization and terrorism financing. In addition, the bank shall take the necessary measures to ensure immediate access to information of clients' identification (documents or copies of documents). In such cases, the bank shall have the final responsibility for identifying and checking identification of client according to the rules outlined in this Statute.

4. The process of identification shall be carried out following the Georgia Law On Facilitating the Prevention of Illicit Income Legalization, this Statute, normative acts issued by National Bank of Georgia, internal instruction of bank, and according to guidelines and recommendations of the Financial Monitoring Service of Georgia.

5. Considering the goals of this Statute, banks define procedures necessary for identifying a person (except procedures of opening an account) themselves. Besides, banks have right to demand any other kind of information and/or documents connected with persons participating in transaction (operation).

6. The bank is authorized to use the electronic database of identification documents, presented by the civil registration agency of the Justice Department of Georgia, in order to identify a client (his/her representative or principal, as well as a third person, if the transaction is performed to favor a third person) and his/her beneficiary owner according to the rules and regulation of the Georgia Law On Facilitating the Prevention of Illicit Income Legalization and this Statute.

7. Identification of a client and his/her beneficiary and checking their identity according to this Article and acquiring other information shall be carried out before performing transaction or opening account, or carrying out any other type of business activity; also, before continuing business relations, if a suspicion arises on legalization of illicit income or financing terrorism, or suspicion arises regarding authenticity of existing identification information.

8. Bank has no right to extend service to a client, or establish business relations with a person (including when performing such bank transactions which do not require opening an account by a person, in particular, transferring or receiving money, selling or buying foreign currency through bank notes, exchanging bank note, etc.), if the bank does not perform his/her identification according to para. 1 of this Article.

9. Banks are prohibited from opening or maintaining an account in a fictitious name or anonymously.

10. The bank is obligated, before staring business relations with a client, to find out what goals is the client pursuing or what kind of relationship he/she is seeking and to maintain a constant study of relationships between the bank and the existing clients.

11. The bank does not stop performing transaction (operation) if there is a suspicion regarding the operation (transaction) (extending service to a person/client connected with bank through business relations), except in the following instances:

(a) If the client cannot be identified;

(b) If any person participating in the transaction is listed as a terrorist or a person supporting terrorism;

(c) Receiving negative response from management to establish business relations with a client in cases discussed in Article 7(2a) of this Statute.

12. In the cases discussed in 11(a) – (c) of this Article, the bank shall refuse to extend services to a client (establish business relations with a person) and immediately submit the corresponding reporting form to the Financial Monitoring Service of Georgia, existing paperwork in possession of the bank and any other information regarding this operation (transaction) and persons participating in such.

13. As a result of standard identification procedure, the following data must be established:

(a) If an individual:

(a.a.) First and last name;

(a.b.) Citizenship;

(a.c.) Date of birth;

(a.d.) Place of residence;

(a.e.) Identification number (passport number) and citizen's private number (according to the passport);

(a.f.) If an individual is registered as an individual entrepreneur – the corresponding registration number, date, registration entity/agency, and taxpayer identification number;

(b) If a legal entity:

(b.a) Full name;

(b.b.) Nature of business;

(b.c.) Legal address (if it is a branch or representative office, address of such, as well as the address of the head office);

(b.d.) Name of registering agency, date and number of registration;

(b.e.) Taxpayer identification number;

(b.f.) Identification data of persons authorized to manage and represent (according to (a) of this subarticle);

(b.g.) Identification data of the person representing the legal entity in a specific bank operation (transaction) subject to monitoring;

(c) If organizational entity according to legislature is not a legal entity:

(c.a.) Full name;

(c.b.) Legal address;

(c.c.) Legal act or other document based on which this organizational entity is created (or is functioning);

(c.d.) Taxpayer identification number;

(c.e.) Identification data of persons authorized to manage or represent (according to (a) of this subarticle);

(c.f.) Identification data of the person who represents such an organizational entity in a specific bank operation (transaction) subject to monitoring;

14. Documents necessary for identification:

(a) If an individual is a citizen of Georgia – identification card or passport, or other official document equal to such, according to Georgian legislation, containing respective data; if a person is registered a an individual entrepreneur, a document proving his/her registration as such;

(b) If an individual is a foreign citizen – passport issued by a respective agency, or any other document considered equal to such by Georgian legislation which contains respective data;

(c) If resident legal entity (also in case of organizational entity which does not represent a legal entity) – respective act regarding creating of this entity, considered by Georgian legislation and a document proving such person’s authorities.

(d) If legal entity is non-resident person – documents issued by a respective agency proving creation and registration of such legal entity and document proving such person's authorities.

15. For identification of a person, banks shall identify the country which issued presented documents, the agency, date of issuance and expiration date.

16. For identification of an individual, documents other than ID card and passport can be used in exceptional cases, when a person cannot have an ID card or a passport (for instance, opening an account in the name of a minor).

17. For identifying, systemizing, and better studying identification data of permanent clients of bank (those persons who have more than one account in the bank and who periodically contact the bank to carry out a transactions), a bank can use a questioning procedure. In addition to such a procedure, the bank shall implement creation of a corresponding electronic database.

18. Use of a questioning procedure is also acceptable for identification of such persons who contact the bank on a one-time basis to carry out a financial transaction (transferring or receiving money, selling-buying currency, exchanging bank notes, etc.), or if such persons participate in bank transaction as second or third persons (if the transaction is carried out in favor of a third person).

19. If documents presented for identification or such information retained in bank allow, the following data shall be identified along with such defined in 13(a), (b) and (c) of this Article:

a. If an individual:

(a.a.) Patronymic name;

(a.b.) Place of birth;

(a.c.) Temporary (actual) place of residence (in Georgia, as well as in a foreign country), if such place is not the same as registered place of residence;

(a.d.) Main activities and position;

(a.e.) Requisites of account(s) in other bank(s);

(a.f.) Telephone, fax number, email address;

(b) If a legal entity (also if an organizational entity not representing a legal entity):

(b.a.) Date of appointment of persons having managerial or representative authority;

(b.b.) Requisites of account(s) in other bank(s);

20. Detailed rules associated with client identification, filling our questionnaires and activities associated with renewing existing identification data, as well as the corresponding functions/job descriptions of bank employees are defined by internal instructions of the bank.

21. The bank shall maintain constant monitoring of business relations with a client, which includes:

(a) Retaining current information and records about client and his/her beneficiary owner;

(b) Periodic renewal of existing identification data and checking if such data reflect requirements of normative documents;

(c) Detailed study of transactions in order to determine if such transactions reflect the client's knowledge, his/her personal or commercial activities, risk group and, if needed, facts of acquiring his/her wealth (among those – monetary funds).

22. The banks shall have a risk management system in order to double-check client identification, activities of which may create a high level of risk of legalizing illicit income of financing of terrorism; checking and double-checking of identification and monitoring process shall be increased. Procedures of identification and checking background shall be carried out based on and considering risk factors, type of client, and business relations. The bank shall identify clients with a high risk factor of illicit income legalization and/or financing of terrorism. If a client is considered as having a high risk factor, the bank is authorized to use requirements outlined in Article 7 of this Statute.

23. The bank shall pay special attention to the risks associated with implementing such new technologies, products and services which support anonymity in services, and shall take all necessary measures to prevent legalization of illicit incomes and financing of terrorism. The bank shall have such policies for identifications and background checks, which provides decreasing of risks connected with remote servicing of a client considering rules implied by Georgian legislation. Policies and procedures outlined in this paragraph shall be used in establishing business relations and maintaining constant monitoring of such.

Article 7. Bank Obligations to Politically Exposed Persons

1. The bank is obligated to determine whether the person having business relations with the entity and his/her beneficiary owner belongs to the category of politically exposed persons.

2. If a client and/or his/her beneficiary owner represents a politically exposed person, in addition to the steps stipulated under the Georgia Law On Facilitating the Prevention of Illicit Income Legalization, the bank (its authorized employee) additionally shall complete the following actions:

(a) Obtain permission from the management to establish business relations with such person;

(b) Take reasonable measures to ascertain the origin of funds and property of such person;

(c) Perform strong monitoring of business relations with such person.

3. If the person (his/her beneficiary owner) becomes a politically exposed person (PEP) after establishing business relations with bank, the latter shall undertake measures provided for in para. 2 of this Article against such person upon availability of the aforementioned information.

4. The bank shall have defined specific respective procedures, based on which the bank shall seek the respective information from client in order to identify and check politically exposed persons, as well as from public sources or electronic database.

Article 8. Establishing Correspondent Relations by the Bank

1. When establishing international correspondent relations, banks shall seek information from public sources regarding respondent a bank's reputation and degree of supervision on such and about adequacy and effectiveness, if it represents a person implementing monitoring of illicit income legalization and combating the financing of terrorism. Banks shall require information from respondent banks regarding the degree of internal control towards illicit income legalization and issues associated with combating the financing of terrorism, and assess the level of such control.

2. It is unacceptable to create international correspondent relations without agreement of bank directorate (curator director).

3. Banks are prohibited to establish correspondent relations with fictitious banks. They are obligated to take reasonable measures to find out:

(a) If a person who is in business relations with the bank (or person, with whom the bank is establishing business relations) belongs to the category of fictitious banks;

(b) Whether a person who is in business relations with the bank (or a person with whom the bank is going to establish business relations) has relations with a fictitious bank.

Article 9. Bank's Obligations in Connection with Reflecting Identification Data when Making Money Transfers

1. When carrying out operations (transactions, transfers) defined by Article 6(1b) of this Statute, the bank is obligated to reflect identification data of a person in the money transfer order (GEL and foreign currency payment, quick money transfer order).

2. When making domestic and international money transfers, it is required to collect/reflect the following information from the person sending the money:

a. Name (if an individual – first name and last name);

b. Account number or verification code (if such exists);

c. Address (address can be substituted: in case of an individual – by personal number according to ID card or passport, or date and place of birth, by identification code of the payer; in case of a legal entity – with payer ID code.

3. Identification data mentioned in para. 2 of this Article also shall be fully reflected in the corresponding electronic document of the money transaction in a manner that the information is available to the money receiving agency after completion of the transaction.

4. If it is technically impossible that identification data mentioned in para. 2 of this Article be fully reflected in corresponding electronic document of the money transaction, the paying bank shall provide the aforementioned information to the receiving agency if it requests additional identification information of the payer.

5. Banks performing the role of intermediary in the transaction process shall ensure the transfer of identification information of a person from paying bank to receiving bank. If for technical reasons such action is not possible, the intermediary banks shall retain identification information of the payer for a specific time period, following Article 8(1) of this Statute.

6. When completing a domestic transaction, it is acceptable to reflect only the information specified in 2(a) and (b) of this Article. In such a case, the paying bank shall provide the aforementioned information to the receiving bank if such bank requests it (or in other cases as specified by legislation) within three business days.

Article 10. Bank Obligations Regarding Registration of Transaction Information (Documents)

1. Pursuant to Article 6(6)of the Georgia Law On Facilitation the Prevention of Illicit Income Legalization, the bank shall register information (documents) regarding bank operations and/or transactions.

2. The obligation to register information regarding a bank operation (transaction) shall extend to the transactions of such bank and executed transactions, as well as transactions and operation requested by clients that serve as a basis for such bank operations.

3. When registering information regarding a bank operation, the bank shall document the following information:

(a) Content of the bank transaction (operation), (for instance, transfer, placing on account, sending or receiving money, etc.);

(b) Date, amount, and currency of transaction (operation) in which such transaction shall be completed;

(c) Identification information of the person on whose request the bank is carrying out the operation (person carrying out the operation), also the type of account(s), number and date of opening (if required, the date of closing as well) used in this particular operation;

(d) The second party of the operation (if such exists) and its bank requisites (for instance, when transferring money – the name of the corresponding bank agency, type, number, and name of accountholder);

(e) Identification data of the person acting on behalf of the bank client (representative, agent); also the content of affidavit, issuing person, date of issue and date of expiration, also person who approved the affidavit (for instance, notary), date and place of approval;

(f) If the operation is conducted in favor of a third person – identification information of such person;

(g) Basis of conducting operation – if information is available (for instance, the basis for conducting operation can be considered transaction placed by bank client, based on which he/she carries out the operation, etc.).

4. When registering information regarding transaction placed between bank and client (among such, loan application or agreement regarding bank services), also information serving as basis for the transaction, bank shall document the following information:

(a) Type of transaction (for instance, deed of purchase, buying-selling, leasing, etc.);

(b) Content and subject of transaction (specific object, material value, or intangible value, which represents subject of the transaction, or services, work, which has to be carried out according to the transaction);

(c) Form of transaction (written agreement, verbal agreement);

(d) Purpose of transaction (for instance, commercial activities, receiving income, charity, paying off a debt, and so on);

(e) Date and place of placing a transaction and expiration date of transaction;

(f) Amount of transaction and currency in which transaction shall be carried out;

(g) If a transaction is subject to registration (confirmation) – the name of registration agency, date of registration, place and number (for instance, when confirming a transaction by notary).

5. The bank shall create the corresponding system to record information documentarily, systemize and retain information noted in para. 3 and 4 of this Article.

6. Identification information of persons who are not clients of bank (are not associated with bank through business relations) is recorded based on submitted (existing in bank) information (documents). The bank shall not require a client additionally to present identification documents of the other party.

Article 11. Bank Obligations in Regards to Retaining Information (Documents) about a Transaction

1. The bank is obligated to retain information (documents) presented for identification of client in material or electronic form (presented in accordance to the rule of Article 6(6) of this Statute), as well as other information regarding the bank operation (transaction), documentation of the client's account and business correspondence, and records specified in Article 3(4) of this Statute for at least 6 years, if the corresponding supervisory agency has not required retention for a longer period and/or Georgian legislation does not specify a longer retention for such information (documents and records). Electronically documented data (electronic database) as well as information existing in document format (documents) shall be retained for the aforementioned period.

2. Information (documents) submitted for identification of client and information about the operation (transaction) shall be retained in the original or, if not possible – in copies. In addition, the copies shall be notarized by a notary or by authorized employee of the bank. To fulfill this last requirement, based on internal instruction or respectively issued decision, the bank shall designate an employee (or employees) who shall be authorized to notarize copies. A copy shall be notarized in a manner that clearly shows who it is notarized by and the date of such. Information submitted for identification of a client according to Article 6(6) of this Statute and data double-checked by the bank do not require notarization.

3. Except for the information outlined in para. 1 of this Article, electronic report forms submitted to the Financial Monitoring Service of Georgia pursuant to Article 9 of the Georgia Law On Facilitation the Prevention of Illicit Income Legalization and Article 12 of this Statute also shall be retained for 6 years (unless the supervisory body requires a longer retention). When retaining documents in electronic format, the bank shall adhere to security rules. Responsibilities for retaining documents in electronic format are defined in internal instructions of the bank. In addition, in cases described in this Statute, printed report forms must be confirmed by signature of the bank employee authorized for such by internal instructions of bank and – if internal instructions require – by the bank's seal.

4. Information (documents) retained in bank shall fully reflect the completed bank transaction and/or operation and its participants. Also, such information (documents) shall be registered, systemized, and retained in a manner that makes it possible, when necessary, to find and pull them out in shortest time (for instance, in order to submit such information (documents) to supervisory bodies in a timely manner or to use such as evidence during criminal pursuit).

Article 12. Bank Obligations Regarding Submission of Report Forms of Operations (Transactions) Subject to Monitoring

1. If the bank develops a suspicion regarding the authenticity of identification information or, although trying, it is impossible to identify a client, or if the transaction (operation) represents such defined by Article 3 of this Statute, the bank shall submit a report form about such a transaction (operation) to the Financial Monitoring Service of Georgia through established rule by the Georgia Law On Facilitation the Prevention of Illicit Income Legalization and this Statute.

2. Submitting a notice to the Financial Monitoring Service of Georgia means, according to the rule established by this Statute, to fill out respective form regarding a bank transaction, send it to the Service, and get confirmation about its acceptance. Notifications submitted to the Financial Monitoring Service of Georgia shall be filled out using the web-portal of the Financial Monitoring Service of Georgia. The procedure for completing and sending account forms by the bank is carried out according to the Customer Guidelines published on the web-page of the Financial Monitoring Service of Georgia. Confirming acceptance of reports by the Financial Monitoring Service of Georgia means that electronically, through the web-portal, "Confirmed" status is granted.

3. Report forms shall be submitted (filled out and sent) to the Financial Monitoring Service electronically, following the rule explained in para. 6 of this Article. Report forms in printed version shall be submitted to the Financial Monitoring Service according to the rule established in this Statute only if it is technically impossible to send such electronically.

4. Submission of the forms to the Financial Monitoring Service of Georgia shall be done within the following time periods:

(a) If the amount of bank operation (transaction) or the total amount of combined bank operations (transactions) aimed at partition of the transaction exceeds GEL 30 000 or its equivalent in another currency, forms shall be submitted within 5 business days from the date of implementing the operation (transaction) or establishing a transaction (or receiving information regarding such transaction, or combined operations/transaction);

(b) If a transaction (operation) or identification data are considered suspicious – the same day as suspicion arises;

(c) If any person participating in a bank operation (transaction) is listed as terrorist or person supporting terrorism, and/or may be connected with such, and/or monetary funds involved in bank transaction (operation) may be connected or used for terrorism, for a terrorist act, or by terrorists or by terrorist organization, or by organization financing terrorism, the information shall be submitted on the same day it is received. In addition, in the last scenario, all respective materials and documents in the bank's possession, along with the account forms, shall be submitted to the Financial Monitoring Service of Georgia.

5. In exceptional cases discussed in para. 3 of this Article, printed versions of account forms (also, if needed, along with additional materials) shall be submitted to the Financial Monitoring Service of Georgia in a well-sealed envelope by an authorized courier of bank; if it is impossible to use a courier service – by registered mail. The name and address of the sending bank and the addressee shall be shown on the envelope: Financial Monitoring Service of Georgia, its address – 0108, Georgia, Tbilisi, Vukol Beridze Street No. 6, with the stamp "Confidential".

6. Submission of account forms, bank operations (transactions) subject to monitoring and other confidential information to the Financial Monitoring Service of Georgia is done electronically through the web-portal located on the web-page of the Financial Monitoring Service of Georgia (www.fms.gov.ge), with respective web-shield and/or using supporting web-service.

7. The decision regarding completion of forms and sending such to the Financial Monitoring Service of Georgia shall be made by a bank employee who is granted the respective authority according to internal instructions of bank. The right to complete account forms is granted to only those employees of the bank who have authority to do so according to the bank's internal instructions.

8. Electronically completed forms remain at the bank and are to be retained for at least 6 years. In the exceptional cases described in para. 3 of this Article, when sending printed versions of account forms, the form is printed out in two copies; each of those copies shall be confirmed by signature of the employee of the bank designated and authorized by internal instructions; if it is specified in the internal instructions, copies shall be confirmed by bank seal as well. One of these copies shall be sent to the Financial Monitoring Service of Georgia, the other remains in the bank and is retained for at least 6 years.

9. Forms are filled out completely. The bank shall register the account forms sent to the Financial Monitoring Service of Georgia according to the rule established by internal instructions.

10. When revealing suspicious bank operation (transaction) and in this connection submitting the respective account forms to the Financial Monitoring Service of Georgia, the bank shall indicate the basis (circumstances) for considering such a bank operation (transaction) suspicious, and special attention shall be paid to the other bank operations (transaction conducted by persons participating in such an operation (transaction).

11. According to Article 10(4a) of the Georgia Law On Facilitation the Prevention of Illicit Income Legalization, the Financial Monitoring Service of Georgia is authorized to request additional information from the bank and documents in its possession (including confidential) connected to any bank operation (transaction), including about bank accounts, and about persons participating in it, and about those bank operations (transactions), regarding which account for was not submitted to the Financial Monitoring Service of Georgia. The bank shall submit (send/mail) all requested information to the Financial Monitoring Service no later than two (2) business days from the date of request.

12. If after submitting the account form, the bank learns of (or finds in its possession) any additional information regarding the respective bank operation (transaction) or persons participating in such, the bank shall immediately submit such information to the Financial Monitoring Service of Georgia. In addition, additional information shall be marked with the numbers of the accounts' form to which it represents addition. Additional information has to be submitted according to rules, explained in the "Customers' Guidelines" regarding additional information of transaction subject to monitoring.

13. The bank shall strictly adhere to confidentiality associated with filling out account forms of bank operations (transactions), facts of submitting such to the Financial Monitoring Service of Georgia, and other relevant information. Information about arising suspicion associated with a bank operation, transaction or participating persons, filling out account forms and submitting such to the Financial Monitoring Service of Georgia shall not be made available to persons participating in such bank operation (transaction), their representatives, or any other persons. The bank employee who reveals suspicious bank operation (transaction) or fills out accounts form may pass this information only to those employees who are authorized to have such information by internal instructions of the bank.

Article 13. Obligation of Commercial Banks To Submit Registration Form to the Financial Monitoring Service of Georgia

1. In order to implement activities of systemizing and analyzing information about bank operations (transaction) subject to monitoring, and pursuant to Article 10(5a) of the Georgia Law On Facilitation the Prevention of Illicit Income Legalization, the Financial Monitoring Service of Georgia is creating an electronic database. In order to enter information about each commercial bank into this database, a bank shall submit a registration form to the Financial Monitoring Service of Georgia through the web-portal located on its web-page (www.fms.gov.ge) with the respective web-shield. The registration form shall be considered submitted to the Financial Monitoring Service after sending the respective electronic notification. If the aforementioned electronic registration is not technically possible, such a registration form shall be submitted to the Financial Monitoring Service of Georgia in document format.

2. If any changes are made (including replacing an employee who is responsible for implementing monitoring) in the registration form submitted to the Financial Monitoring Service of Georgia, the bank shall submit an updated registration form to the Financial Monitoring Service of Georgia within 2 business days after implementing such a change, according to the rule defined in para. 1 of this Article.

Article 14. Responsibilities Associated with Implementing Monitoring

1. Supervision of adhering to the norms and requirements outlined in the Georgia Law On Facilitation the Prevention of Illicit Income Legalization and this Statute shall be implemented by the National Bank of Georgia.

2. Special sanctions shall be applied to a bank, according to the rules established by the National Bank of Georgia, for violating the provisions and requirements outlined in the Georgia Law On Facilitation the Prevention of Illicit Income Legalization and this Statute.