Post-Plenary Report

GUATEMALA

November 2005

DETAILED EVALUATION REPORT ON THE SYSTEM FOR COMBATING MONEY LAUNDERING AND FINANCING OF TERRORISM

TABLE OF CONTENTS

ABBREVIATIONS

AML	Anti Money Laundering
AGIS	Guatemalan Association of Insurance Agencies
CFATF	Caribbean Financial Action Task Force
CFT	Combating Financing of Terrorism
DICRI	Directorate of Criminal Investigations
FATF	Financial Action Task Force
FAU	Financial Analysis Unit
FENACOAC	National Federation of Cooperative and Credit Agencies
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
IVE	Special verification Agency
LCLDOA	Guatemalan Anti Money Laundering Act
KYC	Know Your Customer
ML	Money Laundering
MP	Office of Public Prosecution
NCCT	Non Cooperating Countries and Territories
NGO	Non Governmental Organization
PEP	Politically Exposed Person
SAT	Internal Revenue Department
SIC	Criminal Investigation Service
STR	Suspicious Transaction Report
UN	United Nations

A. GENERAL

Information and methodology used for the assessment

1. The Guatemalan system for combating money laundering and financing of terrorism was evaluated as part of the mutual evaluation exercises of the Caribbean Financial Action Task Force (CFATF.) It was carried out on the basis of the (1996) 40 FATF Recommendations; the 25 FATF Criteria for Non-Cooperative Countries and Territories, and the CFATF 19 Recommendations, and used the October 2002 version of the IMF-WB Methodology as the evaluation tool. The CFATF Council of Ministers approved these parameters for the Second Round of Mutual Evaluations of the CFATF Member States, concluded in 2004. The 8 FATF Special Recommendations on Terrorist Financing while reviewed during the Evaluation will not form part of the final evaluation of Guatemala's compliance with international AML/CFT standards.

2. Guatemala was included in the FATF's List of Non-Cooperative Countries and Territories (NCCTs) in June 2001. However, over the following years the Guatemalan authorities took active measures to eliminate the shortcomings identified by the FATF, and have introduced various legislative and institutional reforms. As a result, Guatemala was removed from the list in June 2004.

3. Guatemala joined the CFATF in October 2002, and was not therefore part of a "First Round" of Mutual Evaluations and the resulting report. The CFATF Mutual Evaluations during this Second Round are characterized by greater attention to implementation of anti-money laundering legislation, and the practical functioning of AML infrastructures within the financial and other public institutions involved in combating money laundering. Accordingly the this first CFATF Mutual Evaluation Report on Guatemala will also place greater emphasis on the functioning of Guatemala's AML infrastructure and the implementation of the country's legislation in this area.

4. This Report is based on information obtained during the visit that took place from 19-22 October 2004. The period of evaluation was kept relatively short (3 days) considering that Guatemala, as already mentioned, had already shortly before been scrutinized by the FATF during its NCCT exercise. This report is also based on the criterion-by-criterion worksheet previously filled out and submitted by Guatemala. The Evaluation team comprised: Licenciada Rina Artavia Juarez, Costa Rica (Financial Expert); Licenciado José Rolando Monroy Sintigo, El Salvador (Police Expert), and Licenciado José Mario Salgado Montalván Honduras (Legal Expert). The Mission was headed by Licenciado Russell Ursula, Deputy Executive Director of the CFATF Secretariat.

5. The visit was coordinated by the authorities of the Superintendency of Banks of Guatemala, through the *Intendencia de Verificación Especial* (IVE) (Special Verification Agency), which is part of the Superintendency of Banks and is the Financial Intelligence Unit of Guatemala. Presentations were received from the Superintendent of Banks, Dr. Douglas Borja and the *Intendente de Coordinación Técnica* (Technical Coordination Superintendent). Interviews were also held with Licenciado Ricardo Vélez Lara, director of the IVE, Ingeniero Luis F. Samayoa, Deputy Coordinator of the Anti Money-Laundering Comisión of the Guatemalan Banking Association, Licenciado Rolando San Román General Manager of the National Stock Exchange, Licenciado Willy W. Zapata, Superintendent of Tax Administration of Guatemala, Licenciado Gustavo Antonio Ordóñez Nájera, Secretary General of the *Ministerio Público* (State Prosecutor's Office), and Licenciado Rodolfo Jovito Méndez Alvarado, Anti-Money Laundering Prosecutor, and other representatives of the Ministerio Público.

6. The CFATF Mission also held wide-ranging discussions with representatives of the financial sector, including suppliers of financial services. The programme of interviews and the names of persons

with whom exchanges took place are annexed to this Report. The Members of the Team wishes to express their gratitude to the Superintendency of Banks of Guatemala, the management and staff of the IVE, the Guatemalan authorities and the officials of all the institutions visited, for their hospitality, cooperation and openness in supplying us with information and internal details.

General Situation of Money Laundering and Financing of Terrorism in Guatemala

7. Since it is a legal imperative, the financial institutions have taken steps to know their customers and have developed a series of strategies, such as competitions, and lotteries, in which customers fill out their data and financial institutions obtain information which they use to comply with the "Know Your Customer" policy, while at the same time merchandising their products in the various sectors. In addition, the mission learned that the authorities must pay special attention to money remitters, since there are a series of factors such as the amount of money moved (according to different sources, the amount received is estimated to have increased from $375 million to $2,100 - $2,600 million), and the existence of many informal operations of this type in the country, which makes the sector vulnerable.

8. As regards financial entities, insurance companies and the securities sector, the mission learned that there is both internal and external auditing, and that these audits include ML compliance. However, it is considered that the remittance houses must make a serious effort to strengthen both internal and external auditing, since although some of the biggest such as Western Union have external auditing, there is a large number of informal remitters that need some type of checking of their systems and policies with regard to money laundering.

9. There is no anti-terrorism financing legislation, but the financial institutions in general and the regulated persons rely on article 26 of the Law Against Laundering of Money and Other Assets in making reports of suspicious transactions. In addition, the mission concludes that feedback from the IVE to regulated entities on their suspect operations reports would be advisable, both as regards the quality of the reports and the procedure followed. On the one hand this would provide the satisfaction of knowing that legal procedure had been followed, and on the other would throw light on the mistakes being made by the regulated entities.

Overview of measures to prevent money laundering and terrorism financing.

Legal framework

10. Guatemala has signed and ratified, inter alia, the following treaties:

- *1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)*
- *1999 UN Convention for the Suppression of the Financing of Terrorism*
- *2000 UN Convention Against Transnational Organised Crime (Palermo Convention)*

Central American Convention for the Prevention and Elimination of Money Laundering Related to Illegal Activities connected to Drug Trafficking and Related Crimes.

11. Related to the implementation of the Vienna Convention are the Narcotics Act (*Ley Contra la Narcoactividad),* Decree no. 48-92, and the Anti-Money Laundering Act (hereinafter LCLDOA), Decree no. 67-2001, both of the Congress of the Republic of Guatemala. Guatemala has special prosecutors for narcotics and money laundering, as well as courts and tribunals with powers to prosecute and try these crimes. Both laws provide for active and passive extradition for persons

committing these offences, as well as procedures for mutual legal assistance (LCLDOA article 3, Narcotics Act article 63).

12. As part of the implementation of the 1999 Anti-Terorism convention, Guatemala has drafted a Bill for an Act to Prevent and Suppress the Financing of Terrorism, which is now before the Congress. Guatemala has also formed an inter-institutional commission, coordinated by the Ministry of Foreign Affairs, to address the subject of international terrorism. This commission is responsible for fulfilling international requirements in this area. It is important to note that the Guatemalan Penal Code already defined various offences that would enable severe penalties (one to five years' imprisonment, and economic penalties) to be imposed for acts related to terrorism.

13. Article 2 of the LCLDOA criminalises and penalises money laundering in accordance with international standards. Criminalisation of money laundering may be considered to be in effective implementation in Guatemala, and has been given practical effect in the courts. The special prosecution service is at present prosecuting several money laundering cases. In several of these cases the charges have been laid, and it is expected that the trials will begin and verdicts handled down in accordance with the law.

14. Article 21 of the LCLDOA stipulates that the regulated entities shall keep a special record, on forms to be designed for the purpose by the IVE, of the natural or legal persons, whether occasional or regular clients, with whom they engage in business relations, or relations within the normal or apparent run of their business. They must record the operations performed with these customers, especially as regards the opening of new accounts, trust transactions, rental of safe deposit boxes or performance of cash transactions above the amount established in article 24 of the Act ($US 10,000.00 or the equivalent in local currency).

15. The LCLDOA requires regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these.

16. Article 28 of the LCLDOA stipulates that regulated persons shall provide the IVE with information requested by the latter in the form and within the periods specified by the regulations. It further stipulates that that violation of any kind of contractually or legally imposed confidentiality cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it. Article 33 (a) states that the IVE may request and/or receive from regulated entities any information related to financial, commercial or business transactions that may relate to the offence of laundering of money or other assets.

17. Article 34 requires all public or private entities to provide all cooperation requested by the IVE for the enforcement of the Act. Article 35 stipulates that the Ministerio Público, the IVE or any other competent authority may provide or receive administrative assistance from the competent authorities of other countries to assist them in fulfilling the purposes of the Act.

18. Article 31 of the LCLDOA establishes the liability of the regulated persons referred to in Article 18 for non-fulfilment of their obligations under the Act.

19. Article 20 of the LCLDOA prohibits regulated entities from maintaining anonymous accounts, or accounts under fictitious or vague names, in any circumstances. The last paragraph of Article 28 of the LCLDOA states that violation of any kind of contractually or legally imposed confidentiality

cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it. Article 63 of the Banking and Financial Groups Act stipulates that save for the obligations and duties laid down by the anti-money laundering laws and regulations, the directors, managers, legal representatives, officials and employees of banks may not provide any natural or legal person with information in any form tending to breach the confidential nature of the identities of depositors in banks, financial institutions or entities of financial groups, as well as information provided by private persons to these institutions.

20. The Banking and Financial Groups Act (Decree no. 19-2002 of the Congress of the Republic of Guatemala) stipulates that when banks are being established persons convicted of culpable or fraudulent bankruptcy; persons convicted of offences involving dishonesty; or persons convicted of illegal acts connected with money laundering or embezzlement may not act as organisers, shareholders or managers of the proposed institutions (article 13). The Superintendency of Banks, before bringing before the Currency Board any application for approval of any financial institution, verifies that the organisers, shareholders or managers of the banks being established comply with Article 13 of the Act, i.e. that they do not have any of the impediments specified in that article.

21. Article 19 of the Act specifies that persons acquiring, directly or indirectly, shares representing 5% or more of the paid-up capital of a bank must have the approval of the Superintendency of Banks, which shall verify compliance with the requirements for shareholders of new banking institutions. The same applies to those bank shareholders who increase their shareholding to the specified percentage. In addition, every January the banks must submit to the Superintendency of Banks information indicating who their shareholders are, the value and percentage of the holding of each, up to 31 December of the preceding year, without prejudice to the Superintendency's right to demand such information at a date of its choosing. Finally, this article stipulates that banking institutions must keep a record of nominative shares that enables the partners in the firm to be identified at any moment.

22. At the present time Article 391 of the Penal code, Decree No. 17-73 of the Congress of the Republic, criminalises terrorism. Therefore, although Guatemalan law does not expressly provide for freezing of terrorist funds, this can be done in specific cases under Articles 278 of the Penal Code, Decree No. 51-92 of the Congress of the Republic and 530 of the civil and Mercantile Code, Decree Law 107 of the Head of government. Under these, a competent judge, on the request of the Ministerio Público, may order an emergency precautionary measure, in the course of a criminal trial for terrorism. This measure would involve blocking of goods and other resources, including bank deposits. The measure would have the same effect as freezing of funds, since once the block is in place the account holder could not make use of the resources. As regards money laundering prevention, article 12 of the Anti-Money Laundering Act, Legislative Decree 67-2001, enables the Ministerio Público to order, in cases where there is danger of escape, the seizure, embargo or blockage of goods, documents and bank accounts. This order must be immediately confirmed by the competent judge or tribunal.

23. The Anti-Money Laundering Prosecution Service considers that ***money transporting*** is an activity not at present criminalised by the LCLDOA. However, article 8 of the draft Law for the Prevention and Repression of the Financing of Terrorism being debated in Congress criminalises smuggling of money in cash or documentary form, and penalises it with imprisonment. The main advantage of the legislation is that money laundering is not limited to a list of predicate offences, but may be based on the commission of any offence.

24. To date there have been two convictions for money laundering in the lower courts. In these cases the courts have ruled admissible the investigative evidence submitted by the Ministerio Público. As regards administrative sanctions provided for in the LCLDOA, seven fines have been imposed, totalling US $95,000.00.

25. 27 of the Constitution of the Republic of Guatemala stipulates that extradition is governed by the provisions of international treaties. In the case of money laundering, Article 3 of the LCLDOA provides for active and passive extradition when this crime is committed. In Guatemala money laundering is not considered a political offence, so extradition of persons accused of it would be feasible.

Institutional Framework

26. The following are the law enforcement authorities in Guatemala:
    - Superintendency of Banks, through the IVE.
    - Anti-Money Laundering Prosecution Service.
    - Specific Judicial (Courts) authorities.
    - Anti-Narcotics Analysis and Information Service (SAIA) which is a specialised police unit with money laundering investigation as one of its functions.

27. Under Article 32 of the LCLDOA and Article 24 of its Regulations, the IVE is part of the organisational structure of the Superintendency of Banks. Therefore the Superintendent of Banks is its hierarchical chief. It is the agency charged with carrying out the objectives of, and ensuring compliance with, the Act and its Regulations, by means of the powers conferred on it, which are strictly administrative. Consequently, it is also responsible for ensuring that regulated entities comply with the laws and regulations applicable to them. The IVE is a Financial Intelligence Unit, and as such it receives, analyses and distributes financial information to the Ministerio Público on transactions in which there is evidence of money laundering. It also exercises the same functions on information requested by the Ministerio Público and competent judges. Article 33 (b) of the LCLDOA stipulates that the functions of the IVE include analysing information obtained in order to confirm the existence of suspicious transactions and money laundering operations or patterns of operations.

28. The IVE is empowered to obtain from regulated persons the information needed to facilitate analysis of financial transactions. Under Article 28 of the LCLDOA regulated persons must provide the IVE with the requested information in the form and within the time limits prescribed in the regulations for data and documents referred to in previous articles.

29. The budget of the IVE for 2004 is US $2.2 million. Its staff totals the amount of 25 and is made up of public accountants and auditors, lawyers and notaries public, systems engineers and economists, many with postgraduate degrees. They have experience, inter alia, in: supervision of financial institutions and insurances companies; offshore banking; credit card companies; banks; mercantile, economic and criminal law. The IVE has adequate resources to fulfil the functions assigned to it by the LCLDOA.

30. The Ministerio Público is responsible for carrying out investigations into money laundering. It is assisted by the National Civil Police and the IVE, as specified by article 33 (f) of the LCLDOA. It should be mentioned that within it there is a Prosecution Unit specialising in money laundering, which provides support to other prosecution units.

31. The special Anti-Money Laundering Prosecution Unit has a staff of 24 persons. The budget of the section for the year 2004 was originally US $493,700.00; however this has been increased recently owing to the increase of its staff from 13 to 24. This prosecution unit is part of the Ministerio Público, and is therefore supported by its technical, professional, laboratory, transport and logistic resources.

32. During the years 2002-2003 and 2004 the IVE received 207 requests from the Ministerio Público, and collaborated as requested. However, the Ministerio Público is considering the advisability of creating an analysis unit similar to the IVE within itself, in view of delays in response. In answer to this situation the IVE states that next year it intends to contract 2 technical analysts to prepare responses to the Ministerio Público.

33. There are three court districts with competence in the area of money laundering; the Chiquimula regional court, the Quetzaltenango regional court and the eleventh criminal, narcotics and environmental court of first instance with its jurisdiction in the capital city. Each one of these districts has a criminal tribunal, which in the case of the capital city is the Third Criminal Court. In addition, in the capital the first Chamber of the Criminal Appeals Court hears money laundering appeals. The judiciary has a budget of US $97.5 million.

34. The National Civil Police has a Criminal Investigation Service (SIC), and, for anti-money laundering work, an Anti-narcotics Analysis and Information Service (SAIA). Under the terms of the Regulations for Organisation of the National Civil Police, Government Agreement No. 402-2002, these entities collaborate with the competent authorities in the investigation of ML offences.

B. Detailed Assessment

Assessing Criminal Justice Measures and International Cooperation

Criminalization of ML and FT

Description

35. Guatemala is a party to the following instruments: ***1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention.*** This convention was approved by Decree no. 69-90 of the Congress of the Republic. Ratified by Government Agreement of 27 December 1990 of the President of the Republic. Published in the Official Journal of 27 May 1991. ***1999 UN Convention for the Suppression of the Financing of Terrorism.*** This convention was approved by Decree no. 71-2001. Ratified by Government Agreement of 17 December 2001 of the President of the Republic. Published in the Official Journal of 19 April 2002.***2000 UN Convention Against Transnational Organised Crime (Palermo Convention.*** This convention was approved by Decree no. 36-2003. Ratified by Government Agreement of 18 September 2003 of the President of the Republic. Published in the Official Journal of 27 November 2003. ***UN Security Council Resolution 1373.*** In the process of implementation.

36. Article 2 of the LCLDOA criminalises and sanctions money laundering, in accordance with international standards. The offence is criminalised as follows.
"Whosoever
a) Invests, converts, transfers or performs any financial transaction with goods or money, knowing, or by reason of his post, employment, office or profession having the duty to know, that such goods or money are the proceeds of, proceed from or originate in the commission of an offence;
b) Acquires, possesses, manages, holds or uses goods or money knowing, or by reason of his post, employment, office or profession having the duty to know, that such goods or money are the proceeds of, proceed from or originate in the commission of an offence;
c) Conceals or impedes the determination of the true nature, origin, location, destination, movement or ownership of goods or money, or of rights connected with such goods or money, knowing, or by reason of his post, employment, office or profession having the duty to know, that such goods are the proceeds of the commission of an offence;
is guilty of the offence of laundering of money or other assets".

37. Article 2 of the LCLDOA extends the crime not only to those who have committed the offence of money laundering, but also to those who have committed both offences, money laundering and the predicate. Under Article 2 of the LCLDOA, it is not necessary for a person to have been penalised for a predicate offence before someone can be prosecuted for money laundering. In a specific case, a court of first instance has already handed down a guilty verdict for ML without any previous conviction for a predicate offence. This verdict is not yet final. Since under Articles 1 and 2 of the LCLDOA ML may arise out of any crime, in Guatemala a list of predicate offences is not necessary.

38. Article 2 of the LCLDOA stipulates that anyone who performs transactions with goods or money that are the proceeds of, or originate in, the commission of a crime, is guilty of ML. This includes all types of goods originating in the commission of a crime, whether they be movable or immovable property, cash or any negotiable instrument. Articles 1 and 2 of the LCLDOA give effect to this criterion in Guatemala. The Anti-ML Prosecution Service is at present prosecuting cases of foreigners accused of cross-border transport of cash. In these cases there is evidence that the predicate offences may have been committed in other countries. A guilty verdict has been handed down against a foreigner for ML in these circumstances.

39. It is important to note that the Guatemalan Criminal code already includes various offences enabling acts connected with terrorism to be severely punished (one to fifty years' imprisonment and economic penalties). Financing of terrorism is also criminalised in Article 4 of the Draft Law to Prevent and Suppress the financing of Terrorism. Article 2 of the LCLDOA makes the offence of ML imputable to physical and legal persons, while Article 5 states that legal persons can be charged with it, the penalty being a fine of US $10.000.00 to $625,000.00 or the equivalent in national currency. Article 7 of the Draft Law to Prevent and Suppress the Financing of Terrorism also establishes the possible liability of legal persons.

40. Article 4 of the LCLDOA stipulates that a person guilty of this offence shall be liable to a non-commutable term of imprisonment of from six to twenty years, a fine equal to the value of the goods, instruments or proceeds of the offence, confiscation, forfeiture or destruction of the objects resulting from the offence or the instruments used in its commission. It further stipulates that if the guilty person is a foreigner, in addition to the penalties incurred he shall be expelled. Legal persons shall be liable to fines of US $10.000.00 to $625,000.00 or the equivalent in national currency, according to the gravity of the circumstances in which the offence was committed, and a caution to the effect that repetition of the offence will result in definitive cancellation of its legal personality.

41. Legal persons are also subject to confiscation, forfeiture or destruction of the objects resulting from the offence or the instruments used in its commission; to payment of legal costs; and publication of the verdict in at least two of the print communications media with widest national circulation. In the case of legal persons subject to surveillance and inspection by the Superintendency of Banks, the judge shall notify this body of the verdict and sentence, in order that the measures prescribed by law may be taken. As regards administrative penalties, Article 31 of the LCLDOA prescribes fines for regulated persons, for non-compliance with the requirements of the Act, of US $10,000.00 to $50,000.00.

42. Among the powers conferred on the IVE by the LCLDOA, Article 33 (g) gives it the power to impose administratively on regulated persons pecuniary fines in keeping with the failure in compliance. For this purpose, Agreement No. 43-2002 of the Superintendency of Banks, published in the Official Journal of 18 July 2002, established the Scale of Penalties, which sets the fine to be imposed in each case, thereby providing objective guidelines for pecuniary sanctions. Articles 15 and 19 of the draft law on financing of terrorism provide similar criminal and administrative sanctions.

43. The laws and regulations regarding ML are as follows:
    - Anti-Money Laundering Act, Decree 67-2001 of the Congress of the Republic
    - Regulations to the Anti-Money Laundering Act, Government Agreement 118-2002
    - Banking and financial Groups Act, Decree 19-2002 of the Congress of the Republic, which helps to combat money laundering.

44. The following are the law agencies for enforcement of the law:
    - Superintendency of Banks, through the Special Verification Agency
    - Anti-Money Laundering Prosecution Unit
    - Specific judicial bodies
    - Anti-Narcotics Analysis and Information Service (SAIA) which is a specialised police force charged, inter alia, with investigating money laundering.

45. Other instruments:
    - International Conventions to which Guatemala is party
    - Multilateral administrative conventions
    - Memoranda of understanding signed with FAUs
    - Letters rogatory.

46. The Penal Code, Decree 17-73 of the of the Congress of the Republic, which establishes penalties for acts related to terrorism, as well as for economic assistance to persons committing such acts is the current legal instrument relating to FT in Guatemala. There also exists a Draft Law to Prevent and Suppress the Financing of Terrorism.

Analysis of Effectiveness

1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)

47. This Convention is given effect by the Narcotics Act (*Ley Contra la Narcoactividad)*, Decree no. 48-92, and the Anti-Money Laundering Act (hereinafter LCLDOA), Decree no. 67-2001, both of the Congress of the Republic of Guatemala. Guatemala has special prosecution units against drug-trafficking and money laundering, as well as tribunals with jurisdiction over these offences. Both laws provide for active and passive extradition for persons guilty of the offences, as well as procedures for mutual legal assistance (Article 3 of the LCLDOA and 63 of the Narcotics Act.

48. As part of the implementation of this Convention, Guatemala has drafted a **Bill for an Act to Prevent and Suppress the Financing of Terrorism**, which is at present before Congress. In addition, Guatemala has set up an inter-agency commission to address international terrorism, coordinated by the Ministry of Foreign Affairs; this commission is responsible for responding to international requests in this sphere.

UN Security Council Resolution 1373

49. As part of the implementation of this resolution, the Inter-Agency Commission Against International Terrorism prepared a first draft of a Law Against Terrorism, which is at present in the Ministry of Foreign Affairs.

50. Criminalisation of money laundering may be considered to be in effective implementation in Guatemala, and has been given practical effect in the courts. This criminalisation is in line with international standards. The special prosecution service is at present prosecuting several money laundering cases. In several of these cases the charges have been laid, and it is expected that the trials will begin and verdicts handled down in accordance with the law. The Anti-Money Laundering Prosecution Service considers that ***money transporting*** is an activity not at present criminalised by the LCLDOA. However, article 8 of the draft Law for the Prevention and Repression of the Financing of Terrorism being debated in Congress criminalises smuggling of money in cash or documentary form, and penalises it with imprisonment. The main advantage of the legislation is that money laundering is not limited to a list of predicate offences, but may be based on the commission of any offence.

51. The Guatemalan Penal Code contains provisions for penalizing acts related to terrorism. In addition, the draft Law for the Prevention and Repression of the Financing of Terrorism is before Congress for approval and promulgation. At present, in the area of money laundering, sentencing has been pronounced in the first instance in two money laundering cases, where the sentencing tribunals have

granted probative value to the evidence presented by the MP based on circumstantial evidence. With respect to the FT, the draft legislation is presently before the Congress of the Republic for approval and publication. It is considered that the penalties provided in the law are effective, dissuasive and proportional to the seriousness of the offence. Guilty verdicts have already been handed down in specific cases. As regards administrative penalties prescribed by the LCLDOA, seven fines totaling US $95,000.00 have been imposed.

52. The budget of the IVE for 2004 is US $2.2 million. Its staff is as follows: The *Intendente de Verificación Especial* (Special Verification Officer) who is the head of the unit; a Deputy Director of Analysis with a staff of 8 analysts; a Deputy Director of Inspection with a staff of 6 inspectors, an economic analyst; a secretary responsible for record-keeping; a secretarial pool of three; a Legal Advisor; a data processing team comprising two systems engineers. This amounts to a total staff of 25, made up of public accountants and auditors, lawyers and notaries public, systems engineers and economists, many with postgraduate degrees. They have experience, inter alia, in: supervision of financial institutions and insurances companies; offshore banking; credit card companies; banks; mercantile, economic and criminal law. The IVE has adequate resources to fulfill the functions assigned to it by the LCLDOA. The special Anti-Money Laundering Prosecution Unit has a staff of 24, organised as follows: 1 prosecutor, who is the head of the section; 4 *agentes fiscales*, 8 *auxiliares fiscales*, 10 *oficiales*, one administrative secretary. The budget of the section for the year 2004 was originally US $493,700.00; however, owing to the increase of its staff from 13 to 24, a supplementary budget of about US $19,600.00 per month was approved, of which US $157,000.00 had been committed by August 2004.

53. This prosecution unit is part of the Ministerio Público, and is therefore supported by its technical, professional, laboratory, transport and logistic resources. There are three court districts with competence in the area of money laundering; the Chiquimula regional court, the Quetzaltenango regional court and the eleventh criminal, narcotics and environmental court of first instance with its jurisdiction in the capital city. Each one of these districts has a criminal tribunal, which in the case of the capital city is the Third Criminal Court. In addition, in the capital the first Chamber of the Criminal Appeals Court hears money laundering appeals. The above structure is governed by Agreements of the Supreme Court of Justice Nos. 8-2000, 42-2004, 19-2004 and 39-2004. The judiciary has a budget of US $97.5 million. The Court system in Guatemala seems to have sufficient resources to fulfill its role.

Recommendations and Comments

1) Guatemala is recommended to conclude the respective legislative procedures, by passage through Congress of the corresponding Anti Terrorism Legislation.

Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II

FATF Rec No 1	Compliant
FATF Rec No 4	Compliant
FATF Rec No 5	Compliant
FATF SR I	Largely compliant (1999 UN Convention for Suppression of Financing of Terrorism ratified, UN Resolution 1373 not yet fully implemented)
FATF SR II	Non-compliant (FT legislation not yet promulgated)

Confiscation of proceeds of crime or property used to finance terrorism

Description

54. Article 8 of the LCLDOA provides for confiscation of property. This has been put into effect in lower court verdicts. Article 9 of the Draft Law against FT also provides for confiscation. Criterion 7.1: Articles 11 and 12 of the LCLDOA state: Art. 11: that the judge or tribunal hearing the case may at any time order, without previous notification or hearing, any precautionary measure or guarantee provided in the law for the purpose of maintaining the availability of the property, products or instruments that are the proceeds of or are connected with money laundering, at the request of the Ministerio Público. This request must be considered and confirmed immediately by the judge or tribunal. Article 12 stipulates that if there is danger of removal, the Ministerio Público may order the seizure, embargo or blockage of property, documents or bank accounts, but must immediately make a request for judicial confirmation, accompanied by an inventory and an indication of their location. If the judge or tribunal does not confirm the precautionary measure, the goods, documents or bank accounts are automatically ordered to be returned.

55. The competent authorities are empowered to freeze goods temporarily, observing the presumption of innocence embodied in Article 14 of the Guatemalan Constitution. Article 8 of the LCLDOA stipulates that goods, instruments or products used in or derived from money laundering may be confiscated. In addition, Article 60 of the Penal Code stipulates that when use of the objects is prohibited or they are not part of legal commerce, confiscation shall be permitted even though no crime is declared to have taken place or the guilt of the accused has not been established.

56. It is feasible for the Guatemalan authorities to identify and follow up property that may be subject to confiscation or that are suspected to be the proceeds of crime. In this regard, Article 28 of the LCLDOA stipulates that regulated persons shall provide the IVE with information requested by the latter in the form and within the periods specified by the regulations. It further stipulates that violation of any kind of contractually or legally imposed confidentiality cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it. Article 33 (a) states that the IVE may request and/or receive from regulated entities any information related to financial, commercial or business transactions that may relate to the offence of laundering of money or other assets. Article 34 requires all public or private entities to provide all cooperation requested by the IVE for the enforcement of the Act. Article 35 stipulates that the Ministerio Público, the IVE or any other competent authority may provide or receive administrative assistance from the competent authorities of other countries to assist them in fulfilling the purposes of the Act.

57. As regards other competent authorities, Articles 11 and 12 of the LCLDOA provide for precautionary measures. The National civil Police, through the Anti-Narcotics Analysis and Information Service (SAIA), may identify and track down proceeds of crime o the basis of Article 112 of the Penal Code, which stipulates that the police on their own initiative, in response to a report or on the orders of the Ministerio Público, shall, inter alia, assemble the investigative elements necessary for laying a charge.

58. The Regulations for the Organisation of the National civil Police, Government Agreement No. 402-2002, confer on the **Anti-Narcotics Analysis and Information Service (SAIA),** inter alia, the following specific duties:
a) to collaborate with the competent authorities in the investigation, collection and receipt of information on the crimes of drug trafficking and money laundering;

b) to analyse the information obtained to determine the existence of suspicious transactions or operations related to drug trafficking and money laundering.

59. Article 16 of the LCLDOA stipulates that the measures and penalties referred to in Articles 11 and 12 shall apply without prejudice to the rights of third parties in good faith. Article 17 of the LCLDOA provides for return of property in custody, for which the judge or tribunal seized of the case may order the return, as property on deposit during the trial, to the claimant of the goods, products or instruments of legal commerce once it has been established *en la via incidental* (in the course of the trial then in progress) that:
    c) the petitioner has legitimate rights with regard to the goods, products or instruments;
    d) the petitioner can not be charged with any kind of participation, collusion, or involvement in the money laundering offences being tried.
    Articles 18 and 57 of the Narcotics Act also protect the rights of third parties of proven good faith.

60. **With regard to civil contracts,** Article 1301 of the Civil Code, Decree Law No. 119-96 of the Congress of the Republic, declares a legal business transaction to be null and void if its purpose is contrary to public order or expressly forbidden by law, or through absence or incompatibility of the basic requirements of its existence. Transactions that are null and void are without effect if they are subject to re-validation by confirmation. In addition, Article 102 of the same legal instrument stipulates that nullity may be declared ex officio by a judge when it is manifest. It may also be alleged by interested parties or by the Ministerio Público.

61. With regard to administrative contracts in which a government entity is a party, Article 20 of the Administrative Disputes Act, Decree No. 119-96 of the Congress of the Republic, confers on the President of the Republic the authority to declare that a given contract is harmful to the interests of the State; this declaration must take the form of a Government Agreement issued in the Council of Ministers. Such declaration of nullity may be made within three years of the date of the contract concerned.

62. The Ministerio Público, as part of its administrative policies and procedures, keeps statistics, and this applies to its Anti-Money Laundering Prosecution Service. The Anti-Money Laundering Prosecution Service, the Judiciary and the National Police have received training in money seizure procedures from the Narcotics Affairs Section of the US Embassy in Guatemala. Regarding training, Article 37 of the LCLDOA states that the fines administratively imposed for non-compliance with the Act shall be collected by the Superintendency of Banks, which shall apply fifty per cent (50%) to training of the staff of the IVE, and the other fifty per cent to increase its budget.

63. At the present time terrorism is criminalised by Article 391 of the Penal Code, Decree No. 17-73 of the Congress of the Republic. This means that although Guatemalan law does not contain any provision specifically governing freezing of terrorist funds, such action can in fact be taken in specific cases by reference to Articles 278 of the Penal code, Decree no. 51-92 of the Congress of the Republic, and 530 of the Civil and Mercantile Code, Decree Law 107 of the Head of government. Under these dispositions a competent judge, at the request of the Ministerio Público, could order an emergency precautionary measure, in the course of a terrorism trial, to embargo goods and other resources, including funds deposited in bank accounts. This measure would have the same effect as freezing of funds, since once the embargo comes into force, the account holder would be unable to use the funds.

64. Regarding ML prevention, Article 12 of the LCLDOA, Legislative Decree no. 67-1002, stipulates that the Ministerio Público may order, where there is danger of removal, the seizure, embargo or blockage of property, documents and bank accounts. Such order must be immediately validated by a

competent judge or tribunal. Article 12 of the draft Law for the Prevention and Repression of the Financing of Terrorism grants similar powers to the Ministerio Público.

65. Article 20 of the draft Law for the Prevention and Repression of the Financing of Terrorism grants the IVE powers similar to those it exercises in ML prevention. As a Financial Intelligence Unit it would therefore be able to detect funds linked to terrorism financing. Article 12 of the Draft Law contains provisions related to this criterion, by virtue of which a competent judge or the Ministerio Público, where there is danger of removal, may order the freezing of assets connected with the financing of terrorism. At present Article 391 of the Penal Code, Decree no. 17-73 of the Congress of the Republic, criminalises terrorism. Consequently, in the course of a trial for this offence, a competent judge may order the relevant precautionary measures, including embargo of property according to the circumstances of the case, under Article 278 of the Penal code, Decree no. 51-92 of the Congress of the Republic.

66. Article 213 of the Constitution of the Republic of Guatemala states:
"Funds derived from the administration of justice belong exclusively to the Judicial Organ, and the Supreme Court of Justice is responsible for their investment."
The Supreme Court therefore has the authority to decide, at its discretion, how such funds are to be invested. They may therefore be used for management of the detained and confiscated property, or else for other socially beneficial purposes.

Analysis of effectiveness

67. Regarding freezing of assets (criterion 7.1) the Ministerio Público and the courts have frozen and blocked bank accounts in specific cases. An example of the effectiveness of this procedure is the fact that, following a report by the IVE, the competent authorities froze approximately 50 million quetzals, equivalent to US $ 6.3 million, on the same day the report was made. Regarding confiscation of property, court sentences have ordered this on two occasions. Civil confiscation is provided for in the draft Law for the Prevention and Repression of the Financing of Terrorism.

68. When the IVE has requested information from regulated persons, public records, State entities, independent bodies and private businesses, the information has usually been forthcoming. In cases where it has not, the process of sanction has been duly initiated. The Ministerio Público has requested the freezing or blockage of bank accounts. The freezing has taken place and the requests have been validated by the courts.

69. On the basis of the UN Security Council lists, the Superintendency of Banks has consulted the financial system to determine whether the persons or entities on the lists have business with the banks authorised to operate in the country. To date no financial movements by these persons or entities have been detected. It has not therefore been necessary for the authorities to order any funds to be frozen. It is considered that should any of the persons on the UN Security Council lists be discovered to have assets or resources in our financial system, Guatemala has a legal framework that would enable such funds to be frozen.

70. It is considered that the measures established in the Draft FT Law give sufficient powers to the competent authorities to permit, in practice, detection and freezing of terrorist funds. These measures are analogous to those in the AML law, which have been effectively applied in Guatemala. Even though Guatemalan law contains no provision for creation of a confiscation fund, it is considered that the constitutional provision assigning funds derived from the administration of justice to the Judicial Organ is adequate, since it strengthens the rule of law, and the Supreme Court can decide how to invest the confiscated assets, which can be put to socially beneficial use. The

Almacén Judicial (court depository) is responsible for the custody, conservation and, where appropriate, sale of lawfully tradeable movable property connected to acts that have given rise to judicial action.

71. Although Guatemalan legislation contains no express provisions for sharing confiscated assets with other jurisdictions, it is considered that the constitutional provision assigning funds derived from the administration of justice to the Judicial Organ is adequate, since the Supreme Court can decide how to invest confiscated assets.

Recommendations and comments

1) Passage of the Bill for the Prevention and Repression of the Financing of Terrorism.

Implications for compliance with FATF Recommendations 7, 38, SR III

FATF Rec No 7	Compliant
FATF Rec No 28	Compliant
SR III	Non-compliant (FT legislation not passed)

The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels

Description

72. The IVE is a Financial Intelligence Unit, and as such it receives, analyses and distributes financial information to the Ministerio Público on transactions in which there is evidence of money laundering. It also exercises the same functions on information requested by the Ministerio Público and competent judges. Article 33 (b) of the LCLDOA stipulates that the functions of the IVE include analysing information obtained in order to confirm the existence of suspicious transactions and money laundering operations or patterns of operations.

73. Article 26 of the LCLDOA requires regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these. As regards monetary transaction, Article 24 of the Act requires regulated persons to keep a daily record, on the forms designed by the IVE for the purpose, of all cash transactions, occasional or regular, in national or foreign currency, in excess of ten thousand US dollars or the equivalent in national currency. Multiple cash transactions in local or foreign currency exceeding in aggregate the amount established in this article shall be considered as a single transaction if they are affected by or in the benefit of the same person in a single day.

74. The Superintendency of Banks, through the IVE, in official communication no. 2012-2002 of 13 May 2002, transmitted to regulated persons a list of **"Warning Signs for Detection of Unusual Transactions"**. This list is solely a series of examples useful in the detection of possible unusual or suspicious transactions, and will be periodically revised and updated by the IVE.

75. The Regulations of the LCLDOA Article 16 of the Regulations of the LCLDOA sets out the procedure for reporting suspicious transactions to the Superintendency of Banks through the IVE. To detect and prevent suspicious transactions each regulated entity must develop warning signs,

taking into consideration those which the Superintendency of Banks makes known through the issue of circulars in the media it considers convenient. For suspicious transaction reporting by regulated entities, the Superintendency of Banks, through the IVE, designed Form IVE-04.

76. The IVE is authorised to obtain from regulated persons the information it needs to facilitate the analysis of financial transactions. Article 28 of the LCLDOA stipulates that regulated persons shall provide the IVE with information requested by the latter in the form and within the periods specified by the regulations, with regard to data and documentation referred to in previous articles, for the purposes of the Act.

77. When an entity required to provide the information cannot do so within the time period specified by the IVE, it may, with due advance notice, request an extension, explaining the reasons for the request, and the request must be decided upon before the end of the original time period. Violation of any kind of contractually or legally imposed confidentiality cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it.

78. The IVE has ample powers to obtain timely access to the financial, administrative or other information needed for adequate performance of its functions. The final paragraph of Article 34 of the LCLDOA requires all public or private entities to provide all cooperation requested by the IVE for the enforcement of the Act. Article 35 stipulates that the IVE or any other competent authority may provide or receive administrative assistance from the competent authorities of other countries to assist them in fulfilling the purposes of the Act.

79. As pointed out under the preceding criterion, Article 28 of the LCLDOA stipulates that regulated persons shall provide the IVE with information requested by the latter in the form and within the periods specified by the regulations, with regard to data and documentation referred to in previous articles, for the purposes of the Act. Violation of any kind of contractually or legally imposed confidentiality cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it.

80. Article 63 of the Banking and Financial Groups Act stipulates that save for the obligations and duties laid down by the anti-money laundering laws and regulations, the directors, managers, legal representatives, officials and employees of banks may not provide any natural or legal person with information in any form tending to breach the confidential nature of the identities of depositors in banks, financial institutions or entities of financial groups, as well as information provided by private persons to these institutions. This article enables information to be obtained from banking institutions and from member institutions of a financial group, in investigations under the AML laws and regulations.

81. Article 31 of the LCLDOA establishes the liability of the regulated persons referred to in Article 18 for non-fulfilment of their obligations under the Act, and provides for fines to be imposed by the competent administrative authority in amounts from ten thousand to fifty thousand US dollars (US $10,000.00 – $50,000.00) or the equivalent in national currency, depending on the seriousness of the case. They are also required to fulfil the neglected obligation that gave rise to the fine, without prejudice to any criminal liability that might arise therefrom. Among the powers conferred on the IVE by the LCLDOA, Article 33 (g) gives it the power to impose administratively on regulated persons pecuniary fines in keeping with the failure in compliance. For this purpose, Agreement No. 43-2002 of the Superintendency of Banks, published in the Official Journal of 18 July 2002,

established the Scale of Penalties, which sets the fine to be imposed in each case, thereby providing objective guidelines for pecuniary sanctions.

82. Among the functions of the IVE, Article 33 (e) of the LCLDOA states that when there are indications of the commission of a crime, it must make the pertinent report to the competent authorities, indicating and providing the evidence in its possession or knowledge. Sub-paragraph (f) states that it must provide the Ministerio Público any assistance requested in analysing such information, and collaborate in the investigation of acts and offences related to money laundering.

83. Among the functions of the IVE, Article 33 (d) of the LCLDOA requires it to exchange with counterpart agencies in other countries information for the analysis of ML related cases, subject to signing memoranda of understanding or other cooperation agreements with those agencies. The memoranda of understanding stipulate that the information exchanged may not be shared with other entities, without the written authorisation of the FAU providing it. It is also stipulated that the confidentiality of the information shall be maintained; at least to the extent that confidentiality of information related to money laundering is maintained in the receiving country.

84. Article 33 (c) of the LCLDOA establishes that one of the functions of the IVE is to produce and maintain registers and statistics necessary to comply with its functions.

85. Under Article 32 of the LCLDOA and Article 24 of its Regulations, the IVE is part of the organisational structure of the Superintendency of Banks. Therefore the Superintendent of Banks is its hierarchical chief. The budget of the IVE for 2004 is US $2.2 million. It staff is as follows: The *Intendente de Verificación Especial* (Special Verification Officer) who is the head of the unit; a Deputy Director of Analysis with a staff of 8 analysts; a Deputy Director of Inspection with a staff of 6 inspectors, an economic analyst; a secretary responsible for record-keeping; a secretarial pool of three; a Legal Advisor; a data processing team comprising two systems engineers. This amounts to a total staff of 25, made up of public accountants and auditors, lawyers and notaries public, systems engineers and economists, many with postgraduate degrees. They have experience, inter alia, in: supervision of financial institutions and insurances companies; offshore banking; credit card companies; banks; mercantile, economic and criminal law.

86. The orgnaisational structure of the IVE is enables it to perform its functions appropriately. Its position within the structure of the Superintendency of Banks provides it with sufficient independence and authority to remain free of unauthorised external influences in its functions and decisions, and to ensure that the information and intelligence in its possession remain securely protected, and are distributed solely according to law, since the physical location of its premises makes them secure. The IVE has not yet published periodic reports on its activities, including statistics, typologies and trends.

Analysis of effectiveness

87. **The legal provisions are effective**. But in 2001 the IVE received 45 STRs, in 2002 427, in 2003 476, and 266 up to September 2004. There is obviously a drop, which can be explained by the training imparted by the IVE to the regulated persons; anything else would mean that the regulated entities are not reporting adequately. Likewise, in 2002 3 cases relating to 18 STRs were sent to the Ministerio Público; in 2003, 2 cases relating to 21 STRs; and up to September (2004) 5 cases related to 29 STRs. In this regard it should be mentioned that the IVE has a very efficient computer system that acts as a filter and classifies the STRs according to indications of money laundering. Reports classed as A and B are intensively analysed, those classed as C and D are temporarily filed, but may be reactivated should more information come to light to suggest money laundering.

88. Since the coming into force of the LCLDOA, the regulated persons have provided the additional documentation and information required for analysis of STR's that have been reported, or the information requested by other entities such as the Ministerio Público. In cases where the information has not been supplied, the process of administrative sanction prescribed by Article 31 of the LCLDOA and 33 of the Regulations has been duly initiated. The information requested from regulated persons, other State agencies or private businesses has usually been supplied. In cases where the information has not been forthcoming, the process of administrative sanction has been duly initiated against the offending institution.

89. To date the Superintendency of Banks, pursuant to the Act and the principle of due process, has granted 10 audiences to regulated persons considered to have failed to comply with their obligations under the Act. Consequent upon this, to date 7 resolutions have been issued confirming the infraction and imposing the corresponding fine. The total amount of these fines is US $95,000.00. Eight cases in which there were indications of money laundering have been forwarded to the Ministerio Público, together with all the evidence that could be assembled. In addition, the agency has collaborated with the Ministerio Público in responding to requests for information from various prosecutors, through the Anti-Money Laundering Prosecution Service, on 200 occasions, including instances involving information obtained from the IVE's counterparts under memoranda of understanding.

90. Memoranda of understanding have been signed with 18 FAUs in as many countries, based on the Egmont Group's model. The countries are: : El Salvador, Panama, Colombia, Montserrat, Dominican Republic, Brazil, Bolivia, Honduras, Spain, Mexico, Venezuela, Argentina, Barbados, Costa Rica, Bahamas, Peru, Belgium and Korea. These memoranda were signed in accordance with the Egmont Group standard. Negotiation of memoranda of understanding with the FAUs of the USA and France has been concluded, and the memoranda, duly signed by the Superintendent of Banks, have been sent to those countries signature. They are expected to enter into force soon. Memoranda of understanding are being negotiated with theFAUs of the following countries: Haiti, British Virgin Islands., Thailand, Canada, Nicaragua, Russia, China and Uruguay. On the basis of these memoranda the Superintendency of Banks has responded to 22 requests for information, and 30 requests for information exchange have been made. The requests for information and the provision of information to other FIUs have taken place according to the Egmont Group principles for exchange of information.

91. Statistics are at present kept on: a) number of STRs received, number of STRs analysed, number of STRs filed, number of STRs under investigation, number of STRs converted into cases and forwarded to the Ministerio Público for police and criminal investigation b) number of requests for information from Ministerio Público c) number of requests for information from other FAUs d) number of requests for information from the IVE to other FAUs e) records of transactions of US $10,000.00 and above or the equivalent in national currency remitted by regulated persons, among others. The IVE has been fully functional since May 2002 and has forwarded to the Ministerio Público eight duly analysed cases in which indications of money laundering were found. It has also performed the other functions set out in the LCLDOA.

Recommendations and comments

1) It is important to seek out the reasons for the low proportion of cases arising out of STRs forwarded to the Ministerio Público, since it is only 6% of the cases reported by the regulated persons (only 68 STRs out of 1,214), since this could mean that information the Ministerio Público might consider as calling for a money laundering investigation is being overlooked.

2) It is important to note that in addition to the forwarding of cases to the Ministerio Público, the Superintendency of Banks, through the IVE, supplies it with ample information relating to money laundering. In this regard, during 2004 the IVE received129 requests form information from the Ministerio Público, related to 566 persons.

3) It would be important for the regulated persons to receive feedback from the IVE about their STRs, with regard to both their quality and the process followed. This would on the one hand help to ensure that the legal process was being followed, and on the other, throw light on any errors being committed by the regulated persons.

Implications for compliance with FATF Recommendations 14, 28, 32

FATF Rec No 14	Compliant
FATF Rec No 28	Compliant
FATF Rec No 32	Compliant

Law enforcement and prosecution authorities, powers and duties

Description

92. The Ministerio Público is responsible for carrying out investigations into money laundering, under Articles 251 of the Constitution, 107, 181 and 309 of the Penal Code, and 1 of the Organic Law of the Ministerio Público, Decree No. 40-94 of the Congress of the Republic. It is assisted by the National Civil Police and the IVE, as specified by article 33 (f) of the LCLDOA. Within it there is a Prosecution Unit specialising in money laundering.

93. The Ministerio Público is responsible for carrying out investigations into money laundering, under Articles 251 of the Constitution, 107, 181 and 309 of the Penal Code, and 1 of the Organic Law of the Ministerio Público, Decree No. 40-94 of the Congress of the Republic. The Ministerio Público has a specific department entitled *Dirección de Investigaciones Criminalísticas* (DICRI) created by Article 40 of the Organic Law of the Ministerio Público. It also has a Prosecution Unit specializing in money laundering. The Ministerio Público has the operational support of the National civil Police, under Article 10 (a) of the National Civil Police Act, Decree No. 11-97 of the Congress of the Republic, and Article 309 of the Penal Code.

94. The National Civil Police has a Criminal Investigation Service (SIC), and, for anti-money laundering work, an Anti-narcotics Analysis and Information Service (SAIA). Under the terms of the Regulations for Organisation of the National Civil Police, Government Agreement No. 402-2002, its specific duties are, inter alia:

a) "to collaborate with the competent authorities in the investigation, collection and receipt of information on the crimes of drug trafficking and money laundering;
b) to analyse the information obtained to determine the existence of suspicious transactions or operations related to drug trafficking and money laundering.
c) Develop and keep statistical records, based on information collected, necessary for the performance of its functions;
d) Plan strategies and actions to combat drug trafficking and money laundering;

e) Train personnel responsible for providing its services;
f) Exchange information, as permitted in internal law and international treaties and conventions on drug trafficking and money laundering, with counterpart agencies in other countries;
g) Maintain contact with other public agencies concerned with the offences of drug trafficking and money laundering;
h) Such other functions as may be assigned, relating to drug trafficking and money laundering".

95. Regarding ML prevention, Article 28 of the LCLDOA stipulates that regulated persons shall provide the IVE with information requested by the latter in the form and within the periods specified by the regulations, with regard to data and information referred to in Articles 19 to 27 of the LCLDOA. Violation of any kind of contractually or legally imposed confidentiality cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the LCLDOA or the regulations governing it. Article 63 of the Banking and financial Groups Act enables information to be obtained from banking institutions and from member institutions of a financial group, in investigations under the AML laws and regulations.

96. Under Article 319 of the Penal code, the Ministerio Público may demand information from any public official or employee. To obtain information from individual or legal persons, the Ministerio Público must request the approval of a competent judge, who can authorise the provision of the information requested.

97. Appropriate mechanisms exist for collaboration and exchange of information among the various public agencies responsible for combating money laundering (IVE, MP, Law Courts) in investigations into ML and other offences.

98. The special Anti-Money Laundering Prosecution Unit has a staff of 24, organised as follows: 1 prosecutor, who is the head of the section; 4 *agentes fiscales*, 8 *auxiliares fiscales*, 10 *oficiales*, one administrative secretary. The budget of the section for the year 2004 was originally US $493,700.00; however, owing to the increase of its staff from 13 to 24, a supplementary budget of about US $19,600.00 per month was approved, of which US $157,000.00 had been committed by August 2004. This prosecution unit is part of the Ministerio Público.

99. The judicial organ is responsible for trials and enforcement of judgements, as stipulated by Article 203 of the Constitution. These functions are performed through justices of the peace, lower court judges, *tribunales de sentencia*, chambers of the appeal court, the supreme court of justice and the *juices de ejecución* (Article 43 of the Penal Code). In Agreement 42-2002, the Supreme Court assigned to various court districts and tribunals competence to hear money laundering cases.

100. There are three court districts with competence in the area of money laundering; the Chiquimula regional court, the Quetzaltenango regional court and the eleventh criminal, narcotics and environmental court of first instance with its jurisdiction in the capital city. Each one of these districts has a criminal tribunal, which in the case of the capital city is the Third Criminal Court. In addition, in the capital the first Chamber of the Criminal Appeals Court hears money laundering appeals. The above is governed by Agreements 8-2000, 42-2002, 4-2004, 19-2004 and 39-2004 of the Supreme Court of Justice. The Guatemalan authorities state that the courts have the necessary human, physical and technical resources.

101. The Judicial Organ has a National Centre of analysis and documentation, Agreement no. 37-2002 of the Presidency of the Judiciary, which keeps statistics on sentences.The Penal Management Administration Centre, Agreement no. 65-98 of the Supreme Court of Justice, manages the flow of incoming cases and assigns them to the court districts of the capital city. In addition, it is possible to obtain statistical information on final verdicts in the *juzgados de ejecución,* which maintain control at national level, the first with odd numbers and the second with even numbers.

102. The Ministerio Público, as part of its administrative policy and procedures, keeps statistics on its work. This also applies to the special prosecution service. In the IVE statistics are at present kept on numbers of STRs received, analyzed and processed by judicial authorities.

103. Article 25 of the LCLDOA Regulations mandates notification of new patterns of money laundering. In cases in which, on the basis of analysis of the information obtained, of internationally known patterns, and of communications received from specialised agencies, the existence of patterns of money laundering is determined, the Superintendency of Banks, through the IVE, must inform the regulated entities, by such means as it considers convenient, of the new money laundering techniques, so that they may take appropriate preventive measures. Furthermore, the Superintendency of Banks, through the IVE, may instruct regulated persons, by whatever means it considers appropriate, on new measures they must implement, within the scope of the relevant legislation, to prevent their institutions being used for money laundering.

104. The IVE has a training programme for 2004 that includes local and international training. However, the Police and the Prosecution Service do not, despite the fact that the latter agency has received training for its staff.

105. Article 11 of the LCLDOA governs the precautionary orders or measures designed to preserve the availability of the property, products or instruments that are the proceeds of or are connected with money laundering. Such orders must be requested by the Ministerio Público from the judge or tribunal hearing the case. Article 12 of the same Act stipulates that if there is danger of removal, the Ministerio Público may order the seizure, embargo or blockage of property, documents or bank accounts, but must immediately make a request for judicial confirmation.

Analysis of effectiveness

106. Except for the National civil Police, the Ministerio Público and all other administrative bodies in this field comply satisfactorily with the FATF requirements. The public security and/or investigation authorities provided no information on the use and control of special investigative techniques.

107. Regulated persons must provide the IVE with information requested by the latter in the form and within the periods specified by the regulations, with regard to data and documentation referred to in articles 19-27 of the LCLDOA. Furthermore, they cannot use violation of any kind of contractually or legally imposed confidentiality as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it.

108. Interagency collaboration (IVE, MP, courts) in investigation of money laundering and other crimes is satisfactory. The Prosecution Service and the judiciary have adequate technical, human and financial resources, but not the police. It is therefore considered that the police do not tackle their job adequately. All the agencies interviewed keep statistics on the cases they handle, except the National Civil Police.

109. Despite the fact that notification of new ML patterns is mandatory (Art. 25 of the LCLDOA Regulations) no typology exercises were observed to exist, especially among the IVE-prosecution service-police-courts. It was learned that the Ministerio Público has received training, but the police have not. It was observed that the officials of the Judicial Body dealing with money laundering follow international criteria for the correct enforcement of the LCLDOA. Guatemala has adequate legal tools for bringing suspects to trial (preventive detention) and for identifying and securing property linked to crimes (precautionary measures relating to goods as opposed to persons).

Recommendations and comments

The police should be more closely incorporated into ML and FT investigations.

If in fact the use of special investigative techniques is not part of the law, the Guatemalan authorities should take the necessary measures.

The work done by the IVE with regard to this criterion, in requesting information from regulated entities, processing it and forwarding it to law enforcement agencies, is very good.

There should be a formal signed agreement among the relevant agencies to collaborate on both ML and FT.

The Guatemalan authorities should take steps to provide the police with human, technical and financial resources to enable them to operate efficiently against ML and FT.

The National Civil Police should keep statistics on their cases.

Typology exercises should be conducted, especially by the IVE, the technical and advisory body, and the enforcement agencies (prosecution-courts-police).

The National Civil Police should receive adequate training to combat this scourge, and the technical level of the prosecution service should also be raised with regard to the identification of the proceeds of crime and the seizure, freezing and confiscation of such property.

The AML enforcement agencies (prosecution service-police) should be given technical capacity to identify and execute precautionary measures, especially those relating to property).

Implications for compliance with FATF Recommendation 37

FATF Rec No 37	Compliant

International Co-operation

Description

110. For purposes of international cooperation (cooperative investigations including controlled delivery), information exchange and mutual legal assistance, the following instruments are available:

1. Inter-American Convention on Mutual Assistance in Criminal Matters, by virtue of which the states parties provide reciprocal legal assistance in investigations, prosecutions and measures in criminal matters, with regard to crimes falling within the competence of the requesting state at the time of making the request (article 2);
2. Treaty for Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, ratified on 29 June 1997;
3. Article 18 of the Central American Convention for the Prevention and Elimination of the Laundering of Money and other Assets Connected with Illegal Drug Trafficking and Related Crimes lays down standards for international cooperation.
4. Article 34 of the LCLDOA stipulates that the Ministerio Público, the IVE or any other competent authority may provide or receive assistance from the competent authorities of other countries in order to facilitate legal investigations or measures in relation to the offences referred to in the Act.
5. Article 63 of the Narcotics Act provides for mutual assistance. In order to facilitate legal investigations and measures relating to the offences specified in the Act, the MP and the competent legal authorities may give and request international assistance.
6. Articles 388 to 393 of the Code of Private International Law deal with letters rogatory or rogatory commissions.
7. Among the functions of the IVE, Article 33 (d) of the LCLDOA requires it to exchange with counterpart agencies in other countries information for the analysis of ML related cases, subject to signing memoranda of understanding or other cooperation agreements with those agencies.
8. Memoranda of understanding have been signed with 18 FAUs in as many countries, based on the Egmont Group's model. The countries are: : El Salvador, Panama, Colombia, Montserrat, Dominican Republic, Brazil, Bolivia, Honduras, Spain, Mexico, Venezuela, Argentina, Barbados, Costa Rica, Bahamas, Peru, Belgium and Korea.

111. Up to now, criminalisation of ML has not been a factor substantially affecting the capacity of the authorities to provide mutual legal assistance, since ML criminalisation follows international standards.

112. Negotiation of memoranda of understanding with the FAUs of the USA and France has been concluded, and the memoranda, duly signed by the Superintendent of Banks, have been sent to those countries signature. They are expected to enter into force soon. On the basis of these memoranda the Superintendency of Banks has responded to 22 requests for information, and 30 requests for information exchange have been made.

113. By means of Government Agreement No. 402-2002 of the President of the Republic, the Anti-Narcotics Analysis and Information Service (SAIA) was created as part of the National Civil Police, with the mandate to compile, analyse and exchange all information necessary for preventing and combating money laundering. In this regard, sub-paragraph (f) of the abovementioned Government Agreement mandates the SAIA, among its other functions, to exchange information, as permitted in internal law and international treaties and conventions on drug trafficking and money laundering, with counterpart agencies in other countries.

114. Article 8 of the LCLDOA stipulates:
"For the purposes of this Act confiscation consists of the loss, ordered in the verdict, in favour of the State of goods, instruments or products used in or derived from the commission of the offence of money laundering, unless they are the property of a third party not guilty of the act.

When use of the articles referred to is legally prohibited, or they are not legally tradeable, their confiscation shall be ordered even though the commission of the crime or the guilt of the accused has not been established, or the author if the crime is unknown".

Guatemala is a party to Central American Convention for the Prevention and Elimination of the Laundering of Money and other Assets Connected with Illegal Drug Trafficking and Related Crimes, Articles 5, 7 and 8 of which governs the confiscation and disposal of seized property. The second paragraph of Article 213 of the Constitution of Guatemala states that funds derived from the administration of justice belong exclusively to the Judicial Organ, and the Supreme Court of Justice is responsible for their investment**.** The LCLDOA contains no express provisions for sharing confiscated assets with other countries.

115. In Article 27 of the Constitution of the Republic of Guatemala stipulates that extradition is governed by the provisions of international treaties. In the case of money laundering, Article 3 of the LCLDOA provides for active and passive extradition when this crime is committed. In Guatemala money laundering is not considered a political offence, so extradition of persons accused of it would be feasible.

116. Regarding negotiation of refuge for terrorists, Article 4 of the Regulation for the Protection and Determination of Refugee Status on the Territory of the State of Guatemala, Government Agreement 383-2001 of the President of the Republic, states:

"*Refugee status may not be granted to a person who finds himself in any of the following situations:*
a) Having committed a crime against peace, a war crime or a crime against humanity, as defined in international treaties and conventions
b) having committed a serious common crime, outside of Guatemalan territory; and
c) being guilty of acts contrary to the purposes and principles of the United Nations".

117. The Immigration Act, Decree no. 95-98 of the Congress of the Republic, states:
"*All matters concerning beneficiaries of asylum, refugees and exiles shall be governed by the Conventions, Treaties, and any international arrangement to which Guatemala may be party, and they shall be considered temporary residents for all immigration purposes. Persons in this situation must request permission to leave the national territory, on the understanding that failing to make such request will deprive them of the status of refugee or beneficiary of asylum, as the case may be. Upon losing the said status, the person concerned shall become subject to the ordinary immigration laws. However, the time spent by the person in the country as a refugee, beneficiary of asylum or exile shall count in his favour for purposes of obtaining permanent residence".*

118. In addition, Article 33 of the Immigration Act, Government Agreement no. 529-99 of the President of the Republic, states:
"Eligibility of Refugees, Beneficiaries of Asylum and Exiles. The status of refugee, beneficiary of asylum or exile shall be determined by the Ministry of Foreign Affairs in accordance with the provisions of international conventions and treaties on the subject, and where applicable, by the rules approved by the competent authorities for determining his eligibility".

119. "The Immigration Department shall permit entry to a foreigner who requests admission to the national territory for reasons of persecution or the causes specified in the relevant regulations as requirements for qualification to apply for the status of refugee, beneficiary of asylum or exile, the Department shall record the application in the Register of persons requesting asylum or refugee status: shall hand over the person to the Ministry of Foreign Affairs or to whomever shall have been designated for the purpose by that Ministry; and shall grant the status of temporary resident in the capacity of refugee, asylum beneficiary or exile, after having received notification from the Ministry of Foreign Affairs. In case of denial, the Immigration Department shall proceed to expel the person concerned from the national territory. Refugees, asylum beneficiaries and exiles must apply to the Immigration Department for a visa."

120. Regarding extradition procedures, Article 13 of the draft Law to Prevent and Suppress the Financing of Terrorism, which is now before the Congress, stipulates that the offences referred to in the Act shall be cause for active or passive extradition in accordance with the Constitution, the international treaties to which Guatemala is a part, and the laws in force. Article 14 of the Draft states that the competent authorities of Guatemala shall deny refugee status or asylum to persons who are guilty of the offence of financing of terrorism or who have knowingly collaborated in its commission.

121. As regards financial resources, the Superintendency of Banks has allocated to the IVE a budget of US $2.2 million for 2004. IVE has a professional staff of 25. In addition, 50% of the administrative fines imposed must be allocated for training IVE staff, and the remaining 50% will be used to augment the budget of the Superintendency.

122. Regarding technical resources, a data network and a wired network centre have been designed specifically for the IVE. This network is protected against unauthorised access by a Cisco 535 Firewall which serves as moderator of access to and from the various stations with which the IVE maintains links. In addition there is a complete register of event logs embodying information on all searches made in the applications, the user who made the search, the date, hour, activity performed, etc

123. Implementation of the technological platform took place in three phases:
    - First phase: infrastructure and **technological services** of the Superintendency were separated from those of the IVE
    - Second phase: analysis, design, development and implementation of the IVE's data system was worked on
    - Third phase: Once the technological platform of the IVE was consolidated, computer security was strengthened, processes capable of being computerised were continually evaluated, and contacts were activated with other institutions considered as potential sources of data for the IVE's investigations.

124. It is important to note that one of the data processing tools that contributed to the graphic analysis of STRs, the management of large volumes of information and work with data bases, as well as extraction of information and display of the results for the benefit of the IVE analysts, is **ANALYST'S NOTEBOOK,** which was donated to the IVE by the US Embassy.

125. Regarding the Ministerio Público, the special Anti-Money Laundering Prosecution Unit has a staff of 24, organised as follows: 1 prosecutor, who is the head of the section; 4 *agentes fiscales,* 8 *auxiliares fiscales,* 10 *oficiales,* one administrative secretary. The budget of the section for the year 2004 is US $493,700.00, not including the increase of its staff this year from 13 to 24.

Analysis of effectiveness

126. Guatemala has requested and received information from the Central American countries and Panama in 29 ML cases. Guatemala has requested and received information from the Central American countries and Panama in 29 ML cases. It is considered that the powers granted to the SAIA enable the Guatemalan public security authorities to exchange information with their foreign counterparts. In addition, it should be mentioned that the Ministerio Público as the agency responsible for criminal prosecutions has exchanged information with its counterparts in Central America, Panama and Colombia.

127. On the basis of existing laws and regulations, Guatemala provides the international cooperation requested of it in investigations. There is coordination among authorities responsible for capture and confiscation. There have so far been no cases of active or passive extradition for ML. Guatemalan law contains provisions for denying refuge to individuals accused of terrorism, and extradition procedures exist.

128. The Superintendency of Banks, through the IVE, has done its job effectively, analysing information received from regulated entities and other sources. This has enabled it to forward to the Ministerio Público eight cases in which there were indications of money laundering. The Superintendency of Banks, through the IVE, has forwarded to its counterparts the information requested by them, as noted under Criterion 22.

Recommendations and Comments

1) Sharing of confiscated funds with other countries is not possible under the present constitutional disposition.

Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V

FATF Rec No 3	Compliant
FATF Rec No 32	Compliant
FATF Rec No 33	Compliant
FATF Rec No 34	Compliant
FATF Rec No 37	Compliant
FATF Rec No 40	Compliant
SR I	Largely compliant (1999 UN convention for suppression of financing of terrorism ratified; UN Resolution 1373 not yet implemented).
SR V	Materially non-compliant (international cooperation in criminal matters and terrorist acts but CFT legislation not promulgated).

Assessing Preventive Measures for Financial Institutions

General Framework

Description

129. Article 28 of the LCLDOA requires regulated persons to provide the competent authorities with the information they require, and that they may not refuse. At the same time Article 63 of the Banking and Financial Groups Act stipulates that bank officials may not provide any information tending to breach the confidential nature of the identities of their customers, except for information they are required to provide to the Currency Board, the Bank of Guatemala and the Superintendency of Banks.

130. Under Article 32 of the LCLDOA and Article 24 of its Regulations, the IVE is part of the organisational structure of the Superintendency of Banks. Therefore the Superintendent of Banks is its hierarchical chief. It is the agency charged with carrying out the objectives of, and ensuring compliance with, the Act and its Regulations, by means of the powers conferred on it, which are strictly administrative. Consequently, it is also responsible for ensuring that regulated entities comply with the laws and regulations applicable to them. As regards financing of terrorism, the Superintendency of Banks prepared a draft law to prevent and suppress the financing of terrorism, which stipulates that the Superintendency, through the IVE, shall be responsible for administratively monitoring ensuring compliance with the objectives of the law, and that for tat purpose it shall have the same functions as are conferred on it by the LCLDOA.

Analysis of effectiveness

131. The IVE issues requests to various public and private entities. As regards exchange with the Internal Revenue Department, there is cooperation within the scope of the law. However, both agencies have found it necessary to set out in writing the procedure for sharing of information, and are in the process of signing a memorandum of understanding to that effect.

132. The Superintendency of Banks, through the IVE, has carried out on site verifications of compliance by regulated institutions with AML laws and regulations. 30 on site verifications were planned for this year, 27 of which have been performed to date, as follows: 8 offshore banks, 3 cooperatives, 4 remittance houses, 2 stock-broking firms, 1 bureau de change, 1 warehousing firm, 3 bail bonding firms, 1 money-lender, 1 bank, 1 credit card issuing firm and 2 insurance companies. The results of the inspections are considered to be satisfactory. When there are deficiencies in compliance they are brought to the attention of the institutions for correction.

Recommendations and comments

1) The signing of a memorandum of understanding for exchange of information between the IVE and the Inland Revenue Department is considered beneficial to both.

2) (It is important to mention that in the month following the visit of the mission, on 26 November 2004, an Administrative Convention for Inter-Agency Cooperation was signed between the Inland Revenue Department and the Superintendency of Banks).

3) This criterion is complied with as regards money laundering, but not as regards financing of terrorism, since the corresponding law has not been passed. Nevertheless, the Superintendency of Banks, through the IVE, will be responsible for performing the functions which the law will assign to it.

Implications for compliance with FATF Recommendation 2

FATF Rec No 2	Compliant

Customer identification

Description

133. The financial institutions of the securities sector are complying adequately with the provisions of Articles 20, 21 and 22 of the LCLDOA, which stipulates that in no case may regulated institutions maintain anonymous accounts or accounts under fictitious or vague names. Article 21 of the Act stipulates in addition that the regulated institutions shall keep a special record on forms designed by the IVE. As regards Criterion 48, specifically regarding transfer of funds, there is a draft Law to Prevent and suppress the Financing of Terrorism, which in its Article 17 stipulates that in cases of systematic, substantial, wire or electronic transfers of funds, and messages relating to them, the regulated institutions must obtain adequate and meaningful information on the person originating the transfer, inside or outside the national territory, as provided in the regulations to the Act. In transfers of funds and messages related to them, this information must remain in the transfer or message throughout the chain of payment.

134. Articles 19, 21 and 22 of the LCLDOA set out the responsibilities of the regulated institutions to establish programmes to prevent the improper use of their services and products for money laundering. The must ensure awareness on the part of staff, provide their employees with training, establish auditing mechanisms, and formulate specific know-your-customer guidelines. They must also appoint management-level officials to ensure compliance with internal programmes and procedures. Anonymous accounts and accounts under fictitious or vague names are prohibited. The regulated institutions must also keep records, on forms, of physical and legal persons with whom they do business, whether these are occasional or regular clients. They must also reliably verify the identity, trade name or denomination of the person, age, occupation or social objective, civil status, domicile, nationality, legal capacity, etc. They must also take measures to obtain, update, verify and preserve information on the true identity of third parties for whose benefit an account is opened or a transaction performed.

135. Article 12 of the regulation states that when the regulated entities initiate business relations, or relations n the normal or apparent run of business, with a client, especially in regard to the opening of a new account, the performance of fiduciary operations, rental of safe deposit boxes, or cash

transactions in excess of ten thousand US dollars, they must establish mechanisms to obtain the minimum information required by the form designed by the IVE. Article 19 stipulates that the institutions must designate management-level officers to monitor compliance with internal programmes and procedures, as well as the duties imposed by the Act. Formulating and implementing KYC measures are requirements of these programmes. Article 22 also specified that the regulated institutions must take the necessary steps to obtain, update, verify and preserve information on the true identity of third parties for whose benefit an account is opened or a transaction performed. Under Article 20 of the Regulations of the Act the regulated institutions must review and, where necessary, update the information on the form for initiation of relations, at least once a year, recording in writing the date on which the revision and/or update is performed.

136. Article 21 of the Act states: "Regulated persons must keep a special record on the forms designed for the purpose by the IVE of the individual or legal persons with whom the establish relations". Likewise, in the case of foreigners, they must demand reliable proof of their legal entry and presence in the country, their immigration status and, if they are not residents, the identity of the person who will represent them legally.

137. Article 22 of Decree 67-2001 and articles 50 and 56 of the Banking and financial Groups Act lay down the policies regarding loans, investments, assessment of quality of assets, ability to pay and other procedures for accurate knowledge of customers. Article 26 of the LCLDOA requires regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these.

138. Article 21 of the LCLDOA stipulates that the regulated entities shall keep a Record of the natural or legal persons, whether occasional or regular clients, with whom they engage in business relations, and of the operations performed with these customers, especially as regards the opening of new accounts. Guatemalan law does not recognise the concept of introducer or professional intermediary for the opening of accounts. Article 19 lays down guidelines to be followed by the regulated persons in adopting, developing, and implementing programmes to prevent the improper use of their services and products for money laundering.

139. The legislation gives no guidance as to funds derived from corruption or improper use of public assets, but financial institutions, in detecting suspicious operations, have reported cases of corruption which have been forwarded by the IVE to the Ministerio Público. Article 21 of the Act and Article 12 of the Regulations stipulate that the customers must be identified and the relevant forms filled out, regardless of the type of client.

140. Article 887 of the Commercial code contains the requirements to be met by insurance firms. Also, article 18 of the LCLDOA defines regulated entities, among which insurance companies are included. Under articles 19,21 and 22 of the LCLDOA, insurance firms, as regulated persons, must comply with the obligations imposed by the Act as regards know-your-customer, and adoption and implementation of programmes, standards, procedures and internal controls to prevent the improper use of their services and products for money laundering. Article 11 of the LCLDOA Regulations requires regulated persons to maintain internal audits, and include in their procedures mechanisms for verification and evaluation of the effectiveness of and compliance with programmes, standards and procedures for ML prevention and detection.

Analysis of effectiveness

141. The financial institutions have made a considerable effort to implement the KYC policy, and they complete the IVE forms. The money-remittance firms have not implemented the forms for initiation of relations. They are in discussion with the IVE. However, remittance firs as regulated persons are required to comply with KYC policies, and the IVE has carried out 4 AML verifications. For transactions in excess of US $10,000.00, representatives of this sector state that they keep a record with full name, ID number, telephone number and other information on the person ordering the remittance.

142. The IVE has put into use in the financial system the forms for initiation of business relations with natural and legal persons. It also checks whether the regulated entities, in complying with the AML rules, establish KYC policies, manuals and procedures. The IVE carries out verifications of the regulated persons as regards compliance with regulations governing existing or new customers, and assesses the level of compliance with KYC policy, as well as the policy regarding identification of third parties in whose benefit an account is opened or a transaction performed.

143. In general, the financial institutions in the securities and insurance sectors have established KYC procedures, fill out the start of business forms for both physical and legal persons, monitor their transactions and if necessary make the relevant report to the IVE. Efforts of the financial institutions to enforce their AML policies, procedures and controls apparently aim at universal compliance by all customers regardless of nationality.

144. There are legal provisions governing processes and procedures to be implemented by financial institutions for the purpose of due diligence, and these are supervised by the IVE. The Banking Association states that there is constant communication among its members for the purpose of getting feedback on the subject of money laundering prevention, and that they have provided training by international instructors. This association also provides two important services for its members who collaborate in due diligence: the Credit Investigation Service and the Personnel Investigation Service, tools which help financial institutions to have an overview of their customers and employees.

145. In Guatemala new accounts cannot be opened until the applicant supplies all the documentation and information required on the forms. According to the Banking Association, if the person does not wish to complete the forms, either in this case or in the case of transactions exceeding $10,000.00, the policy of the financial institutions is not to proceed with the transaction. In addition, it is an institutional policy of the IVE, when a suspicious transaction is detected in any financial institution, that the account should not be closed, but monitored in order not to lose track of the operations. However, no specific instruction to this effect has been issued.

146. Regardless of the identity of the customer, the law requires him to be reliably identified. I the case of trust, the banks must obtain data from trustees, fiduciaries and beneficiaries. The Start of Business Form for Legal Persons, IVE BA-02, requires them to provide information such as data on the product or service wanted, information on the requesting entity, references of the requesting entity, data on its legal representative and its economic-financial status.

147. The IVE states that in Guatemala accounts may not be opened on behalf of third parties. The closest concept to this is that of the trust, and trusts are also supervised and required to comply with all AML laws and regulations. The IVE verifies compliance with the KYC policy, and the use of forms to identify persons with whom business relations are initiated. In Guatemala the banks appear to be conscious of the risk of accepting customers who at some point may damage their reputations.

148. The banks have established procedures for monitoring the accounts of their customers and on certain occasions have reported to the Superintendency of Banks that they are holding funds derived from possible cases of corruption. It should be noted in this regard that such reports indicate the level of commitment of the financial institutions and of their compliance officers. The start of business forms must be completed by all customers and the KYC policy must be applied to all customers without distinction.

149. The IVE states that before banks initiate operations with any corresponding bank, as a matter of policy they enquire among other banks in the system about the practices of the bank in question, and verify whether it has a defined KYC policy. They also check whether it is supervised by any agency corresponding to the Superintendency of Banks in Guatemala.

150. There is important coordination in the insurance sector, through the Guatemalan Association of Insurance Institutions (AGIS). All the firms (18) have compliance officers, and carry out physical checks on their customers, make use of the rvices of credit bureaux, and do electronic checking, in the interest of the KYC policy. There are also established procedures for payment of claims. In-depth investigations are carried out to prevent possible fraud, and payments are documented before notaries public.

151. The insurance companies apply the KYC policy, and identify the parameters within which their customers' transactions fall. For example, from June 2000 to June 2004, 88.74% of customers were responsible for movements of less that $3,000.00, 10.42% for movement of amounts between $3,000.00 and $10,000.00, and 0.84% for transactions above $10,000.00. In addition, in 2004 15 unusual operations and 22 suspicious transactions were reported, and 50 substantial transactions were reported to the IVE. The majority of these transactions related to payments in excess of $10,000.00, to persons insuring 2 or 3 vehicles of recent manufacture at the same time, or to inquiries from a variety of sources.

152. Representatives of a stock-broking firm state that a no-cash policy is in effect in their sector, and is considered an advantage. They have a system of audit which carries out AML verifications, and the Superintendency of Banks, through the IVE, also monitors them to ensure that they have in effect both internal and external audit. It should be mentioned that the internal auditors of the regulated entities must inform the management and board of directors of the results of their audit.

Recommendations and comments

1) The efforts made by the IVE to train and create awareness of money laundering in regulated entities should be recognised. Nevertheless, special attention should be paid to remittance firms, since there exists a series of factors such as the volume of money moved (according to several sources, this has increased from $375 million in 1996 to $2,000 - $2,600 million in 2004) and the existence of many businesses of this type in the informal economy, which generate vulnerability in the sector.

2) Since it is a legal imperative, the financial institutions have taken steps to know their customers and have developed a series of strategies, such as competitions, lotteries, in which customers fill out their data and financial institutions obtain information which they use to comply with the "Know Your Customer" policy, while at the same time merchandising their products in the various sectors. In addition, according to representatives of the Banking Association and representatives of the compliance officers of the securities sector, the data of every new customer is checked to make sure that the information is reliable.

3) The financial institutions, according to the Banking Association, have national and international data bases that enable them to monitor high risk customers. It is important to note that the Banking Association is working on a list of PEPs (politically exposed persons) and their relatives, to serve as a data base for consultation by the Association's members. In addition, in the securities sector, the stock-broking firms use systems of verification of the information provided by their customers, using reasonable methods of confirmation and documenting the process.

4) In the framework of ML prevention, and in compliance with the KYC policy, the financial institutions, the securities sector and the insurance companies have begun to use standardised forms for Start of Business with the customer. These forms were analysed and discussed by the Banking Association, the Association of Insurance Institutions and the IVE. This has furnished the regulated institutions with a tool for collection of customer identification information, and information on source of funds, profile of transactions, bank references, among other important data. However, this is an aspect that the remittance firms should begin to develop, and which we consider would be of great benefit to the sector.

5) The financial institutions are aware of the sanctions to which non-compliance with these requirements exposes them, and therefore they have taken steps to put in place KYC mechanisms. According to information provided by the Banking Association, they have adopted, at association level, monitoring systems based on procedures such as: development of profiles of historic transactions and unexpected activities on the part of the client; assessment and classification of risks presented by transactions of the customer or the account, in the context of the products and services of the financial institution, including identification of PEPs, for the necessary checks, monitoring of accounts and transactions based on profiles and projections of risk, for the detection of anomalies and unusual operations. For these purposes electronic solutions are used, combined with manual monitoring and control procedures, which interact with the main data systems of the institution. Unusual transactions detected are investigated and the findings documented. Records and files of unusual operations are kept.

6) Financial institutions must complete the forms and include information on the shareholders of legal persons. There is also an initiative on the part of the IVE to create a register of shareholders of legal persons, in which changes in shareholding must be entered.

7) There was no evidence in the available information that introducers exist, or that intermediaries are allowed to open accounts. As a matter of policy, on opening business relations with a physical or legal person, banks must apply the know-your-customer rules.

8) The financial institutions, according to the Banking Association, have national and international data bases that enable them to monitor high risk customers. They are also updated with names that appear in the press. It is important to note that the Banking Association is working on a list of PEPs (politically exposed persons) and their relatives, to serve as a data base for consultation by the Association's members.

9) Insurance firms, as regulated persons, must comply with the legislation, and for this purpose have implemented the start of business forms, appointed compliance officers and reported cases to the IVE.

10) In their own interest, Guatemalan insurance companies never pay acclaim to any person or entity until it is fully identified. With the legal mandate contained in Article 22 of the LCLDOA, their controls have become even stricter, so that they make no payment to any beneficiary if the provisions of the Act have not been satisfied. There are also established procedures for payment of

claims. In-depth investigations are carried out to prevent possible fraud, and payments are documented before notaries public.

Implications for compliance with FATF Recommendations 10, 11, SR VII

FATF Rec No 10	Compliant
FATF Rec No 11	Compliant
SR VII	Largely compliant (special attention to remitters needed)

Ongoing monitoring of accounts and transactions

Description

153. The LCLDOA requires regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these.

154. As regards paying special attention to transactions with persons in jurisdictions without adequate systems of ML or FT prevention or dissuasion, there is no specific legal provision, but Article 26 mandates special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic, without distinction of place of origin. There is no specific legal provision concerning wire transfers and information on the person ordering them, but Article 12 of the Regulations of the AML Act states in its third paragraph "for the purpose of complying with the objective of the Act, the regulated persons may not carry out any transaction with customers who fail to provide in a timely manner the information and documentation requested".

155. Articles 19 and 26 of the LCLDOA require regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these. Article 19 also stipulates that regulated persons must adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services.

156. Under Articles 19, 21 and 22 of the LCLDOA, insurance companies, as regulated persons, are obliged to comply with the dispositions of the said Act as regards knowing their customers, and to adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services and products for money laundering.

Analysis of effectiveness

157. In 2001 the IVE received 45 STRs, in 2002:427, in 2003:476, and 266 so far in 2004, for a total of 1,214. Of the 266 STRs sent to the IVE, 207 were from banks, 39 from cooperatives, insurers 8, offshore banks 8, money-lenders 3, stock-brokers 1. According to the IVE, STRs have been received in which the warning signs concerned operations with other jurisdictions appearing on the list of NCCTs. Also, according to the Banking Association financial institutions make checks on lists such as those of OFAC and others that help them to avoid transactions with undesirable persons.

158. Article 17 of the LCLDOA stipulates that "in cases of systematic, substantial, wire or electronic transfers of funds, and messages relating to them, the regulated institutions must obtain adequate and meaningful information on the person originating the transfer, inside or outside the national territory,

as provided in the regulations to the Act. In transfers of funds and messages related to them, this information must remain in the transfer or message throughout the chain of payment". Also, regulated persons must "minutely examine and monitor transfers of funds from suspicious activities that do not contain all the information referred to in the preceding paragraph".

159. The financial institutions have appointed compliance officers, whose basic responsibility is to prevent money laundering in the institution, and to monitor implementation of internal AML programmes and procedures, including adequate record keeping and notification of suspicious operations, as well as liaison with the competent authorities. According to the Banking Association, feedback in the area of ML prevention is achieved by means of meetings of compliance officers. The IVE has also imposed fines on banks that have failed to report suspicious operations.

160. In its training programmes, the IVE raises awareness in bank compliance officers of the need for special monitoring of accounts that might be considered high risk (accounts of NGOs, public entities, senior government officials, persons or businesses notorious for illicit activities, etc,).

Recommendations and comments

1) As can be seen, remittance firms are not among the institutions which submit STRs to the IVE. This is a matter of concern, since it is considered that they do not have adequate customer identification procedures, nr have they detected any suspicious operations.

2) For compliance with this criterion it is important that the law to Prevent and Suppress the Financing of Terrorism be passed.

3) The Regulated persons are aware of the concept of high risk customer and the need for monitoring such customers. For example, the Guatemalan Banking Association has a Commission for the Prevention of Money Laundering, and the Compliance Officers Committee, in which every member institution is duly represented. At their meetings, the Compliance Officers share experiences and obtain feedback on the subject.

Implications for compliance with FATF Recommendations 14, 21, 28, SR VIII

FATF Rec No 14	Compliant
FATF Rec No 21	Compliant
FATF Rec No 28	Compliant
SR VIII	Materially non compliant (remittance firms require attention, FT legislation not passed)

Record keeping

Description

161. Article 23 of LCLDOA stipulates that the records that must be kept by the regulated persons must be kept up to date over the life of the business relationship, and retained for a minimum of five years after the of the conclusion of the transaction or the closure of the account. Articles 28 and 29 of the LCLDOA state that regulated persons must provide the IVE with any information requested by it, in the time limit set by it.

162. Article 21 of the LCLDOA stipulates that the regulated entities shall keep a record, on forms designed for the purpose by the IVE, of the natural or legal persons with whom they engage in business relations, or relations within the normal or apparent run of their business. They must also reliably verify the identity, trade name or denomination of the person, age, occupation or social objective, civil status, domicile, nationality, legal capacity, and legal personality of such persons. Article 23 of Decree 67-2001 stipulates that the records referred to in articles 20, 21 and 22 must be kept up to date over the life of the business relationship, and retained for a minimum of five years after the conclusion of the transaction or the closure of the account.

163. Under Articles 19, 21 and 22 of the LCLDOA, insurance companies, as regulated persons, are obliged to comply with the dispositions of the said Act as regards knowing their customers, and to adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services and products for money laundering. The Regulations for Insurance and Bonding Agencies and Agents, Government Agreement no. M de E 5-73, state that a person wishing to operate as an insurer must obtain a licence from the Superintendent of Banks, after complying with the required formalities. Authorised agents must conclude business contracts with the insurance companies, specifying the responsibilities of both parties.

164. Decree 34-96 of the Securities and Commodities Market Act (Art. 45) states that "agents shall be responsible for the authenticity and integrity of the securities traded by them, and where applicable for the continuity of endorsements, the authenticity of the latest of them, and for entering the latest holder in the register of the latest issuer, as the case may be". In addition, article 18 of the LCLDOA states that" physical or legal persons engaged in brokerage or jobbing in the securities market shall be considered regulated persons."

Analysis of effectiveness

165. Financial institutions, securities firms, remittance firms and insurance companies all asserted that they retain their records for longer than the five years required by the law. Financial entities have provided the information requested by the IVE, and those which have not have been fined. The IVE has fined at least two institutions for failing to supply information.

166. According to the Guatemalan Banking Association, they monitor accounts and transactions on the basis of profiles and projected risks, for identification of anomalies and unusual transactions. They also state that they keep records on electronic media and hard copy. The securities sector gives the same assurance. Insurance companies use the forms for start of business and transactions over $10,000.00, and have also made efforts to appoint compliance officers. The IVE has carried out inspections in 4 insurance firms.

167. Stock-brokers, as regulated persons, must comply with all the provisions of the LCLDOA. The IVE has carried out on site verifications of compliance. The National Stock Exchange has developed its own electronic trading systems to facilitate participation in the stock market by brokers, stock issuers and investors. They supervise the participants for purpose of ML prevention. It is therefore concluded that the securities sector is supervised as regards ML by the IVE, and that the Stock Exchanges also play a role in verification.

Recommendations and comments

Implications for compliance with FATF Recommendation 12

FATF Rec No 12	Largely compliant (remittance firms need attention)

Suspicious transactions reporting

Description

168. There is no law covering financing of terrorism, but financial institutions and regulated persons in general make reports of suspicious transactions on the basis of Article 26 of the LCLDOA.

169. Article 30 of the LCLDOA expressly exempts from criminal, civil administrative or any other liability regulated persons, their owners, directors, managers, administrators, officers, legal representatives and duly authorised employees who have supplied information pursuant to the Act.

170. Article 27 of the LCLDOA states that regulated persons may not inform anyone, except a Tribunal or the Ministerio Público, that it has received a request for information, or that it has given information to another tribunal or competent authority.

171. Article 887 of the Commercial code contains the requirements to be met by insurance firms. Also, article 18 of the LCLDOA defines regulated entities, among which insurance companies are included. Under articles 19,21 and 22 of the LCLDOA, as regulated persons, they must comply with the obligations imposed by the Act as regards know-your-customer, and adoption and implementation of programmes, standards, procedures and internal controls to prevent the improper use of their services and products for money laundering.

172. Under Article 25 of the LCLDOA, the Superintendency of Banks must inform the regulated entities of the new money laundering techniques, so that they may take appropriate preventive measures.

Analysis of effectiveness

173. According to the Guatemalan Banking Association, although the law against financing of terrorism does not exist, they have had experience of the subject with the lists of the September 11 terrorists which were circulated with the support of the IVE. They also support the passage of the CFT law.

174. No information was received of persons harmed by having reported suspicious transactions. According to the information received, there has been no case of regulated persons passing information to third parties.

175. As regulated persons, insurance companies must comply with AML legislation, and for this purpose they have put into use the forms for initiation of business, have appointed compliance officers and have made reports to the IVE.

176. The Superintendency of Banks notified insurance companies of cases resolved by TracFin financial analysts on warning signals of unusual transactions. The companies themselves have contracted a specialist to provide training on ML prevention, and have bought software to monitor transactions.

Recommendations and comments

1) The draft law against terrorist financing should be passed in order to prevent and track down this crime.

Implications for compliance with FATF Recommendations 15, 16, 17, 28

FATF Rec No 15	Compliant
FATF Rec No 16	Compliant
FATF Rec No 17	Compliant
FATF Rec No 28	Compliant

Internal controls, Compliance and Audit

Description

177. Article 19 of the law embodies the requirements to be met by regulated persons as regards internal controls and audit. The final paragraph of Article 19 of the LCLDOA stipulates that regulated persons must designate management-level officers to monitor compliance with internal programmes and procedures and compliance with the requirements of the Act, including adequate record keeping and notification of suspicious operations. These officers are responsible for liaison with the competent authorities. The Superintendency of Banks, through the IVE, must monitor compliance with the obligations imposed by the Act.

178. Article 19 (a) of the LCLDOA stipulates that regulated persons must adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services in ML activities. These programmes shall include, as a minimum, "(a) Procedures to ensure a high level of integrity in the staff, and knowledge of their personal, work and financial background". Article 10 of the LCLDOA Regulations requires regulated persons, as part of their internal controls, to keep a record of each of their employees, including notes of procedures put into effect pursuant to the Act.

179. Article 14 of the Banking and Financial Groups Act (Decree no. 19-2002 of the Congress of the Republic of Guatemala) states that national banks may establish branches abroad, and that the Superintendency may authorise this provided that in the host country there is supervision, in accordance with international standards, that allows consolidated supervision. Article 113 (a) and (d) of the Banking and Financial Groups Act states that to operate in Guatemala, away-from –home or offshore entities must obtain an operating licence from the Currency Board, with the previous approval of the Superintendency, declare that they are part of a Guatemalan financial group, and agree to submit themselves unconditionally and irrevocably to consolidated supervision by the Superintendency of Banks of Guatemala, in accordance with the terms of Article 28 of the Act, and to anti-money laundering laws, rules and regulations; and declare, in addition, that the bank supervisory authorities of their country of origin apply standards at east as strict as those in force in Guatemala.

180. Article 19 of the LCLDOA stipulates that regulated persons must adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services in ML activities. The Superintendency of Banks verifies that regulated persons have established policies and manuals of procedure for the application of due diligence in KYC. It also requires them to appoint management-level officers to monitor compliance with internal

programmes and procedures, as well as the duties imposed by the Act, including keeping of adequate records and notification of suspicious and unusual transactions.

181. Article 14 of the Banking and Financial Groups Act (Decree no. 19-2002 of the Congress of the Republic of Guatemala) states that national banks may establish branches abroad, and that the Superintendency may authorise this provided that in the host country there is supervision in accordance with international standards that allow consolidated supervision. Article 6 of the Regulations of the LCLDOA requires regulated persons to ensure that their agencies, branches, subsidiaries or offices abroad comply with the laws of the host country on money laundering.

182. Article 11 of the LCLDOA Regulations states that those regulated persons which have internal audit, must include in it machinery for verification and assessment of effectiveness of, or compliance with, standards, programmes and procedures for prevention and detection of money laundering. Article 45 of the Securities and commodities Market Act, Decree no. 34-96 of the Congress of the Republic, states that agents shall be responsible for the authenticity and integrity of the securities traded by them, and where applicable for the continuity of endorsements, the authenticity of the latest of them, and for entering the latest holder in the register of the latest issuer, as the case may be.

Analysis of effectiveness

183. As regards financial entities, insurance companies and the securities sector, the mission learned that there is both internal and external auditing, and that these audits include ML compliance. However, it is considered that the remittance houses must make a serious effort to strengthen both internal and external auditing, since although some of the biggest such as Western Union have external auditing, there is a large number of informal remitters that need some type of checking of their systems and policies with regard to money laundering.

184. There are compliance officers in the various financial institutions, insurance companies and in the securities sector. However, some institutions base themselves on Article 21 of the Regulations, which says that compliance officers must devote themselves exclusively to their duties, except in Group B institutions. This group is created by Article 5 of the Regulations, which indicate that the person doing the job of compliance officer must be a management-level officer. In this situation some institutions appoint as compliance officer a management-level person with other responsibilities as well, which could be harmful in the case of large institutions which need to use more vigilance in ML prevention.

185. There is awareness among regulated persons of the need to know their employees**,** to investigate them before hiring them, and to monitor them in the course of their employment.

186. Guatemala has signed memoranda of understanding containing clauses stating that as long as the legislation of both countries permits it, the parties undertake to render each other assistance. For this purpose the Superintendency of Banks may perform verifications.

187. According to the Banking Association, the banks have procedures for updating customer information, and the securities sector states that customers are visited directly to check the accuracy of the information they give. There is also general awareness among insurers, who assert that they check their customers because the law requires it and because in their business it is vital because of the high level of direct risk associated with the customers.

188. Guatemalan law stipulates that regulated persons must appoint compliance officers. In many institutions that are Financial Groups, the practice is to appoint corporate compliance officials, who

have the additional responsibility of supervising the performance of the other compliance offices. In insurance companies, in accordance with the regulations, the compliance officers are part of management. The remittance houses are a sector that should pool its efforts to comply with the law. However, it should be noted that Western Union has a compliance official responsible for this, and FENACOAC, the federation of cooperatives that make transfers, has also appointed one.

189. The abovementioned law requires banks to verify compliance with KYC policy whatever jurisdiction they may be situated in. The Superintendency of Banks verifies, by means of memoranda of understanding signed with various countries, compliance with AML rules abroad.

190. 77% of insurance companies have specific AML programmes, 6% are in the process of implementing them, and 17% are without such programmes. 100% of insurance companies have undergone external audit, with a clean bill of health in 83% of the cases, and reservations in 17%. The IVE verifies compliance of regulated entities with Article 11 of the LCLDOA Regulations. The internal audit must notify management and board of directors of the results of their work, and external auditors must likewise notify the top authorities of the companies who contracted them.

191. According to representatives of the securities sector, they seek out customers for their products, or else use the method of referred clients, and therefore they carry out prior checks of identity and solvency.

Recommendations and comments

1) It is considered that the remittance houses must make a serious effort to strengthen both internal and external auditing

Implications for compliance with the FATF Recommendations 19, 20

FATF Rec No 19	Largely Compliant
FATF Rec No 20	Compliant

Integrity standards

Description

192. Article 13 of the Banking and Financial Groups Act stipulates that when banks are being established persons convicted of culpable or fraudulent bankruptcy; persons convicted of offences involving dishonesty; or persons convicted of illegal acts connected with money laundering or embezzlement may not act as organisers, shareholders or managers of the proposed institutions. Article 19 of the Act specifies that persons acquiring, directly or indirectly, shares representing 5% or more of the paid-up capital of a bank must have the approval of the Superintendency of Banks, which shall verify compliance with the requirements for shareholders of new banking institutions. The same applies to those bank shareholders who increase their shareholding to the specified percentage. In addition, every January the banks must submit to the Superintendency of Banks information indicating who their shareholders are, the value and percentage of the holding of each.

193. The law requires every regulated person to identify and know its clients. Article 20 of the LCLDOA stipulates that in no case may regulated institutions maintain anonymous accounts or accounts under fictitious or vague names. In addition, Resolution JM 68-2003 of the Currency Board required all

institutions to cancel numbered accounts or convert them into ordinary accounts within three months from the date of the Resolution.

194. Articles 23 and 49 of the Securities and Commodities Act create the registry of intermediaries, containing the requirements they must meet before they can operate in the market. Article 22 of the Act sets out all the requirements to be met by persons wishing to obtain a licence to operate a commercial stock exchange. The application must be made to the registry.

195. Persons acquiring 5% or more of the shares in a bank must obtain the approval of the Superintendency of Banks**,** which before forwarding any application to the Currency Board, carries out a verification in accordance with Article 13 of the Banking and Financial Groups Act. According to the IVE this type of account has not been identified since the entry into force of the provision, but as regards legal persons there is the problem that in such companies the holders can change and transfer the shares. There is an initiative by Superintendency of Banks to reform the Commercial code and create a register of bearer shares.

196. The agency responsible for verification of compliance in the case of share issues is the Securities and Commodities Market Registry. It should be noted also that the stock exchanges police themselves and require the brokerage houses to comply with this regulation. In Guatemala the securities market consists of the *Bolsa de Productos y Mercancías* (Commodities exchange) (Bolpromer), in which 11 brokerages operate, 45% of which belong to financial groups; the *Bolsa de Valores Global (*Universal stock exchange), with 11 agents, only 45% of which belong to financial groups, and the *Bolsa de Valores Nacional* (National Stock Exchange), with 22 registered agencies, 83% of which are part of national financial groups. The IVE is responsible for ML prevention and detection verification, and ensures that the participants meet the requirements of the law and regulations. Brokers, as regulated persons, have compliance officers, policy and procedure manuals and forms, and must carry out customer verification.

Recommendations and comments

1) The initiative of the IVE, with regards to the registration of owners of bearer shares is welcomed and it will be beneficial to establish the identity of persons behind legals structures and also to receive information when there are changes with regard to the owners.

Implications for compliance with the FATF Recommendation 29

FATF Rec No 29	Compliant

Enforcement powers and sanctions

Description

197. The LCLDOA, states that legal persons can be held liable, independently of the criminal liability of their owners, directors, managers, administrators, officers, employees and legal representatives, for the offences referred to in the Act. In addition, fines and sanctions for non-compliance with obligations are established. Furthermore, Agreement 43-2002 sets the scale of penalties to be used by the Superintendency of Banks for penalising regulated persons under the terms of the LCLDOA.

198. Article 33 of the LCLDOA states that the IVE may request and/or receive from regulated entities any information related to financial, commercial or business transactions that may relate to the

offence of laundering of money or other assets. The final paragraph of Article 34 requires all public or private entities to provide all cooperation requested by the IVE for the enforcement of the Act.

199. In the final paragraph of Article 28 of the LCLDOA states that violation of any kind of contractually or legally imposed confidentiality cannot be used by regulated entities as a defence for failing to provide the competent authorities with information in compliance with the Act or the regulations governing it. Article 14 of the Banking and Financial Groups Act states that the Superintendency may authorise national banks to establish branches abroad, provided that in the host country there is supervision, in accordance with international standards, that allows consolidated supervision.

200. Article 25 of the LCLDOA stipulates that any natural or legal person, national or foreign, who transports into or out of the Republic, alone or through an intermediary, cash or negotiable instruments in excess of ten thousand dollars or the equivalent in national currency, must declare it at the point of entry or departure, on the forms to be designed by the IVE for the purpose.

Analysis of effectiveness

201. The Superintendency of Banks, following the relevant verifications, has imposed fines from $10,000.00 to $25,000.00, for a total of $95,000.00, on 7 entities for shortcomings in their AML systems. The penalties were imposed for failing to submit reports and answers to inquiries from the IVE in the allotted time, for failing to report suspicious transactions, for not responding quickly enough to embargo orders, and for failure to apply KYC measures.

202. The Superintendency of Banks verifies that the regulated persons, in compliance with AML regulations, establish policies and manuals of procedure, and in general apply due diligence in KYC. 30 verifications were carried out in 2003, and 27 in 2004. It should be noted that of 26 banks registered, 5 were verified in 2003 and only 1 in 2004. Although verification was extended to other sectors, it is important for more verifications to be carried out in the banking sector, in view of its vulnerability and its pivotal role in money laundering prevention.

203. The IVE would not seem to have encountered major problems of access to documentation regarding suspicious transactions, or to information in general. Guatemala has signed memoranda of understanding at the level of the FAU (in this case the IVE) on money laundering, and at the level of the Superintendency of Banks, which so far has carried out at least two on site inspections abroad.

204. The forms completed by persons carrying more than $10,000.00 into or out of the country are collected by the SAT (Inland Revenue) and forwarded to the IVE. However, they are used only for purposes of consultation.

Recommendations and comments

1) The LCLDOA empowers the Superintendency of Banks to verify that the regulated persons comply with the AML regime, and to impose heavy fines for non-compliance, according to the seriousness of the case.

2) The IVE has made serious efforts to carry out in-house and on-site inspections of regulated persons, and its work is essential for monitoring the banking, securities, insurance and particularly the remittances sector.

3) It is important to note that the forms for declaration by travellers of amounts in excess of $10,000.00 are used only in airports, not at land border crossing points, which are also vulnerable to transport of cash. The authorities should take the necessary steps to remedy this.

Cooperation between supervisors and other competent authorities

Description

205. The Superintendency of Banks consists of four departments Superintendent of Banks Agreement no. 01-2003 of 3 January 2003) one of which is the Special Verification Agency (IVE), which is the one responsible, under Decree 67-2001, for everything connected with the offence of money laundering. Article 33 describes the functions of the IVE, and its paragraph (h) states that it shall provide the Ministerio Público with whatever assistance it requires to analyse information in its possession, and assist in the investigation of acts and offences relating to money laundering. Article 33 of the LCLDOA empowers the IVE to exchange with counterpart agencies in other countries information for the analysis of ML related cases, subject to signing memoranda of understanding or other cooperation agreements with those agencies.

206. Article 113 of the Banking and Financial Groups Act stipulates that before being allowed to operate, away-from-home institutions must be ensure the Superintendency of Banks of Guatemala that they have authorised the supervisory bodies of their country of origin to exchange information.

207. With regard to the securities sector, Article 33 authorises the IVE to request information from brokerage houses, as regulated persons, and under article 28 they are required to provide it in the form and within the time specified.

Analysis of effectiveness

208. The Special Verification Agency (IVE) commenced operations in January 2002. It possesses staff specialised in financial operations and bank supervision. It comprises a total of 25 persons, composed of accountants and auditors, lawyers and notaries public, systems engineers and economists, all trained and experienced. Its budget is part of the budget of the supervisory body. Nevertheless it enjoys functional and financial autonomy vis-s-vis the regulated persons under obligation to comply with the AML regime. Its budget for 2004 is $2.2 million. In addition, under the LCLDOA, 50% of the administrative fines imposed must be allocated for training IVE staff, and the remaining 50% is used to augment the budget of the Superintendency. As regards technical resources, the IVE possesses a modern data network and wired network centre that facilitates investigation of STRs. The network is protected both internally and externally. In addition, it also has the Analyst's Notebook software, which was donated to the IVE by the US Embassy, and which permits graphic analysis of STRs and the management of large volumes of data.

209. During the years 2002-2003 and 2004 the IVE received 207 requests from the Ministerio Público, and collaborated as requested. However, the Ministerio Público is considering the advisability of creating an analysis unit similar to the IVE within itself, in view of delays in response. In answer to this situation the IVE states that next year it intends to contract 2 technical analysts to prepare responses to the Ministerio Publico.

210. Guatemala has signed memoranda of understanding with 18 FAUs in as many countries, based on the Egmont Group's model. The countries are: : El Salvador, Panama, Colombia, Montserrat, Dominican Republic, Brazil, Bolivia, Honduras, Spain, Mexico, Venezuela, Argentina, Barbados, Costa Rica, Bahamas, Peru, Belgium and Korea. On the basis of these memoranda the

Superintendency of Banks has responded to 22 requests for information, and 30 requests for information exchange have been made.

211. Guatemala has signed memoranda of understanding containing clauses stating that as long as the legislation of both countries permits it, the parties undertake to render each other assistance.Inspection has been carried out of at least one offshore bank, for the purpose of verifying, inter alia, compliance with KYC policies. Guatemala has signed financial memoranda with El Salvador, Peru, Panama, Puerto Rico, Montserrat, Dominican Republic, Honduras, Costa Rica, USA, Nicaragua, Bahamas, Belize and Mexico.

Recommendations and comments

1) It is important to continue supporting the IVE financially, and, as has been done so far, to inject resources into it to enable it to pursue its task effectively.

2) The IVE should continue to comply, in accordance with the law, with the requirements of the Ministerio Público, for which purpose it should receive the necessary input (staff).

Implications for compliance with FATF Recommendation 26

FATF Rec No 26	Compliant

Description of the Controls and Monitoring of Cash and Cross Border Transactions

FATF Recommendation 22

Description

212. From 10 October 2004, the Directorate of Customs (Internal Revenue Department –SAT-) instituted a new procedure for reception of the Sworn Customs Declaration form from passengers leaving Guatemala from the La Aurora International Airport. The change resulted from the desire of the SAT to improve the efficiency and efficacy of exit controls at the airport.

213. The airline or travel agency is responsible for providing the passenger with the Sworn Exit Declaration form; the SAT representative in the Airport Security X-ray area is responsible for collecting the duly completed forms, during the SAIA check. Later, SAT classifies the forms before forwarding them to the Operations Section of the Customs, which is responsible for forwarding relevant ones to the IVE. As part of the follow-up to the implementation of this new procedure, SAT has carried out compliance verifications of it, maintaining communication with both SAIA and IVE

214. It is important to note that the forms for declaration by travellers of amounts in excess of $10,000.00 are used only in airports, not at land border crossing points, which are also vulnerable to transport of cash. The authorities should take the necessary steps to remedy this.

FATF Recommendation 23:

Description

215. The SAT Directorate of Customs has initiated a project for creation of a Vehicle Customs between Mexico and Guatemala, at the Juan Luis Lizarralde Arrillaga frontier post. The

acquisition of a scanner for this post, for checking vehicles coming from North America, is being considered, to prevent the transport of hidden cash

C. Ratings of Compliance with FATF Recommendations, Summary of Effectiveness of AML/CFT efforts and Recommended Action Plan

The rating of compliance with the FATF Recommendations should be done according to the four levels of compliance used in the Methodology (Compliant, Largely Compliant, Materially Non Compliant, Non Compliant).

Table 1. Ratings of Compliance with FATF Recommendations Requiring Specific Action

FATF Recommendation	Based on Criteria Rating	Rating
1 – Ratification and implementation of the Vienna Convention	1	COMPLIANT
2 – Secrecy laws consistent with the 40 Recommendations	43	COMPLIANT
3 – Multilateral cooperation and mutual legal assistance in combating ML	34, 35, 36, 38, 40	COMPLIANT
4 – ML a criminal offence (Vienna Convention).	2	COMPLIANT
5 – Knowing ML activity a criminal offence (Vienna Convention)	4	COMPLIANT
7 – Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention)	7, 7.1, 7.3, 8, 9, 10, 11	COMPLIANT
8 – FATF Recommendations 10 to 29 applied to non-bank financial institutions; (e.g., foreign exchange houses)		See answers to 10 and 29
10 – Prohibition of anonymous accounts and implementation of customer identification policies	45, 46, 46.1	COMPLIANT
11 – Obligation to take reasonable measures to obtain information about customer identity	46.1, 47	COMPLIANT
12 – Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents	52, 53, 54	LARGELY COMPLIANT (REMITTANCE FIRMS NEED GREATER CONTROL)
14 – Detection and analysis of unusual large or otherwise suspicious transactions	17.2, 49	COMPLIANT
15 –If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the FIU	55	COMPLIANT

16 – Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU	56	COMPLIANT
17 – Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU	57	COMPLIANT
18 – Compliance with instructions for suspicious transactions reporting	57	LARGELY COMPLIANT (REMITTANCE FIRMS NEED GREATER CONTROL)
19 – Internal policies, procedures, controls, audit, and training programs	58, 58.1, 59, 60	LARGELY COMPLIANT (REMITTANCE FIRMS NEED GREATER CONTROL)
20 – AML rules and procedures applied to branches and subsidiaries located abroad	61	COMPLIANT
21 – Special attention given to transactions with higher risk countries	50, 50.1	COMPLIANT
26 – Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement	66	COMPLIANT
28 – Guidelines for suspicious transactions' detection	17.2, 50.1, 55.2	COMPLIANT
29 – Preventing control of, or significant participation in financial institutions by criminals	62	COMPLIANT
32 – International exchange of information relating to suspicious transactions, and to persons or corporations involved	22, 22.1, 34	COMPLIANT
33 – Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance	34.2, 35.1	COMPLIANT
34 – Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance	34, 34.1, 36, 37	COMPLIANT
37 – Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution	27, 34, 34.1, 35.2	COMPLIANT
38 – Authority to take expeditious actions in	11, 15, 16, 34, 34.1,	COMPLIANT

response to foreign countries' requests to identify, freeze, seize and confiscate proceeds or other property	35.2, 39	
40 – ML an extraditable offence	34, 40	COMPLIANT
SR I – Take steps to ratify and implement relevant United Nations instruments	1, 34	Largely compliant(1999 UN Convention for Suppression of Financing of Terrorism ratified, UN Resolution 1373 not yet implemented)
SR II – Criminalize the FT and terrorist organizations	2.3, 3, 3.1	Non Compliant (FT legislation not passed)
SR III – Freeze and confiscate terrorist assets	7, 7.3, 8, 13	Non Compliant (FT legislation not passed)
SR IV – Report suspicious transactions linked to terrorism	55	Materially non-compliant (FT legislation not passed, but entities report on basis of LCLDOA)
SR V – provide assistance to other countries' FT investigations	34, 34.1, 37, 40, 41	Materially non-compliant (there is international cooperation in criminal matters ad terrorist acts but(FT legislation not passed)
SR VI – impose AML requirements on alternative remittance systems	45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62	Non compliant ((FT legislation not passed, and special attention to remittance houses needed)
SR VII – Strengthen customer identification measures for wire transfers _____ SR VIII	48, 51	Largely Compliant(special attention to remitters needed) _____ Materially Non Compliant(special attention to remitters needed)

Table 2. Summary of Effectiveness of AML/CFT efforts for each heading

Heading	**Assessment of Effectiveness**
Criminal Justice Measures and International Cooperation	
I—Criminalization of ML and FT	Article 2 of the LCLDOA criminalises and penalises money laundering in accordance with international standards. There is no anti-terrorism financing legislation, but the financial institutions in general and the regulated persons rely on article 26 of the Law Against Laundering of Money and Other Assets in making reports of suspicious transactions.
II—Confiscation of proceeds of crime or property used to finance terrorism	There is no anti-FT legislation in Guatemala At the present time Article 391 of the Penal code, Decree No. 17-73 of the Congress of the Republic, criminalises terrorism. Therefore, although Guatemalan law does not expressly provide for freezing of terrorist funds, this can be done in specific cases under Articles 278 of the Penal Code, Decree No. 51-92 of the Congress of the Republic and 530 of the civil and Mercantile Code, Decree Law 107 of the Head of government. Under these, a competent judge, on the request of the Ministerio Público, may order an emergency precautionary measure, in the course of a criminal trial for terrorism. This measure would involve blocking of goods and other resources, including bank deposits. Furthermore, the Draft Anti-FT Law is before Congress for approval and promulgation.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	The Special Verification Agency (IVE) is a Financial Analysis Unit, so as part of its functions it receives, analyses, and distributes financial information to the Ministerio Público on transactions in which there is evidence of money laundering. It also exercises the same functions on information requested by the Ministerio Público and competent judges. Article 33 (d) of the LCLDOA stipulates that the functions of the IVE include exchanging information with counterpart agencies in other countries for the analysis of ML cases, subject to signature with them of memoranda of understanding or other cooperation agreements.
IV—Law enforcement and prosecution authorities, powers and duties	In Guatemala The Ministerio Público is responsible for carrying out investigations into money laundering, under Articles 251 of the Constitution, 107, 181 and 309 of the Penal Code, and 1 of the Organic Law of the Ministerio Público, Decree No. 40-94 of the Congress of the Republic. It is assisted by the National Civil

	Police and the IVE, as specified by article 33 (f) of the LCLDOA. Within it there is a Prosecution Unit specialising in money laundering. Under Article 319 of the Penal code, the Ministerio Público may demand information from any public official or employee. The Guatemalan authorities state that the courts have sufficient human, physical and technical resources**.** Except for the National civil Police, the Ministerio Público and all other administrative bodies in this field comply satisfactorily with the requirements of this criterion. The Prosecution Service and the judiciary have adequate technical, human and financial resources, but not the police. It is therefore considered that the police do not tackle their job adequately.
V—International cooperation	Appropriate mechanisms exist for collaboration and exchange of information among the various public agencies responsible for combating money laundering (IVE, MP, Law Courts) in investigations into ML and other offences. For international cooperation, Guatemala is signatory to the relevant treaties and conventions, and Guatemalan law provides procedures for Mutual Legal Assistance to facilitate judicial measures and investigations.
Legal and Institutional Framework for All Financial Institutions	
I—General framework	Article 28 of the LCLDOA requires regulated persons to provide the competent authorities with the information they require, and that they may not refuse. At the same time Article 63 of the Banking and Financial Groups Act stipulates that bank officials may not provide any information tending to breach the confidential nature of the identities of their customers, except for information they are required to provide to the Currency Board, the Bank of Guatemala and the Superintendency of Banks.
II—Customer identification	There are legal provisions governing processes and procedures to be implemented by financial institutions for the purpose of due diligence, and these are supervised by the IVE. The financial institutions of the securities sector are complying adequately with the provisions of Articles 20, 21 and 22 of the LCLDOA, which stipulates that in no case may regulated institutions maintain anonymous accounts or accounts under fictitious or vague names. Article 21 of the

	Act stipulates in addition that the regulated institutions shall keep a special record on forms designed by the IVE. Specifically regarding transfer of funds, there is a draft Law to Prevent and Suppress the Financing of Terrorism, which in its Article 17 stipulates that in cases of systematic, substantial, wire or electronic transfers of funds, and messages relating to them, the regulated institutions must obtain adequate and meaningful information on the person originating the transfer. Article 21 of the LCLDOA stipulates that the regulated entities shall keep a record of the natural or legal persons, whether occasional or regular clients, with whom they engage in business relations, or relations within the normal or apparent run of their business. They must record the operations performed with these customers, especially as regards the opening of new accounts.
III—Ongoing monitoring of accounts and transactions	Article 26 of the LCLDOA requires regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these. Articles 19 and 26 of the LCLDOA require regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these. Article 19 also stipulates that regulated persons must adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services.
IV—Record keeping	Article 23 of the LCLDOA stipulates that the records that must be kept by the regulated persons must be kept up to date over the life of the business relationship, and retained for a minimum of five years after the conclusion of the transaction or the closure of the account.
V—Suspicious transactions reporting	Article 26 of the LCLDOA requires regulated persons to pay special attention to all transactions, completed or not, that are complex, unusual, or large, and to all unusual patterns of transactions and transactions which, although not large, are periodic and have no clear economic or legal basis. The IVE must be immediately notified of these. There is no law covering financing of terrorism, but financial institutions and regulated persons in general make reports of suspicious transactions on the basis of Article 26 of the LCLDOA.
VI—Internal controls, compliance and audit	Article 19 of the LCLDOA stipulates that regulated persons must adopt, develop and implement programmes, standards, procedures and internal controls suitable for preventing the improper use of their services in ML activities. The

	Superintendency of Banks verifies that regulated persons have established policies and manuals of procedure for the application of due diligence in KYC. It also requires them to appoint management-level officers to monitor compliance with internal programmes and procedures, as well as the duties imposed by the Act, including keeping of adequate records and notification of suspicious and unusual transactions. Article 19 of the LCLDOA stipulates that regulated persons must designate management-level officers to monitor compliance with internal programmes and procedures and compliance with the requirements of the Act, including adequate record keeping and notification of suspicious operations. These officers are responsible for liaison with the competent authorities. The Superintendency of Banks, through the IVE, must monitor compliance with the obligations imposed by this article.
VII—Integrity standards	Article 13 of the Banking and Financial Groups Act stipulates that when banks are being established persons convicted of culpable or fraudulent bankruptcy; persons convicted of offences involving dishonesty; or persons convicted of illegal acts connected with money laundering or embezzlement may not act as organisers, shareholders or managers of the proposed institutions. Article 19 of the Act specifies that persons acquiring, directly or indirectly, shares representing 5% or more of the paid-up capital of a bank must have the approval of the Superintendency of Banks, which shall verify compliance with the requirements for shareholders of new banking institutions. The same applies to those bank shareholders who increase their shareholding to the specified percentage. In addition, every January the banks must submit to the Superintendency of Banks information indicating who their shareholders are, the value and percentage of the holding of each.
VIII—Enforcement powers and sanctions	The LCLDOA, states that legal persons can be held liable, independently of the criminal liability of their owners, directors, managers, administrators, officers, employees and legal representatives, for the offences referred to in the Act. In addition, fines and sanctions for non-compliance with obligations are established. Furthermore, Agreement 43-2002 sets the scale of penalties to be used by the Superintendency of Banks for penalising regulated persons under the terms of the LCLDOA. Article 33 (a) states that the IVE may request and/or receive from regulated entities any information related to financial, commercial or business transactions that may relate to the offence of laundering of money or other assets. The final paragraph of Article 34 requires all public or private entities to provide all cooperation requested by the IVE for the enforcement of the Act.

IX—Co-operation between supervisors and other competent authorities	Article 33 describes the functions of the IVE, and its paragraph (h) states that it shall provide the Ministerio Público with whatever assistance it requires to analyse information in its possession, and assist in the investigation of acts and offences relating to money laundering. The Act also stipulates that the functions of the IVE include exchanging information with counterpart agencies in other countries for the analysis of ML cases, subject to signature with them of memoranda of understanding or other cooperation agreements.

Table 3: Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance and Securities Sectors.

Criminal Justice Measures and International Cooperation	**Recommended Action**
I—Criminalization of ML and FT	Congress should pass the Bill related to financing of terrorism.
II—Confiscation of proceeds of crime or property used to finance terrorism	The Draft Law to Prevent and suppress the Financing of Terrorism now before Congress should be passed and promulgated. The Guatemalan Penal Code contains provisions enabling acts of terrorism to be punished.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	It is important to seek out the reasons for the low proportion of cases arising out of STRs forwarded to the Ministerio Público, since it is only 6% of the cases reported by the regulated persons (only 68 STRs out of 1,214), since this could mean that information the Ministerio Público might consider as calling for a money laundering investigation is being overlooked. Feedback from the IVE to regulated entities on their suspect operations reports would be advisable, both as regards the quality of the reports and the procedure followed. On the one hand this would provide the satisfaction of knowing that legal procedure had been followed, and on the other would throw light on the mistakes being made by the regulated entities.
IV—Law enforcement and prosecution authorities, powers and duties	If in fact the use of special investigative techniques is not part of the law, the Guatemalan authorities should take the necessary measures. The police should be more closely incorporated into ML and FT investigations. There should be a formal signed agreement among the relevant agencies to collaborate on both ML and FT. The Guatemalan authorities should take steps to provide the police with human, technical and financial resources to enable them to operate efficiently against ML and FT. The National Civil Police should keep statistics on the cases they handle. Typology exercises should be conducted, especially by the IVE, the technical and advisory body, and the enforcement agencies (prosecution-courts-police). The National Civil Police should receive adequate training to combat this scourge, and the technical level of the prosecution service should also be raised with regard to the identification of the proceeds of crime and the seizure, freezing and confiscation of such property.

	The AML enforcement agencies (prosecution service-police) should be given technical capacity to identify and execute precautionary measures, especially those relating to property.
V—International cooperation	
Legal and Institutional Framework for Financial Institutions	
I—General framework	Congress should pass the two Bills related to financing of terrorism. The signing of a memorandum of understanding for exchange of information between the IVE and the Inland Revenue Department is beneficial to both (the Mission has received notification afterwards that an MOU for information exchange has been signed).
II—Customer identification	Special attention should be paid to remittance firms, since there exists a series of factors such as the volume of money moved (according to several sources, this has increased from $375 million in 1996 to $2,100 - $2,600 million in 2004) and the existence of many businesses of this type in the informal economy, which generate vulnerability in the sector.
III—Ongoing monitoring of accounts and transactions	Remittance firms should be monitored, since they have reported no STR's to the IVE, and they have few controls against ML. It is important that the law against FT should be passed.
IV—Record keeping	
V—Suspicious transactions reporting	It is important to seek out the reasons for the low proportion of cases arising out of STRs forwarded to the Ministerio Público, since it is only 6% of the cases reported by the regulated persons (only 68 STRs out of 1,214), since this could mean that information the Ministerio Público might consider as calling for a money laundering investigation is being overlooked. Feedback from the IVE to regulated entities on their suspect operations reports would be advisable, both as regards the quality of the reports and the procedure followed. On the one hand this would provide the satisfaction of knowing that legal procedure had been followed, and on the other would throw light on the mistakes being made by the regulated entities. The law against financing of terrorism should be passed, to prevent and detect this crime.
VI—Internal controls, compliance and audit	The remittance houses are a sector that should pool its efforts to achieve compliance with the obligations imposed by the law on regulated persons.

VII—Integrity standards	The initiative of the Superintendency of Banks to reform the Commercial Code and create a register of bearer shares should be brought to fruition. It would be of benefit for determining the identity of persons behind legal persons, and also for accessing information on changes.
VIII—Enforcement powers and sanctions	The IVE has made serious efforts to carry out in-house and on-site inspections of regulated persons, and its work is essential for monitoring the banking, securities, insurance and particularly the remittances sector. It is important to note that the forms for declaration by travellers of amounts in excess of $10,000.00 are used only in airports, not at land border crossing points, which are also vulnerable to transport of cash. The authorities should take the necessary steps to remedy this.
IX—Co-operation between supervisors and other competent authorities	The IVE should continue to comply, in accordance with the law, with the requirements of the Ministerio Público, for which purpose it should receive the necessary input (staff). It is important to continue supporting the IVE financially, and, as has been done so far, to inject resources into it to enable it to pursue its task effectively.
Banking Sector based on Sector-Specific Criteria	
II—Customer identification	
III—On-going monitoring of accounts and transactions	It is important to pass the Law for the Prevention and Suppression of Terrorist Financing.
IV—Record keeping	
VI—Internal controls, compliance and audit	
VIII—Enforcement powers and sanctions	
IX—Co-operation between supervisors and other competent authorities	The signing of a memorandum of understanding for exchange of information between the IVE and the Inland Revenue Department is considered beneficial to both. The Mission understood that a Memorandum of Understanding had been signed after the onsite mission visit.
Insurance Sector based on Sector-Specific Criteria	
II—Customer identification	
III—On-going monitoring of accounts and transactions	It is important to pass the Law for the Prevention and Suppression of Terrorist Financing.

IV—Record keeping	
V—Suspicious transaction reporting	It is important to seek out the reasons for the low proportion of cases arising out of STRs forwarded to the Ministerio Público, since it is only 6% of the cases reported by the regulated persons (only 68 STRs out of 1,214), since this could mean that information the Ministerio Público might consider as calling for a money laundering investigation is being overlooked
VI—Internal controls, compliance and audit	
Securities Sector based on Sector-Specific Criteria	
II—Customer identification	
IV—Record keeping	
VI—Internal controls, compliance and audit	
VII—Integrity standards	The initiative of the Superintendency of Banks to reform the Commercial Code and create a register of bearer shares should be brought to fruition. It would be of benefit for determining the identity of persons behind legal persons, and also for accessing information on changes.
VIII—Enforcement powers and sanctions	
IX— Co-operation between supervisors and other competent authorities	

Annex 1. Compliance with the CFATF 19 Recommendations

The CFATF 19 Recommendations	Grading			
	C	**PC**	**NC**	**N/A**
1. Establishment of an AML Authority	X			
2. Money laundering offence definition not restrictive as regards predicate offences	X			
3. Criminalization of conspiracy to engage in, and aiding and abetting drug trafficking, money laundering and other serious offences	X			
4. Full scope crimininalization of money laundering	X			
5. Criminalization of engaging in transactions while knowing that funds are the proceeds of serious crimes	X			
6. Professional confidentiality duty not a defence for attorneys, accountants and other "gatekeepers"	X			
7. Confiscation at the request of foreign authorities is allowed	X			
8. Property based and valued based confiscation allowed	X			
9. Seized asset fund for anti-drug and AML efforts			[1]X	
10. Confiscation applies to drugs, precursors, equipment and materials	X			
11. Adequate supervision and regulation of the whole financial sector	X			
12. Border procedures for inspection of merchandise and carriers	X			
13. Sanctions for not maintaining records for the required retention period	X			
14. Compulsory reporting of large cash transactions	X			
15. Information on international currency flows shared internationally	X			
16. Signing and ratifying OAS Convention on Extradition		[2] X		
17. Anti-drug and AML measures are effective and consistent regional efforts	X			
18. Regular meetings with counterparts in the region to discuss ML and emerging trends and techniques		[3] X		

[1] The constitution of Guatemala indicates that theh Supreme Court of Justice as the discretionary powers to dispose of these funds, which eventually could be destined to manage the manage the seized and confiscated asset or for other beneficial or social areas. La constitución de Guatemala indica que la Corte Suprema de Justicia tiene la facultad discrecional para

[2] This Convention was signed by Guatemala on the 25th of February 1981, however the ratification, acceptance and adherence has not carried out.

[3]This item is indicated as "Partially Compliant" and it refers to the law enforcement entities of national Civil Police and the Ministry of Government (could be indicated as "Homeland Security"). The other entities involved are maintaining

The CFATF 19 Recommendations	Grading			
	C	PC	NC	N/A
19. Technical assistance programme for countries with small economies and limited resources				X

Annex 2. Compliance with the FATF NCCT 25 point Criteria
The FATF 25 NCCT criteria

Criterion	Met	Part. met	Not met	Remarks
1. Ineffective regulation and supervision of financial institutions			X	
2. Inadequate licensing rules for financial institutions			X	
3. Lack of measures to guard against control of financial institutions by criminals			X	
4. Existence of anonymous accounts			X	
5. Ineffective KYC rules			X	
6. Inadequate record keeping requirements			X	
7. Obstacles to accessing information on clients or beneficial owners of legal entities			X	
8. Secrecy provisions prevent access to information to administrative authorities			X	
9. Secrecy provisions prevent access to information to judicial authorities			X	
10. Inefficient mandatory suspicious transaction reporting system			X	
11. Inexistence of sanctions for failure to report suspicious transactions			X	
12. Inadequate requirements for registration of business entities			X	Still it is considered beneficial to establish the legislative initiative to reform the Commercial code and create a register of bearer shares.
13. Obstacles to identification of beneficial owners and directors/officers of business entities			X	Also with regard to this criterion it is considered beneficial to establish the legislative initiative to reform the Commercial code and create a register of bearer shares.
14. Identification requirements allow transactions without comprehensive KYC			X	
15. Obstacles to domestic cooperation between administrative authorities			X	
16. Exclusion of enquiries on behalf of foreign counterparts			X	
17. Unwillingness to respond to international requests for cooperation			X	
18. Restrictive practices in international			X	

excellent activities on national and international levels, especially the "IVE" (FIU), but not the Public Prosecution Office of the Republic.

cooperation between AML supervisory authorities/FIUs				
19. Money laundering proceeds from serious crimes not criminalized			X	
20. Prohibition of exchange of information between judicial authorities			X	
21. Unwillingness to respond to MLA request			X	
22. Refusal to provide judicial cooperation			X	
23. Lack of resources for administrative and judicial authorities		X		
24. Incompetence and/or corruption of government staff		X		
25. Inexistence of FIU			X	

Annex 3

SUPERINTENDENCY OF BANKS
SPECIAL VERIFICATION AGENCY

CFATF VISIT TIMETABLE

No.	TIME		INSTITUTION	LOCATION
	FROM:	TO:		
I9 OCTOBER 2004				
1.	9.00	11.00	Superintendency of Banks and Special Verification Agency-IVE	Headquarters of Superintendency of Banks
2.	11.30	13.00	Guatemalan Banking Association-ABG-(compliance officers and some managers)	ABG Headquarters
3.	14.00	15.30	National Stock Exchange – BVN and Commodities Exchange – BOLPROMER – (Brokers / compliance officers	National Stock Exchange
4.	16.00	17.30	Representatives of the Internal Revenue Dept. – SAT – (Directorate General of Customs)	SAT Headquarters
21 OCTOBER 2004				
1.	9.00	10.30	*Fiscalía General de la República* (Chief Prosecutor and AML Prosecutor)	Headquarters of Ministerio Público
2.	11.30	13.00	*Ministerio de Gobernación (*Min. of Nacional Security) (National Civil Police – PNC – and Directorate General of Immigration)	Headqrs. Of Min. of National Security
3.	14.00	15.30	Guatemalan Association of Insurance Institutions – AGIS – (compliance officers and some managers)	AGIS Headquarters
4.	16.00	17.30	Supreme Court of Justice	Supreme Court Building

Annex 4
Authorities' response to the assessment:

Guatemala takes pleasure in the report of the team which carried out the evaluation of the country in October 2004, since it embodies the efforts made by Guatemala to meet international standards in the struggle against money laundering and financing of terrorism.

A further cause for satisfaction is the fact that the evaluation team considered that Guatemala had complied with the majority of the FATF Forty Recommendations, and that those in which it was judged non-compliant relate to financing of terrorism, a shortcoming that, as explained below, has been practically corrected, since the Act to Prevent and Suppress Financing of Terrorism came into effect on 5 October of this year.

In this regard it is important to take the opportunity to describe other efforts made subsequent to the date of the evaluation, which reinforce Guatemala's status as a cooperating country in these areas.

The report mentions that there is a lack of control in the matter of remittances, and measures have been taken in this regard. By means of Superintendent of Banks Official Circular IVE No. 482-2005 of 30 May 2005, remittance firms were instructed to implement, from 1st July 2005, forms **IVE-TF-09** MONTHLY REPORT OF REMITTANCES RECEIVED THAT EXCEED US $2,000.00 OR EQUIVALENT IN NATIONAL CURRENCY, and **IVE-TF-10** MONTHLY REPORT OF REMITTANCES SENT THAT EXCEED US $2,000.00 OR EQUIVALENT IN NATIONAL CURRENCY.

The reason for the implementation of these forms is to have the remittance houses notify the Superintendency of Banks through the *Intendencia de Verification Especial* (Special Verification Agency) –IVE- when operations are performed within a single calendar month, in favour of a single beneficiary or on the order of a single remitter, which exceed in aggregate the sum of US $2,000.00 or the equivalent in national currency.

The remittance firms must send this report monthly to the Superintendency of Banks through the IVE, on a magnetic support, within the first five (5) working days of the month, starting in August 2005. If during the report month there have been no operations falling within these parameters, this must be reported within the same time frame.

The remittance firms are complying with this provision.

Regarding the lack of internal and external audit in some small remittance concerns, it is important to note that the Superintendency of Banks, through the IVE, is planning to verify, in the course of this year, compliance with anti-money laundering regulations in a minimum of six remittance houses. This verification will include examination of internal and external audit procedures where applicable, and where these do not exist, the various controls applied by the firms to ensure compliance with the AML regime will be checked.

In 2004 audits were carried out in six remittance firms, including the aspects indicated in the previous paragraph.

In the matter of anti-terrorism financing legislation, Guatemala has great pleasure in announcing that on 31 August of this year the Congress of the Republic, by Decree No. 58-2005, passed the Act to Prevent and Suppress Financing of Terrorism. The Decree was published in the Guatemala Official Journal on 5 October, and the law takes effect from that date.

The passage of this Act is a great step forward for the country in fulfilment of international commitments to combat the financing of terrorism.

With regard to the issue of feedback to regulated entities on their suspicious transaction reports, the IVE has developed procedures for informing the reporting entities of shortcomings in both form and content detected in their reports.

In addition, in May and June of this year the Superintendency of Banks, through the IVE, held meetings with the Guatemalan Banking Association and compliance officers of banks and other financial institutions, to get them to establish procedures to improve the quality of suspicious transaction reports.

Since February 2005 a new section under the name of "Financial Analysis Unit" has been in operation in the Ministerio Público, with the task of assisting the various prosecutorial agencies to analyse cases in their remit, and of handling requests for legal assistance. This unit has a staff of seven, including lawyers, notaries, public accountants and auditors.

Within the IVE the necessary measures have been taken to respond to the requests for information from the Ministerio Público through the Anti-Money Laundering Prosecution Service. In June this year a special section was created in the IVE to deal exclusively with requests from the Ministerio Público. As a result, response times for these requests are improving.

Regarding appointment of additional personnel, since the beginning of this year the Superintendency of Banks has taken on two more persons for analysis and inspection duties in the IVE.

Regarding the recommendations and comments on the holding of typology exercises, a document is being prepared that will contain a compilation of the various ML typologies that have been found to exist in Guatemala. For this purpose the assistance of compliance officers of banks, finance houses and offshore banks is being requested in providing information that might help in the establishment of typologies.

This document is expected to be completed by the end of this year.

As regards the need for training in remittance houses, four training activities have been carried out in the remittance sector in the course of this year, and it is expected that this area will continue to receive attention.

Regarding the non-reporting of suspicious transactions by remittance firms, it is expected that with the implementation of the forms mentioned in paragraph 7 above, these firms will exercise greater control over transactions with their customers, and that these controls will help to detect possible suspicious transactions.

With regard to continuation of verification of compliance, thirty on-site verifications are planned for this year in different regulated entities.

To date nineteen verifications have been carried out, as follows: five national banks, three offshore banks, four leasing companies, two warehousing companies, one insurance company, three stock-broking houses and one credit card issuing company.

Verifications of AML compliance are planned for six remittance firms, three cooperatives, one insurance firm and one credit card company. This shows that verification has covered a range of different regulated entities.