COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

CYPRUS

27 September 2011

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I. PREFACE

1. This is the fifth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SR.I, SR.II, SR.III, SR.IV and SR.V), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The evaluation was based on the laws, regulations and other materials supplied by Cyprus, and information obtained by the evaluation team during its on-site visit to Cyprus from 7 to 12 June 2010, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Cyprus. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Mr Grigor Tygranian (Prosecutor, Office of the Prosecutor General, Armenia) and Mr Jeremy Rawlins (Head, Proceeds of Crime Delivery Unit, UK) who participated as legal evaluators, Mr Herbert Zammit Laferla (Director, Financial Stability Division, Central Bank of Malta) and Mr Glenn Baek (Policy Advisor, U.S. Department of the Treasury) who participated as financial evaluators, Mr. Attila Sisak (Deputy Head of Department, Department for Criminal Affairs, Directorate General of Criminal Affairs, National Tax and Customs Administration, Hungary) who participated as a law enforcement evaluator and Ms Livia Stoica Becht and Mr Fabio Baiardi, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following Sections:

    1. General information
    2. Legal system and related institutional measures
    3. Preventive measures - financial institutions
    4. Preventive measures – designated non financial businesses and professions
    5. Legal persons and arrangements and non-profit organisations
    6. National and international co-operation
    7. Statistics and resources

Annex (implementation of EU standards).
Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 18th Plenary meeting – 31 January to 3 February 2006), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' Section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2010 or shortly thereafter.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Cyprus at the time of the 4th on-site visit (7 to 12 June 2010) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which a country received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round MER. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of Cyprus.

Key findings

- Cyprus has a record of relatively low level of crime. The authorities with whom the evaluation team met explained that the money laundering risks to which the jurisdiction is exposed have not changed since the third round evaluation in 2005. No specific money laundering (ML) /financing of terrorism (FT) risk assessment has been undertaken, however the Advisory Authority has identified a number of risks and vulnerabilities. According to its assessment, the main risks emanate from the international business activities at the layering stage, money laundering activities usually taking place through banking or real estate transactions, while it is considered that risks at the placement stage are being mitigated by legal requirements in place regarding dealers in foreign currency, restrictions on foreign ownership of property and the limited role of cash transactions. Cyprus authorities consider the FT risk to be low. Nonetheless, a comprehensive national risk assessment is essential to adequately identify ML/TF risks and vulnerabilities, as well as the targeted sectors in the country, Cyprus should take appropriate measures to address those risks.

- Money laundering and the financing of terrorism are criminalised largely in line with the FATF standard and the legal framework provides an ability to freeze and confiscate assets in appropriate circumstances, with minor deficiencies relating to the scope of criminalisation of the FT offence. As of the assessment date, there have been no prosecutions or convictions for terrorism financing. A few effectiveness issues remain as regards the implementation of the ML offence when considering the number and type of ML convictions and the volume of confiscation orders achieved. Cyprus needs to take additional measures to ensure a comprehensive system for freezing terrorist assets in application of the United Nations Security Council Resolutions (UNSCR).

- Overall, progress has been made since the third round evaluation by strengthening the preventive regime through the enactment on 13 December 2007 of the Law no. 188(I)/2007 on the Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law (hereinafter the AML/CFT Law), which came into force on the 1st of January 2008. This Act, which was amended in 2010, was also aimed at implementing the transposition in Cyprus legislation of the Third European Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. These requirements were complemented by directives and orders issued by the supervisory authorities to the respective sector. It was positively noted that the financial and to a lesser extent the DNFBPs sectors show a higher degree of awareness of their responsibilities and obligations under the AML/CFT Law and the relevant Directives.

- The Cyprus supervisory authorities of the financial sector have sufficient powers to supervise compliance with AML/CFT requirements and carry out inspections. They are empowered to apply, as appropriate, a range of sanctions which are proportionate and dissuasive, though it was noted that sanctions imposed in practice have been mainly in the form of warning letters to take corrective action. Overall, the financial sector appeared to be adequately monitored, although it is recommended to step up the number of on-site visits in particular on MTBs and investment firms and regulated markets.

- However, the same cannot be concluded as regards the designated non-financial businesses and professions, as there is insufficient evidence that effective supervision is taking place across the board, and in particular as regards trust and company service providers, real estate, dealers in precious metals and stones as well as lawyers. There is also a clear lack of resources in the supervisory authorities with the result that on-site examinations may not be undertaken appropriately, if and when undertaken.

- Cyprus has effective mechanisms for coordination and co-operation among all domestic AML/CFT stakeholders, including an active Advisory Authority. Cyprus should, however, conduct a review of the effectiveness of the AML/CFT system.

- The legal framework for mutual legal assistance is sound and Cyprus responds to requests for assistance generally in an efficient and effective manner. Further efforts appear necessary to demonstrate that non-MLA related assistance is also similarly effective for all competent authorities.

Legal Systems and Related Institutional Measures

2. The money laundering offence, as set out in Section 4 of the 2007 Prevention and Suppression of Money Laundering and Terrorist Financing Law, is generally compliant with the requirements established under the Vienna and Palermo Conventions, and in accordance with Recommendation 1. Cyprus applies a threshold approach whereby the money laundering offence extends to any type of property regardless of its value that directly or indirectly represents property from a predicate offence that carries one year's imprisonment. Predicate offences include a range of offences in each of the designated categories of offences based on the FATF Methodology and the appropriate ancillary offences to the ML offence are criminalised. Money laundering is punishable by a penalty of either fourteen years ' imprisonment or by a pecuniary penalty of up to 500.000 Euros or both of these penalties or respectively, in cases of negligent ML, with five years' imprisonment or a pecuniary penalty of up to 50.000 Euros or both. All but two money laundering prosecutions since the last evaluation have been based on own proceeds money laundering. Since 2005, progress is recorded with final convictions for money laundering successfully obtained in 108 cases against 45 persons, including two stand-alone money laundering prosecutions, one of which was based on a foreign predicate offence. The evaluation team notes however that the number of stand-alone ML and in general the volume of ML convictions appear to be low.

3. The financing of terrorism offence[2], as set out in Sections 4 and 8 of the Law no. 29(III) of 2001, amended by the Law no. 18(III) of 2005, eliminated the deficiency previously noted under the third round, the FT offence covering now Cypriot citizens and nationals. The FT offence extends to any funds as defined in the Terrorist Financing Convention, which is part of the Cyprus domestic legislation. However, the evaluation team considered that the FT offence still does not adequately cover the collection and provision of funds as required by Special Recommendation II, despite the reference made in Section 5 of the AML/CFT Law to the "collection of funds for the financing of persons or organisations associated with terrorism". The sanctions set out in the

[2] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit, however this change occurred after the two month period (i.e. in force: 22 November 2010) following the on-site evaluation visit and cannot be considered for the purpose of this assessment.

legislation are imprisonment up to fifteen years or a fine of 1.700.000 Euros, and additionally, confiscation of involved assets may also be applied. These have the potential to be dissuasive, however they have never been tested, as the investigations conducted since 2005 by the authorities did not result in investigations nor convictions in the absence of relevant evidence.

4. Cyprus has a comprehensive, generally robust and well balanced confiscation and provisional measures regime which gives competent authorities the ability to freeze and confiscate assets in appropriate circumstances. While there are only minor deficiencies relating to the scope of criminalisation of the FT offence as noted above which may impact if such cases were to appear in practice, the evaluation team would have expected a greater volume of confiscation orders to be made. Since 2005, the confiscation regime has produced 51 domestic and foreign freezing orders and 14 confiscation orders, of which 9 were made in money laundering cases.

5. The legal framework for implementing the UNSCR has remained unchanged since the third round evaluation and continues to be based upon Decision no. 54.374 issued by the Council of Ministers of the Republic of Cyprus on 4 October 2001[3]. In addition, relevant Community regulations, which are applicable throughout the European Union, are also directly applied in Cyprus. At the time of the assessment, no freezing had occurred under SR. III. Though the authorities' view is that the administrative procedure in place pursuant to the decision and EU regulations is effective, the evaluation team considers that additional measures are necessary to ensure that the requirements of Special Recommendation III are adequately implemented and that a comprehensive and effective system for freezing without delay funds used for terrorist financing is established.

6. According to the 2007 AML/CFT Law, The Unit for Combating Money Laundering (MOKAS) is the competent authority for receiving and analysing information relevant to laundering and terrorist financing offences and for investigating such offences. The organisational structure, the task and responsibilities of MOKAS in connection with its role as a financial intelligence unit have remained basically unchanged since the last evaluation. MOKAS is a multidisciplinary unit established within the structure of the Law Office of the Republic and is composed of officials from the Attorney General's office, the Police, the Customs as well as of its own operational staff, recruited in accordance with the Law Office of the Republic. The Unit undertakes in a professional and timely manner its mission to collect and analyse STRs, and given its law enforcement functions, there is no absolute separation between the analysis and the investigation phase of the process. There have been a number of positive changes that have occurred since the previous evaluation regarding staffing, training and resources of MOKAS and the number of indictments and convictions based on STRs has improved. Overall, MOKAS is adequately performing its role as a key player in the AML/CFT system. While the AML/CFT law does not establish explicitly the dissemination function of the FIU nor the power of MOKAS to request additional information from reporting parties, in practice MOKAS does not experience any difficulties in obtaining the information required with a view to carrying out its analysis and investigating functions and where appropriate, MOKAS shares also financial information with the Police or Customs, which may also investigate ML offences under their respective competences. Concerns remain as regards the information reported to MOKAS and the understanding by the reporting entities of their reporting obligations, as well as the important increase in the number of pending cases. It was also noted that some of the directives and guidelines issued by supervisory authorities and MOKAS to financial institutions and other obliged entities on the manner of reporting suffer from minor gaps and would necessitate to be reviewed, harmonised and updated.

Preventive Measures – financial institutions

7. The scope of preventive measures in the area of AML/CFT for the financial sector now covers all institutions/professions working in a financial activity as defined by the FATF.

[3] Certain changes to the relevant legal framework were introduced after the visit by provisions of Law 110(I)/2010.

8. The AML/CFT Law does not allow the non-application or the partial application of the obligations in instances where a financial activity is carried out on an occasional or very limited basis and there is little risk of money laundering or of terrorist financing. The AML/CFT law, however, does include references to the applications of exemptions or certain specific low risk measures with respect to institutions, transactions, counterparties that originate from or are based in other EU/EEA Member States, which are derived from the EU regulations and directives, and in addition, with respect to third countries that apply equivalent AML/CFT regulations, through reliance on the EU member States' equivalence list. However, in the absence of an independent and autonomous risk assessment of the countries on the list undertaken by Cyprus which would take into account the specific risks for the Cypriot environment, this generic categorisation is unreasonable.

9. Since the third round evaluation, Cyprus has taken extensive measures to rectify its compliance with customer due diligence requirements, by transposing the latter either into the AML/CFT Law (Section 60) or in the directives issued by the supervisory authorities to the respective industry. The legal framework now covers the requirements set out in Recommendation 5. Section 63 of the AML/CFT Law which transposes the EU Third Directive provisions does not reflect the FATF requirements in that it allows a full exemption from CDD requirements in certain instances as opposed to the application of reduced or simplified CDD measures.

10. In practice, the financial sector have shown increased awareness of the new requirements. However, the evaluation team expressed some concern on the effectiveness of implementation and understanding of certain CDD concepts, such as the risk based approach and the beneficial owner, within the insurance and MTBs sectors. In addition there is a legal uncertainty on third party reliance, arising from discrepancies between the AML/CFT Law and the D-Bank, which may negatively impact on the efficiency of the system. Harmonisation of the directives for the respective industries remains an important element for the effectiveness of the sector. Concerns are also expressed as regards the ability of the industry in fully applying its CDD with regard to legal persons, given the large backlog of updating at the Register of Companies.

11. Politically exposed persons (PEP) are now covered by modified provisions in the AML/CFT law, inspired from the provisions of the Third AML Directive, which were complemented by additional provisions in the directives or orders to the industry. However, a number of issues appear to remain. The PEP requirements in the AML/CFT law do not apply to foreign PEPs resident in Cyprus, while they may be covered under some of the directives, raising a conflicting legal situation. Also, apart from the banks and securities market participants, there are no requirements to obtain senior management approval to continue business relationship when a customer/beneficial owner becomes a PEP or is found to be a PEP during the course of an already established business relationship. The lack of harmonisation of the directives issued to the industry could result in different levels of application of the PEP related requirements. The authorities should remedy these shortcomings.

12. Financial institution secrecy laws do not appear to inhibit the implementation of the FATF Recommendations.

13. Similarly, the AML/CFT Law and directives cover adequately the requirements of Recommendation 10. The private sector stated that in practice they go beyond the minimum of five years in retaining records, and no sanctions were applied by the supervisory authorities in the period 2007-2010 for shortcomings with the record keeping requirements. The evaluation team recommends however the authorities to remain attentive to the implementation and understanding of the beneficial owner concept within certain parts of the financial sector to ensure that this does not impact on the effective implementation of the record keeping requirements.

14. Special Recommendation VII was implemented in the European Union by regulation (EC) no. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information

on the payer accompanying transfer of funds, in force since 1 January 2007 and which is directly applicable in Cyprus. The supervisory authority has taken measures to monitor the compliance of financial institutions with the applicable provisions and MTBs have been sanctioned 6 times during 2009 for minor shortcomings which have taken the form of requests to take measures within a specified timeframe. Cyprus complies with Special Recommendation VII.

15. The AML/CFT Law refers to the reporting obligation in two distinct provisions. On one hand, Section 69 obliges persons engaged in financial or other business activities to report transactions suspected to be related to ML or TF, and is considered by the authorities to set out the principal reporting obligation. On the other hand, a general obligation for all persons (whether or not they are engaged in financial businesses or other activities as defined in Section 2 of the AML/CFT law) to report transactions is found in Section 27, which also criminalises the failure to report. D-Banks, D-Insurers, D-Securities, D-MTBs, D-Lawyers and G-Estate and G-Dealers make different references to both Sections 27 and 69. The reporting obligation is tied with the definition of ML and FT offences in the AML/CFT law and includes all offences from the list of predicate offences for Recommendation 1. The legal obligation applies regardless of the amount of the suspicious transaction to be reported. Section 69 provides that the obligation to report includes also the attempt to carry out suspicious transactions, while this is not covered in Section 27. The evaluation team thus considers that there is a need to harmonise Section 27 and Section 69 for reporting purposes. As regards effectiveness, the overall number of STRs received shows a continuous rising trend. Eight STRs related to TF and no sector specific guidance and indicators have been provided for obliged entities on reporting FT. Within the financial sector, the STRs continue to be filed by the banking sector, and these mainly relate to their international business, and non resident customers. The other reporting entities still show a significantly low level of reporting. The insurance sector has never reported to MOKAS, while company service and money remittance businesses having started reporting only recently.

16. The safe harbour and tipping off provisions are covered in Section 26 and respectively 48 and 49 of the AML/CFT Law. The AML/CFT law does not prohibit institutions' directors, officers or employees to disclose the fact that a suspicious transaction has been identified and that an STR is in the process of being prepared. Furthermore the tipping off provision appear to explicitly cover only disclosures of information and STRs that have been submitted to MOKAS regarding knowledge or suspicion of ML, as opposed to the wider reporting obligation which covers also FT.

17. Since the third round evaluation, Cyprus has made progress in addressing the previously identified shortcomings in respect of internal control, compliance and audit requirements, by introducing relevant requirements in the AML/CFT law and specific industry directives. Concerns remain regarding the lack of requirements for the insurance and MTBs sectors to maintain an independent audit function; and further clarifications in the directive applicable to the insurance as regards the applicable requirements. Consequently, there are effectiveness concerns in particular as regards the testing of compliance with procedures, policies and controls where an audit function is not in place, and whether the requirement for independent audit is applied uniformly throughout the financial sector.

18. According to Section 59 of the AML/CFT Law, the Central Bank of Cyprus (CPC), the Authority for the Supervision and Development of Cooperative Societies (ASDCS), the Cyprus Securities and exchange Commission (CYSEC) and the Insurance Companies Control Service (ICCS) are the supervisory authorities of the banking and financial business of Cyprus. They are responsible for monitoring, supervising and evaluating the implementation of the AML/CFT requirements set out in the AML/CFT Law and sectoral directives or orders. They are empowered to issue directives or orders to persons falling under their respective supervision which are binding and enforceable. All these authorities have the necessary powers enabling them to fulfil their supervisory functions. In application of the provisions of their respective institutional laws those

include the right to: undertake off-site and on-site examinations, enter the premises of supervised institutions, and demand and obtain the necessary information to ensure compliance with the AML/CFT law.

19. Furthermore, not all supervisory authorities have adopted a risk based approach to supervision. Although overall the financial sector appeared to be adequately monitored, with the exception of MTBs outlets and investment firms and regulated markets, the evaluation team remained concerned by the noticeable decrease in the past years of the number of on-site visits.

20. The sanctions provided for under the AML/CFT law are applicable to persons engaged in a financial or other activity and thus are not applicable to directors or senior management of a financial institutions. The sanctions available appear to be effective, proportionate and dissuasive. However, sanctions imposed in practice have been mainly in the form of warning letters to take corrective action. The authorities indicated that this is due to the fact that no serious weaknesses have been identified. The overall number of sanctions imposed appears low in proportion to the sector implying a high degree of compliance, a position not necessarily endorsed by the evaluation team.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBP)

21. The DNFBPs sector in Cyprus consists of real estate agents, dealers in precious metals and precious stones, the legal profession and the accountancy profession. There are no casinos in Cyprus, or notaries. The activities of trust and company service providers (TCSP) are currently not regulated *per se* although, according to the Cypriot authorities, this activity is normally undertaken by the legal and accountancy professions in the course of their normal professional activities.

22. The AML/CFT law explicitly applies to all of the designated non-financial businesses and professions, which are defined in the FATF Glossary, though some minor clarifications are required to ensure that the accountancy profession and certain trading activities other than dealers in precious stones or metals are adequately covered in the scope of the law. Trust and company service providers are now included in the AML/CFT Law as obliged persons, however the relevant law covering TCSPs has not yet been issued. It must be noted, however, that under the AML/CFT Law, lawyers and accountants are not directly identified as obliged entities for providing such services unless recognised as such under TCSPs.

23. There are now three supervisory authorities responsible to supervise DNFBPs on their implementation and compliance to the AML/CFT Law and directives issued thereunder: the Council of the Institute of Certified Public Accountants of Cyprus (ICPAC) for the accountancy profession; the Council of the Cyprus Bar Association (CBA) for the professional activities of the independent legal professionals and the Unit for Combating Money Laundering (MOKAS) for real estate agents and dealers in precious metals and precious stones.

24. The supervisory authorities for the non-financial sector have likewise issued directives for those they supervise to guide them on the implementation of and compliance with the AML/CFT requirements: AML Directive to the Members of the CBA; AML Directive to the Members of ICPAC; AML Guidelines to the Members of the Cyprus Jewellers Association and AML Guidelines to the Members of the Cyprus Estate Agents Registration Council.

25. As regards CDD and record keeping requirements, progress has been achieved in some areas where shortcomings had been identified in the third round report, though they are offset by other shortcomings identified. Discussions with the industry have demonstrated a low level of awareness on customer due diligence issues and the effective application of the beneficial owner identification process in most sectors of the DNFBPs and of the implementation of a risk based

approach principles to identify higher risk customers by DNFBPs in general. The evaluation team has also expressed serious concerns on the effective implementation of the AML/CFT requirements in the real estate and dealers in precious metals and precious stones sectors.

26. Deficiencies noted in respect of Recommendation 6 are also applicable to DNFBPs, with additional gaps given the limited or lack of additional requirements in the Directives or Guidelines.

27. As regards the reporting obligation, though meetings with the sector reflected an improved awareness of the STR regime, and additional efforts were undertaken by the authorities through trainings and consultations, the overall number of STRs sent by the DNFBPs remained low which raises serious concerns about the effectiveness of the implementation of the reporting obligation.

28. Notwithstanding the relatively limited experience of the supervisory bodies of DNFBPs so far, it can be stated that the awareness within service providers has grown, open conversations and consultations, trainings by supervisory authorities have been organized, although more are still needed, supervision has become more effective. Deficiencies previously identified in respect Recommendation 14 are also relevant in this context while there are no adequate requirements covering Recommendation 15 and 21 for real estate agents and dealers in precious stones and precious metals.

29. However, there is a clear lack of resources in some of the supervisory authorities with the result that on-site examinations may not be undertaken appropriately, if and when undertaken. The Institute of Certified Public Accountants has outsourced its audit function and although it appears that this is providing better results, the legal basis for outsourcing could not be established. The CBA has taken some supervisory action however there remain concerns considering the methodology applied, its results and given its lack of resources. The evaluation welcomed that MOKAS has now been designated as the supervisory authority for the real estate and the dealers in precious metals and precious stones, however no supervisory action has been taken in respect of these sectors. There is no indication of sanctions imposed on the DNFBP sector. In the light of the above, the evaluation team recommended that supervisory efforts are clearly stepped up. The resources and capacities of all DNFBPs supervisors should be reviewed to ensure that these are in a position to adequately carry out their supervisory functions, and as appropriate, implement AML/CFT training for staff conducting AML/CFT inspections.

Non-Profit Organisations

30. No changes have been made since the third round evaluation to the legal framework covering non - profit organisations (NPO), the authorities indicating that this area has not been of priority, considering that the FT risks in the sector are assumed to be low. While a review of part of the legal framework appears to have been undertaken in order to strengthen the transparency and improve the registration procedures, further efforts appear to be necessary to ensure a high level of transparency of the whole NPO sector. Thus the implementation of the requirements of Special Recommendation VIII continues to be rather limited.

National and International Co-operation

31. Since the third round evaluation, the level of co-operation between regulators and supervisors, MOKAS, law enforcement authorities and the private sector have been stepped up and a variety of mechanisms are in place to facilitate co-operation and policy development. The Advisory Authority now includes the Association of International Banks as a member. A number of achievements were noted, illustrating the effective coordinating role of the Advisory Authority, and which resulted in concrete changes being implemented. A Memorandum of Understanding (MoU) has been signed between the supervisory authorities of the financial sector (CBC, CYSEC,

ICCS and ASDCS) which allows them to cooperate and exchange information. In addition, since October 2009, a special AML/CFT Technical Committee of experts of the supervisory authorities of the financial sector was also established on the basis of this MOU. The relevant institutional and legal framework to comply with the obligation to regularly review the effectiveness of the AML/CFT regime is in place in Cyprus. Additional efforts are required to review the effectiveness of the AML/CFT system as a whole and conduct a national risk assessment to inform the future strategies on the investigation of financial crimes and feed into specific guidance to obliged entities.

32. Cyprus signed and ratified the United Nations Convention against Transnational Organised Crime (Palermo Convention) , the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention). Cyprus legislation complies largely with many provisions of these Conventions, however, there remain certain implementation issues in respect of the Palermo and Vienna Conventions. In addition, there remain several shortcomings in respect of the implementation of the UNSCRs 1267 and 1373.

33. The legal framework covering mutual legal assistance is comprehensive and there have been no major changes since the third round evaluation Cyprus can provide a wide range of mutual legal assistance and requests for assistance are generally answered within 6 to 7 months by the Central Authority within the Ministry of Justice and Public Order and within a shorter period of time for requests submitted to MOKAS. The incomplete criminalisation of the terrorist financing offence has the potential to impact on the ability of Cyprus to provide mutual legal assistance in circumstances where dual criminality is required but has not done so in practice.

34. As regards non-MLA related assistance, the information received does not enable to draw any firm conclusions regarding the scope and effectiveness of the supervisory authorities and other law enforcement authorities co-operation with other foreign authorities on AML/CFT matters. As regards FIU-to-FIU co-operation, it is positively noted that the number of requests received and sent has constantly increased. The evaluation team recommended that a system is put in place to monitor the quality and speed of executing international requests for co-operation on matters related to money laundering and the financing of terrorism, which would also enable to address concerns expressed by other countries in respect of certain limitations that they've experienced in bilateral co-operation related to the exchange of certain sensitive information in certain cases.

Resources and statistics

35. The human, financial and technical resources allocated to competent authorities regarding AML/CFT matters are not satisfactory on the whole, and the situation is particularly worrisome as regards supervisory authorities. CYSEC and ICCS require prompt increase of resources to properly perform their supervisory functions. The resources and capacities of all DNFBPs supervisors need to be reviewed to ensure that they are in a position to adequately supervise their respective sectors, as at the time of the on-site visit, they appeared to be inadequate. Regular AML/CFT training for staff conducting AML/CFT inspections needs to be undertaken for all supervisory authorities. Lastly, the Central Authority did not appear to be provided with sufficient technical and human resources.

36. Cyprus authorities should also take additional measures to gather statistics. Complete statistics were not available inter alia on: a) the number of investigations conducted for ML, including on information on how these cases were initiated and the types of crimes they relate to, on the number of investigations terminated and the reasons for termination, and the cases pending; b) on the underlying predicate offence in each case for which a defendant has been acquitted; c) on formal requests for assistance made or received by all supervisors relating to or including AML/CFT including whether the request was granted or refused are not available; d) on the number of mutual legal assistance requests, whether accepted or denied, and response times.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on Cyprus

1. This Section[4] provides a factual update of the information previously detailed in the third round mutual evaluation report on Cyprus : the general information on the country, its membership of international organisations and key bilateral relations aspects, economy, system of government, legal system and hierarchy of norms, transparency, good governance, ethics and measures against corruption. For the purpose of this report, the evaluation team has not assessed the situation in the areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control.

2. As noted in the 3rd round report, Cyprus acceded to the European Union in 2004. On 1st January 2008. Cyprus adopted the Euro. The economy of Cyprus remained fairly stable until 2008. In 2009, an economic growth of -1,7% was observed and a sluggish recovery is expected for 2010 (growth of 0,5%). The per capita income accounts approximately at 98% of EU (27) average.

3. The Cyprus authorities have provided the following updated macroeconomic data.

Table 1: Major Macroeconomic Magnitudes

	2007	***2008***	***2009***	***2010***
Real GDP (% change)	*5,1*	*3,6*	*-1,7*	*1.0*
CPI inflation (%)	*2,4*	*4,7*	*0,3*	*2.4e*
Unemployment Rate (%)	*3,9*	*3,7*	*5,3*	*6.2*
General government balance (% of GDP)	*3,4*	*0,9*	*-6*	*-5.3*
Government gross debt (% of GDP)	*58,3*	*48,3*	*58*	*60.8*

1.2 General Situation of Money Laundering and Financing of Terrorism

4. The authorities consider that the money laundering situation has not changed in Cyprus since the 3rd round evaluation in 2006.

5. Cyprus has a record of relatively low level of crime. The Advisory Authority had identified that the main risks for Cyprus appear to emanate from the international business activities at the layering stage. As regards ML risks at the placement stage, the authorities indicated that these are mitigated by legal requirements in place regarding dealers in foreign currency, restrictions on foreign ownership of property, and the limited role of cash operations. Money laundering

[4] The reader is referred to the information set out under this Section in the Third round detailed assessment report on Cyprus (MONEYVAL(2005)20), which was based on the legislation and other relevant materials supplied by Cyprus and information gathered by the evaluation team during its on-site visit to Cyprus from 3-9 April 2005 and subsequently. The report was adopted by MONEYVAL at its 18th Plenary meeting (31 January – 3 February 2006).

activities usually take place through banking transactions and transaction in real estate, and the authorities do not anticipate changes in this threat in the foreseeable future.

6. Cyprus has developed as a regional business and financial centre, mainly due to the existence of a wide network of treaties with other countries for the avoidance of double taxation. As a result of the country's development as a financial centre, apart from domestic criminal activities, Cyprus is also affected to some extent by criminal acts committed abroad, proceeds of which may be laundered through Cyprus. Money laundering activities take place usually through financial banking transactions and through the purchase of immovable property in Cyprus. Cypriot legislation restricts foreign ownership of property except for EU citizens.

7. The following criminal offences are the major sources of criminal proceeds: financial crime, fraud, including investment fraud, theft and drug trafficking offences. Proceeds of crime are derived from both domestic and foreign predicate offences. The authorities have provided the table below, which reflects the statistics available for the period 2006-2010 on the reported cases covering the FATF categories of offences:

Table 2: Cases reported – breakdown per FATF designated categories of offences (2006-2010)

FATF designated categories of offences	2006	2007	2008	2009	2010
	Reported Cases	Reported Cases	Reported Cases	Reported Cases	Reported Cases
Participation in organized criminal group and racketeering	N/A	N/A	N/A	N/A	N/A
Terrorism and terrorist financing	0	0	0	0	0
Trafficking in human beings and migrant smuggling	68	73	91	47	38
Sexual exploitation and sexual exploitation of children					
Sexual violence (including rape, sexual assault and sexual offences against children)	120	96	93	78	79
Illicit trafficking in narcotic drugs and psychotropic substances [*1]	200	177	136	104	163
Illicit arms trafficking	0	0	0	0	0
Illicit trafficking in stolen and other goods					
Receiving property fraudulently obtained	53	33	24	18	21
Corruption and bribery	14	7	7	16	9
Fraud	173	169	177	180	254
Counterfeiting currency	3	12	9	20	16
Counterfeiting and piracy of products	111	188	240	371	168
Environmental crimes	N/A	28	21	22	39
Murder, grievous bodily injury	118	122	139	196	129
Kidnapping, illegal restraint and hostage-taking	15	10	12	26	27
Robbery or theft [*2]					

Theft	1607	1667	1405	1285	1670
Smuggling	N/A	N/A	N/A	N/A	N/A
Extortion					
Robbery and Extortion	80	74	71	142	156
Forgery *3	1179	946	1037	843	872
Piracy	0	0	0	0	0
Insider trading and market manipulation	3	0	0	1	0

*1 Mainly users in the vast majority of cases
*2 Majority of cases refer to minor thefts-small amounts involved
*3 Not necessarily predicate offences

8. As regards financing of terrorism in Cyprus, the authorities indicated that they did not identify any instances of the use of the financial system for such purpose.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

9. The financial sector in Cyprus is mainly composed of banks, co-operative credit institutions, investment firms and insurance companies. It continues to be dominated by the banking sector when measured by size of activity. There are 42 banks, 111 cooperative credit institutions, 77 investment firms and 39 insurance companies. These institutions are complemented by 2 representative offices of foreign banks, 6 institutions providing money transfer services and around 1,500 insurance intermediaries.

10. As from 1 January 2006, the former international banking unit (IBUs), whose operations were restricted by virtue of their licences in foreign currencies, were fully incorporated into the overall Cyprus banking system. More specifically, all the former IBUs have been allowed by the Central Bank of Cyprus (CBC) to transact business in local currencies, both for the acceptance of deposits and the granting of loans as well as for any other banking business.

11. Consequently, in the banking sector, 17 of the 42 banks are incorporated in Cyprus, 9 of which are subsidiaries of foreign banks and only 3 being of full resident shareholding. The other 25 are branches of foreign banks, 8 of which are branches of banks incorporated in other European Union Member States and 17 representing banks incorporated in third countries.

Table 3: Ownership structure of commercial banks

Ownership structure of commercial banks		
	Dec-08	**Mar-10**
Foreign ownership more than 50%	10	9
Foreign ownership less than 50%	5	5
Resident Shareholders 100%	3	3
Foreign Branches	27	25
Total number of banks	45	42

12. Cooperative credit institutions constitute the largest sector of the co-operative sector in Cyprus, managing €12.617 million in deposits and €9.736 million in loans as at 31 December 2009. As of January 2003 a five year transition period had been agreed with the European Union within which all co-operative credit institutions had to become fully compliant with the relevant banking directives of the EU. As a consequence, and upon the encouragement of the Cyprus Cooperative Movement, there has been an important merger and consolidation process of co-operative credit institutions, reducing the sector to 111 institutions by December 2009 from the previous 362 institutions as at end December 2005. The Authority for the Supervision and Development of Cooperative Societies aims to reduce the number of institutions to 80 over the next two year period. All co-operative credit institutions are shareholders of the Cooperative Central Bank Ltd which, as from January 2008, become the central body for these institutions.

13. The 77 institutions authorised to transact as investment firms are licensed to provide various activities in the securities markets in accordance with the 2007 Investment Services and Activities and Regulated Markets Law (as amended). In this field the Cyprus Stock Exchange (CSE) is licensed to operate as a regulated market. The CSE counts 23 member firms, all of which are investment firms or credit institutions. There are 128 companies listed on the Exchange.

14. In the insurance sector, 13 out of the 39 institutions provide life insurance business. The 39 insurance companies consist of 26 domestic business undertakings which transact almost all their business within the Republic of Cyprus, 10 are international business undertakings transacting outside Cyprus while the other 3 are branches of non-EU registered entities which transact both in and out of Cyprus. There are also about 323 EU/EEA institutions providing insurance business in Cyprus through the EU pass-porting rights and 4 that provide insurance services through the establishment of branches in Cyprus.

15. In accordance with the provisions of Section 59(1) of the Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 (the AML/CFT Law), there are four main supervisory authorities for the financial sector.

16. The Central Bank of Cyprus (CBC) is the competent authority to license and supervise banks under the Central Bank of Cyprus Law 2002 – 2007 and the Banking Law 1997 – 2009. The CBC adopts a two way approach to its supervisory functions through off-site monitoring and on-site examinations. Among other prudential and operational scope of supervision, the on-site examinations also focus on areas related to AML/CFT procedures and controls. The CBC plans and conducts its on-site examinations on a risk based approach with the frequency and intensity of the examinations being governed by the principle of proportionality according to size, nature, systemic importance, scale and complexity of the bank's operations. The CBC is further responsible for the oversight of payments systems and the provision of payment services, including money transfer businesses (MTBs).

17. The Authority for the Supervision and Development of Cooperative Societies (ASDCS) is responsible to license and supervise cooperative credit institutions. However, the CBC is responsible to supervise the Cooperatives Central Bank Ltd which, as indicated above, is the central body for cooperative credit institutions.

18. The Cyprus Securities and Exchange Commission (CYSEC) is the competent authority for the licensing and supervision of Cyprus Investment Firms and Regulated Markets. It acts according to the Investment Services and Activities and Regulated Markets Law of 2007 (as amended) implementing the European Union Directive 2004/39/EC ("MIFID").

19. Supervision of the insurance sector falls within the responsibilities of the Insurance Companies Control Service (ICCS), which is assisted in this function by the Government Actuary's Department of the United Kingdom in certain cases where a specialized advice is required.

Table 4:Structure and supervision of the Financial Sector

Financial Institutions		
Type of business	**Supervisory Authority**	**No. of Registered Institutions**
1. Acceptance of deposits and other repayable funds from the public	CBC/ASDCS	Banks -42 Co-operative credit institutions -111
2. Lending	CBC/ASDCS	Banks 42 Co-operative credit institutions -111
3. Financial leasing	Not applicable	Not applicable
4. The transfer of money or value	CBC/ASDCS	Banks 42 Co-operative credit institutions -111 MTBs: 6
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	CBC/ASDCS	Banks 42 Co-operative credit institutions -111
6. Financial guarantees and commitments	CBC/ASDCS	Banks 42 Co-operative credit institutions -111
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading	CBC/ASDCS/CYSEC	63 Cyprus Investment Firms that at least provide one of the following investment services: • Reception and transmission of orders in relation to one or more financial instruments • Execution of orders on behalf of clients • Dealing on own account Banks - 42 Co-operative credit institutions -111
8. Participation in securities issues and the provision of financial services related to such issues	CYSEC	15 Cyprus Investment Firms that at least provide one of the following investment services: • Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis • Placing of financial instruments without a firm commitment basis
9. Individual and collective portfolio management	CYSEC	45 Cyprus Investment Firms that at least provide the investment service of Portfolio management
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	CYSEC	46 Cyprus Investment Firms that at least provide the ancillary service of Safekeeping and administration of financial instruments for the account of clients, including custodianship

		and related services such as cash/collateral management
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Not applicable	Not applicable
12. Underwriting and placement of life insurance and other investment related insurance	ICCS	13 Life Insurance companies 518 Life-Insurance Intermediaries (of which 106 Legal entities and 412 natural persons)
13. Money and currency changing	CBC/ASDCS	This business is only carried out by banks and cooperative credit institutions

Designated Non-Financial Businesses and Professions (DNFBP)

20. The DNFBPs sector in Cyprus consists of real estate agents, dealers in precious metals and precious stones, the legal profession and the accountancy profession. There are no casinos in Cyprus while the activities of trust and company service providers (TCSP) are currently not regulated *per se* although, according to the Cypriot authorities, this activity is normally undertaken by the legal and accountancy professions in the course of their normal professional activities.

Table 5: Structure and supervision of the DNFBPs Sector

Designated Non-Financial Businesses and Professions (DNFBPs)		
Type of business	**Supervisory Authority**	**No. of Professionals / Entities**
1. Casinos (including internet)	Not applicable	Not applicable
2. Real estate agents	FIU-MOKAS	310
3. Dealers in precious metals	FIU-MOKAS	120
4. Dealers in precious stones	As above	As above
5. Lawyers, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering	CBA ICPAC	2,030 2.798 (Out of which 639 practicing)
6. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere		

21. According to the replies to the Mutual Evaluation Questionnaire (MEQ), there are currently 310 (2006: 238) real estate agents and 120 (2006: 300) dealers in precious metals and precious stones. The legal profession consists of 2,030 (2006: 1,831) professionals, while the accountancy profession consists of 2,798 (2006: 1,858) professionals, of whom 639 are practicing, spread in about 340 audit firms. Notwithstanding, the Third Round Report indicated 6 TCSPs at the time, having been licensed under the Exchange Control Act (which since has been repealed due to Cyprus accession to the European Union).

22. According to Section 59(1) of the AML/CFT Law, there are three supervisory authorities responsible to supervise DNFBPs on their implementation and compliance to the AML/CFT Law and directives issued thereunder:

- The Council of the Institute of Certified Public Accountants of Cyprus (ICPAC) is vested with the responsibility to supervise the accountancy profession.

- The Council of the Cyprus Bar Association (CBA) is recognised as the supervisory authority for the professional activities of the independent legal professionals.

- The Unit for Combating Money Laundering (MOKAS) is responsible for supervising the professional activities of real estate agents and dealers in precious metals and precious stones.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

23. According to the information received, the situation has remained unchanged as regards the commercial laws and mechanisms governing legal persons and arrangements. [5]

24. The authorities clarified in this context that the Registrar of Companies maintains a file which contains the Memorandum and Sections of Legal Persons, which enables any person to examine the purpose and objectives of the legal person's activities. The Registrar of Companies also conducts an anticipatory check to identify any potential unlawful activity which may exist in the above two documents.

25. Moreover the Registrar of Companies keeps a record of shareholders/members, directors and secretary for each company. This register is annually updated through the Annual Report which is a document to be filed by each company compulsorily. The Annual Report is usually accompanied by financial statements which are compulsory for nearly all companies.

26. The Registrar of Companies also maintains a register of charges and mortgages which can provide to third parties information on the financial situation of a company. The information contained in the company file can be examined and verified by any person upon request to the Registrar's offices and on payment of a nominal fee. Most of the information contained in the office can be certified through the means of certified copies which can be ordered by any interested person.

27. If there is suspicion that a company functions having unlawful purposes or that there is an intention on the company's part to deceive its creditors, then on the initiative of a sizeable portion of its shareholders or by special resolution of the company or through a court order, there is a request to the Council of Ministers to appoint an inspector or inspectors. The inspectors may submit interim reports and they must submit such reports if requested by the Council of Ministers to the same and always they must submit a final report at the end of the inspection. On the basis of

[5] The reader is referred for further information to the Third round detailed assessment report on Cyprus (MONEYVAL(2005)20).

this report the Council of Ministers acts accordingly (Section 163 of the Companies Law, Cap. 113).

28. The directors of the company and also other officers are criminally liable for any misdeed during their years of office with the company. The company itself may also be liable for a fine if convicted by a criminal court, in application of the Companies law's provisions.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

29. There have been no major changes reported regarding AML/CFT strategies and priorities since the 3rd round mutual evaluation report.

30. Apart from the enactment of the consolidated AML/CFT Law of 2007, the authorities pointed out to a number of changes and developments, which are discussed in further details in the report.

31. The meetings of the Advisory Authority have been conducted more often so as the implementation of its functions to become more effective and thus, to strengthen its efficiency as far as decision making on policy issues is concerned. Consultations between the competent authorities within the Advisory Authority regarding the effectiveness of the whole system and to address possible problems have been taking place in this respect.

32. The authorities also referred in this context to the implementation of the risk based approach, which is examined in Section 3 in the report. The authorities stressed that the highest priority of the current control policies and objectives of Cyprus continues to be the strong monitoring and supervision of the financial sector and the provision of appropriate training to persons involved in the prevention and the detection of money laundering.

33. With regard to training, particular attention is given to persons or professionals who have relatively recently been subject to the responsibilities and obligations provided in the anti money laundering law, such as lawyers, accountants, estate agents and dealers in precious stones and metals. The authorities stressed their commitment to ensure that financial investigation is a core principle aimed at tackling crime in general and depriving criminals of their ill-gotten gains.

b. The institutional framework for combating money laundering and terrorist financing

34. The main changes that were reported to be made to the institutional framework since the Third Round are:

- the designation of MOKAS as the competent Supervisory Authority for real estate agents and dealers in precious metals and stones;
- the inclusion, following a decision of the Advisory Authority and a relevant proposal to the Council of Ministers, of the Association of International Banks as a member of the Advisory Authority. [6]

c. The approach concerning risk

35. The AML/CFT Law and directives issued by the relevant competent authorities provide for the application of a risk based approach both for the industry and for the authorities in their monitoring of the industry. The Cypriot authorities recognise that, as indicated in the FATF guidance on the risk based approach, the most important element and first step for the adoption

[6] After the visit, the authorities have informed that the Cyprus Financial Services Firms Association has become a member of the Advisory Authority based on a decision of the Council of Ministers (May 2011).

and implementation of a risk-based approach is the understanding of the threats and vulnerabilities of the financial system in Cyprus.

36. At a national level, the Advisory Authority against Money Laundering and Terrorist Financing had identified that the main risks for Cyprus emanate from the international business activities at the layering stage, since domestic criminality is relatively low, compared to international standards while the use of cash is very limited.

37. Therefore, more attention was given to the preventive measures in the banking sector which handles the bulk of international business. The activities of the remaining elements of the financial sector were considered as less vulnerable to the money laundering risks originating from international business, without undermining the risks that are particular for the remaining sector. To this effect the relevant directives issued by the CBC for the banking sector, while guiding the sector in the application of a risk based approach where applicable, requires the application of higher due diligence measures for high risk customers and situations.

38. With regard to the risk-based approach on supervision, the CBC applies a risk assessment system under which greater emphasis is given to banks which carry out sizeable international business activities. This means that offsite monitoring and onsite examinations are more intensive and frequent to banks which carry higher risk.

39. Particular attention has also been given to professionals i.e. lawyers and accountants who are the gatekeepers of international business in Cyprus and the persons who introduce this business to banks. To this effect, apart from placing these professions under the obligations of the AML/CFT Law, banks are required to evaluate the AML/CFT measures of these professionals and be satisfied that these are in line with the generally acceptable international standards and as vigorous as those employed by the banks themselves before accepting any introduced business from them.

40. Moreover, MOKAS has also adopted a risk based approach by trying to analyze deeper and review further the trends and techniques of money laundering and by cooperating with the Police in analyzing the domestic cases as well as the formal requests for legal assistance submitted by other countries, including through Police channels i.e. Interpol.

41. Finally, the AML/CFT Law also introduced the concept of a risk-based approach for customer due diligence. The relevant directives issued by the respective supervisory authorities further require those they supervise to have in place adequate and effective risk-based mechanisms to identify higher risk customers and apply the higher risk customer due diligence measures as required by the AML/CFT Law and as further promulgated by the relevant directives.

d. Progress since the last mutual evaluation

42. The major AML/CFT legislative development was the enactment by the House of Representatives on 13 December 2007 of Law no. 188(I)/2007 on the Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law" (hereinafter "the AML/CFT Law") by which the former laws on the Prevention and Suppression of Money Laundering Activities of 1996-2004 were consolidated, revised and repealed. Under the current AML/CFT Law, which came into force on 1 January 2008, the Cyprus legislation has been harmonised with the Third European Union Directive on the Prevention of the Use of the Financial System for the purpose of Money Laundering and Terrorist Financing (Directive 2005/60/EC). The AML/CFT Law was subsequently complemented by a number of directives issued to the industry to assist ion the implementation of the new requirements. The new law also takes into consideration recommendations made in the MONEYVAL 3rd Round Mutual Evaluation Report.

43. On the preventive side, and in particular in those areas where criteria of certain Recommendations are required to be covered by primary or secondary legislation, Cyprus has registered progress. Trust and company service providers (TCSP) have now been included under the obliged entities of the AML/CFT Law, although the law governing TCSP is not yet in place. The Third Round MER had concluded that some essential criteria that were required to be covered by law or regulation were in fact governed by the guidance notes issues by the respective supervisory authority. Since then, Cyprus has reviewed its AML/CFT Law and has enacted provisions accordingly, covering those essential criteria as required.

44. The Third Round Evaluation MER had also highlighted a number of essential criteria as not being met for specific recommendations. As further detailed in the relevant Sections of this report, it is now noted that the new legislation and revisions to various directives of the supervisory authorities have addressed most of these issues, while some remaining outstanding.

45. It should also be stressed that since the third round, Cyprus has criminalised terrorist financing (TF) in a manner wholly consistent with the 1999 Terrorist Financing Convention, through the Ratification Law No. 29(III)/2001, as amended in 2005 (Law No. 18(III)/2005). The number of convictions for money laundering has increased and MOKAS has established helpful case law on freezing and confiscation.

46. More detailed information on how the Third Round Mutual Evaluation Report's recommendations have been addressed can be found in the analysis part of the respective recommendations.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

Recommendation 1 (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

47. In the Third Round Evaluation Report, Cyprus received a Largely Compliant rating in respect of compliance with Recommendation 1. This was based upon the consideration that although there was a broad and firm legal basis to enable successful prosecutions for money laundering, the effectiveness of money laundering criminalisation needed to be enhanced, by placing more emphasis inter alia on third party laundering in respect of both foreign and domestic predicate offences and by clarifying the evidence that may be required to establish the underlying predicate criminality in autonomous prosecutions.

Legal Framework

48. In 2007, the Cypriot Parliament enacted the Prevention and Suppression of Money Laundering and Terrorist Financing Law, (Law No. 188(I)/2007), which replaced and consolidated the Prevention and Suppression of Money Laundering Activities Law of 1996-2004. The money laundering offence under Section 4 of the new law, however, remains in the same terms as was reviewed in the Third Round MER. Section 4 provides:

"4.-(1) Every person who –

(a) knows or (b) at the material time ought to have known that any kind of property constitutes proceeds-

(i) and converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property;

(iii) acquires, possesses or uses such property;

(iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;

(v) provides information in relation to investigations that are carried out for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence,

commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty of up to € 500.000 or by both of these penalties in the case of (a) above, or by five years' imprisonment or by a pecuniary penalty of up to €50.000 or by both in the case of (b) above.

(2) For the purposes of sub-Section (1)-

(a) it shall not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not;

(b) a laundering offence may be committed by the offenders of a predicate offence as well;

(c) the knowledge, intention or purpose which are required as elements of the offences referred to in subjection (1) may be inferred from objective and factual circumstances."

49. The money laundering offence is generally compliant with the provisions of the Vienna and Palermo conventions and broadly satisfies the essential criteria and the additional element set out in the Methodology for Recommendation 1.

50. Cyprus applies a threshold approach whereby the money laundering offence extends to any type of property regardless of its value that directly or indirectly represents property from a predicate offence that carries one-year's imprisonment. Predicate offences, as defined in Section 5 of the AML/CFT Law, include a range of offences in each of the designated categories of offences and the appropriate ancillary offences to the offence of money laundering are criminalised.

51. The domestic legislation covers the FATF designated categories as follows:

Table 6: List of domestic offences for designated categories of offences based on the FATF Methodology

Cyprus	
Designated categories of offences based on the FATF Methodology	**Offence in domestic legislation**
Participation in an organised criminal group and racketeering	• Criminal Code, Sections 20, 21 • UN Convention against Transnational Organised Crime (Ratification) Law of 2003, Law no. 11(III)/2003.
Terrorism, including terrorist financing[7]	• UN Convention against Terrorist Financing (Ratification) Law of 2001, Law no. 29(III)/2001. • International Convention for the Suppression of Terrorist Bombings (Ratification) Law of 2000. • European Convention on the Suppression of Terrorism (Ratification) Law of 1979, Law no. 5/79. • International Convention for the Suppression of acts of nuclear Terrorism of 2007, Law no. 44(III)/2007.
Trafficking in human beings and migrant smuggling Sexual exploitation, including sexual exploitation of children	• Suppression of trafficking and exploitation of persons and protection of victims Law of 2007, Law no. 87(I)/2007. • Suppression of trafficking, exploitation of persons and sexual exploitation of children Law of 2000, Law no. 3(I)/2000. • Council of Europe Convention on Action against trafficking in Human Beings (Ratification) Law of 2007 Law no. 38(III)/2007. • Convention for the suppression of the traffic in persons and the exploitation of prostitution of others (Ratification) Law of 1983, Law no. 57/83. • Criminal Code, Sections 153-166.
Illicit trafficking in narcotic drugs and psychotropic substances;	• Narcotic Drugs and Psychotropic Substances Law of 1977, Law No. 29/1977 as amended by Laws 68/1983, 20/1992, 5/2000, 41(I)/2001, 91(I)/2003, 146(I)/2005, 24(I)/2010. • UN Convention against illicit Traffic in Narcotic Drugs and

[7] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit (in force on 22.11.2010).

	Psychotropic substances (Ratification) Law of 1990, Law no. 49/1990.
Illicit arms trafficking	• Firearms Law, Law no. 38/1974 • Acquisition, possession, carrying and import of firearms and weapons Law of 2004, Law no. 113(I)/2004 as amended by Laws no. 91(I)/05 and 56(I)/2007.
Illicit trafficking in stolen and other goods	• Criminal Code, Sections 306, 308, 309.
Corruption and bribery	• United Nations Convention against Corruption (Ratification) Law of 2008, Law no. 25(III)/2008. • Council of Europe Criminal Convention on Corruption (Ratification) Law of 2000, Law no. 23(III)/2000. • Additional Protocol to the Council of Europe Criminal Convention on Corruption (Ratification) Law of 2006, Law no. 22(III)/06. • Criminal Code Sections 100-105. • Corruption Law Cap. 161.
Fraud	• Criminal Code Sections 297-303
Counterfeiting currency	• Criminal Code Sections 348-356
Counterfeiting and piracy of products	• Intellectual property Law of 1976 Law no. 59/76, as amended by Laws 63/77, 18(I)/1993, 54(I)/1999, 12(I)/2001, 128(I)/2002, 128(I)/2004, 123(I)/2006, 181(I)/2007. • Control of the Movement of goods infringing intellectual property rights Law of 2006, Law no. 133(I)/2006.
Environmental crime	• Packaging and packaging waste Law of 2002, Law no. 32(I)/2002. • Law ratifying the amendments of the Montreal Protocol on Substances that Deplete the Ozone Layer, Law no. 23(III)/2004. • Law establishing the measures for the protection of human health and of the environment on the contained use of genetically modified organisms in general, Law no. 15(I)/2004. • Law which provides on substances that deplete the ozone layer, Law no. 158(I)/2004. • The Prevention and Control of Pollution Law of 2008, Law No. 12(I)/2008.
Murder, grievous bodily injury	• Criminal Code, Sections 203-214. • Criminal Code, Section 242-243, 231-232.
Kidnapping, illegal restraint and hostage-taking	• Criminal Code, Sections 245-254.
Robbery or theft	• Criminal Code, Sections 255-272. • Criminal Code, Sections 282-290.
Smuggling	• The Customs Code Law of 2004, Law 94(I)/2004, 265(I)/2004.
Extortion	• Criminal Code, Sections 287-290.
Forgery	• Criminal Code, Sections 331-347.
Piracy	• Criminal Code, Section 69.
Insider trading and market manipulation	• Insider dealing and market manipulation (market abuse) Law of 2005 as amended.

52. The law specifically provides that it should not be necessary that a person be convicted of a predicate offence and with the exception of two stand-alone prosecutions, all money laundering prosecutions since the last evaluation have been based on own proceeds money laundering.

53. One of the stand-alone prosecutions was based on a foreign predicate offence and Section 4(2)(a) of the AML/CFT Law specifically provides that "it shall not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not". The evaluators were told that dual criminality was not required, providing that the behaviour constitutes an offence in Cyprus, however, there has been no example of this in practice.

54. An issue arose during the course of the evaluation visit with respect to Section 4(1) of the AML/CFT Law, which provides:

> "*Every person who at the relevant time (a) knows or (b) ought to have known that any kind of property constitutes proceeds from the commission of a predicate offence, is engaged in the following activities […]"*

55. Law enforcement and prosecutors expressed the view to the evaluators that it was necessary to prove that proceeds came from a specific predicate offence committed on a specific occasion and the evaluators were told that this was required by virtue of the reference in Section 4(1) to the proceeds coming from "the commission of a predicate offence". It was also suggested to the evaluators that the right to a fair trial and the right to property guaranteed under the Constitution would preclude confiscation based on a money laundering prosecution relying on inferences of fact to prove that the property was derived generally from predicate offending rather than from a specific predicate offence committed on a specific occasion. This approach explains, perhaps, why money laundering investigations and prosecutions in Cyprus are generally only pursued on the basis of self-laundering and this is adversely affecting effective criminalisation. MOKAS does not consider that there is an issue with the legislation in this regard and a District Court judge (although the evaluation team was informed that he had not dealt with ML cases) expressed a similar view. The fact remains that at the time of the visit, no criminal investigation or prosecution had proceeded on this basis.

Recommendation 32 (money laundering investigation/prosecution data)

56. At the time of the third round evaluation, there was no data system enabling the Cyprus authorities to keep statistics regarding all ML investigations, prosecutions and convictions. The report included information held by MOKAS on data for the period 2001 – 2005, which related to three persons convicted for ML (all relating to own proceeds laundering) and 14 cases brought before the courts, in which MOKAS had directly participated. There was no available consolidated information on other cases investigated fully by the Police and brought before the courts.

57. Money laundering statistics are provided to MOKAS by the police every three months. The authorities provided the following statistics covering police investigations, prosecutions and convictions :

Table 7 – Overall figures of Police investigations, prosecutions and convictions (2005-2010)

ML	Investigations		Prosecutions		Convictions (final)	
	cases	persons	cases	persons	Cases	Persons
2005	379	405	6	6	1	1
2006	512	487	96	33	64	18
2007	23	34	16	25	3	6
2008	72	56	58	47	39	18
2009	69	45	6	19	1	2
2010 (30 April)	15	2	15	2	0	0

TOTAL	**1070**	**1029**	**197**	**132**	**108**	**45**

Table 8 – ML cases investigated by the Financial Crime Unit of the Police Headquarters for the years (2006- 2009)

	Cases			Court decision							
	Police cases	Court (prose - cutions)	Persons involved	Under trial	Acquitted	Convicted	Nolle Procequi	ML not tried	Termi- nation of procedure	Under investi- gation	Otherwise dealt with
2006	84	13	21	5	7	3	2	3	-		1
2007	15	17	26	4	4	3	3	6	4	1	2
2008	57	21	42	20	-	7		3	-	11	1
2009	69	6	45	17	-	2		-	-	23	3
TOTAL	**225**	**57**	**134**	**46**	**11**	**15**	**5**	**12**	**4**	**35**	**7**

58. At the time of the on-site visit, and since 2005, final convictions for money laundering were successfully obtained in 108 cases against 45 persons, including two stand-alone money laundering prosecutions, one of which was based on a foreign predicate offence. There have been no prosecutions in respect of negligent money laundering. According to the Police, the main predicate crimes for money laundering offences include theft, forgery, fraud, obtaining money by false pretences, drug trafficking and prostitution. There were a large number of investigations in 2005 and 2006 due to the collapse of the stock exchange. While the overall number of prosecutions and convictions has increased as compared to the numbers reported in the Third Round Evaluation, this must be put into the context of 17,798 convictions for predicate offences having been obtained in the period 2006 to 2010. The evaluators were told that the decision to add money laundering charges would generally depend upon the seriousness of the case and available evidence.

Effectiveness and efficiency

59. The evaluation team was pleased to see that good progress had been made on the number of money laundering convictions obtained under Section 4(1)(a). Further progress is required, however, if criminalisation is to be fully effective. There has yet to be a prosecution under Section 4(1)(b) and the Section 4(1)(a) money laundering offence is generally only seen as a bolt on to a prosecution for a predicate offence. This is demonstrated by the fact that only two of the 108 convictions were in respect of stand-alone money laundering.

60. The first stand-alone money laundering conviction was obtained in 2008, when a joint investigation between the MOKAS and the police was commenced following a STR regarding a large deposit having been made into a cleaning lady's bank account. The money was transferred into the lady's sister's account. The investigation revealed that the money had been stolen from the lady's employer. The lady was convicted of theft and both she and her sister were convicted of money laundering. The lady was sentenced to two years imprisonment and her sister to eight months imprisonment.

61. The second stand-alone money laundering conviction was obtained in 2009 and it was based on a foreign predicate offence. The FIU received a report of three million Euros having been paid into a company bank account of a retired person by way of a wire transfer from a European country. A joint investigation was conducted by the MOKAS and the police both in Cyprus and in the European country. The investigation resulted in the prosecution of both the company and the natural person. The natural person pleaded guilty and was sentenced to three years imprisonment

and the money was sent back to the foreign bank with the defendant's consent. The company was acquitted on the basis that the owner of the company had not been aware of the transfer.

62. The small number of third party stand alone money laundering prosecutions is undoubtedly the result of a lack of general understanding by law enforcement and prosecutors as to how they may prove underlying predicate criminality by proving inferences drawn from objective facts and circumstances without the need to prove that property originated from a particular predicate offence committed on a particular occasion. At paragraph 166 of their Report, the evaluation team from the Third Round suggested that these issues should be addressed by way of guidance and/or legislation. Although guidance was issued, it did not address the way in which a ML offence could be proved using circumstantial evidence.

63. According to information provided by the Police, there were seven acquittals in 2006, four acquittals in 2007 and none in 2008 and 2009 for money laundering offences. The evaluation team were told that money laundering prosecutions were generally successful and usually only failed if a conviction was not obtained for the predicate offence. In some cases, guilty pleas were taken in respect of some of the offences charged and others were then either taken into consideration or left on file and so would not be recorded as convictions. Five cases were not taken forward on the basis of *nolle prosequi*.

2.1.2 Recommendations and comments

Recommendation 1

64. There is a clear need for further guidance and consideration should be given to further legislation to enable prosecutors and law enforcement to have a common understanding as to how they may prove underlying predicate criminality by proving inferences drawn from objective facts and circumstances without the need to prove that property originated from a particular predicate offence committed on a particular date.

65. Cyprus has signed and ratified the Warsaw Convention. Section 9.6 of the Warsaw Convention requires that it should not be necessary to prove a specific predicate offence committed on a specific occasion. This should provide a further legal basis for law enforcement and prosecutors to address this issue. It would further assist if investigations and prosecutions were taken forward to test the law on this point.

Recommendation 32

66. In order to be able to determine whether the ML provisions are applied in an effective manner, the authorities should keep and collate comprehensive and up to date statistics covering a) the number and types of predicate offences committed in Cyprus; b) the number of investigations for ML conducted by all competent authorities, including on information on how these cases where initiated and the types of crime they relate to, the number of investigations terminated and the reasons for termination, and the number of cases pending; c) the number of acquittals obtained for ML and information on the underlying predicate offence in each case. Some of this information is currently available but needs to be comprehensively collated.

67. Given the need to monitor and to increase the number of stand-alone money laundering prosecutions, consideration should be given to reporting separately on the number of stand-alone and own proceeds money laundering convictions obtained.

2.1.3 Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**LC**	• The incrimination of TF does not adequately cover provision/collection of funds for an individual terrorist or terrorist organisation, thus TF is not a fully covered as a predicate offence to ML; ; • Effectiveness issues: - very low number of stand alone ML convictions; - low volume of ML convictions in the context of the number of convictions for predicate offences; - incomplete statistics and lack of information on the predicate offences to which the ML provisions are being applied makes it difficult to determine that the ML provisions are applied in a fully effective manner; - the level of evidence required to establish the underlying predicate criminality in autonomous prosecutions remains unclear and whether the AML/CFT Law requires the prosecution to prove that a specific predicate offence committed on a specific occasion gave rise to the proceeds which impacts on the ability to use the legislation to its full advantage.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated PC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

68. Cyprus received a Partially Compliant rating as regards compliance with SR.II, due to deficiencies noted in the FT offence, which excluded offences committed by Cyprus citizens on Cyprus territory and the collection of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist

Legal framework[8]

69. As mentioned in the third round mutual evaluation report, Cyprus criminalised the financing of terrorism under Sections 4 and 8 of the Law no. 29 (III) of 2001[9] (hereinafter referred to as the Ratification Law), as amended in 2005 by the Law No. 18(III)/2005. The 2005 amendment eliminated the previous restriction to the scope of application of the Law, which now covers also Cypriot citizens and nationals.

70. Cyprus ratified the 1999 International Convention for the Suppression of the Financing of Terrorism ("TF Convention") in November 2001 and acceded to all treaties listed in the TF Convention's annex.

Criminalisation of financing of terrorism (c.II.1)

71. Terrorist financing is criminalized consistent with Section 2 of the Terrorist Financing Convention, through a direct reference under Section 4 of the Ratification Law and has the following characteristics:
    - It encompasses the financing of terrorist acts set out under Section 2 (1) (a) and (b) of the Convention (i.e. extends to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part , in order to carry out (a) an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex or b) any other act as set out in Section 2(1) (b) of the Convention);

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[8] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit. Section 8 of this Act (in force on 22.11.2010) is relevant in this context, however considering that these changes have occurred after the two month period after the on-site evaluation, they cannot be considered for the purpose of this report. Section 8 provides:

"8 (1) Any person who provides assistance, in any way, including financing, to-

(a) terrorist organisation or
(b) a member of a terrorist organisation or
(c) any other person, for the benefit of a terrorist organisation or a member of a terrorist organisation or
(d) any other person, for the commission of a terrorist offence or
(e) persons included in the lists, (E.U.-U.N. Section 17)

knowing that this assistance will contribute to the activities of the above, is guilty of an offence and in case of conviction is punishable with up to 8 years imprisonment or a pecuniary penalty not exceeding €85,000 or to both of the above.

(2) The assistance, referred to in Section (1) above, includes also giving instructions-

(a) for making or use of explosives, fire arms or other arms or dangerous substances or
(b) for other specific methods or techniques,

with the purpose of committing or assisting to the commission of a terrorist offence, knowing that these instructions are intended to be used by a person or organisation referred to in subSection (1) above" .

[9] Law to ratify the International Convention for the Suppression of the Financing of Terrorism, including supplementary provisions for the immediate implementation of the Convention (enacted on 30 November 2001 and amended on 22 July 2005).

- it is not necessary that the funds were actually used to carry out a terrorist act (Section 2(3) of the Convention);
- attempt to commit the offence of terrorist financing is a criminal offence (Section 2(4) of the Convention);
- all types of conduct set out in Section 2(5) of the Convention are also offences in Cyprus.

72. At the time of the third round evaluation, Cyprus had not criminalised the provision and collection of funds to be used by a terrorist organisation or by an individual terrorist (Criterion II. A) (ii) and (iii). The authorities stated that this had been remedied through the AML/CFT Law, which includes under Section 5 (b) – Predicate offences- a reference to the "*collection of funds for the financing of persons or organisations associated with terrorism"*.

73. The evaluation team remains convinced that this deficiency has not been adequately addressed. It is to be noted that Section 2 of the AML/CFT Law clearly defines terrorist financing offences as "*the offences defined in Section 4 of the International Convention for Combating Terrorist Financing (Ratification and other provisions) Law No. 18(III/2005)*".

74. The terrorist financing offence extends to any funds as the term is defined in the Terrorist Financing Convention whether from a legitimate or illegitimate source. Reference is made to Sections 1 and 2 of the Terrorist Financing Convention, which with the enactment of the Ratification Law is part of Cyprus domestic legislation and according to Section 169 of the Constitution has superior force.

75. Pursuant to Section 2 (3) of the Terrorist Financing Convention (directly applicable through the Ratification Law), and to Section 5(b) of the AML/CFT Law, it is not required that the funds (i) were actually used to carry out or attempt a terrorist act or (ii) be linked to a specific terrorist act.

76. It is an offence to attempt to commit the offence of Terrorist Financing basing on Section 2 (4) of the Convention.

Predicate offence for money laundering (c.II.2)

77. Financing of terrorism offences are specifically included in Section 5(b) of the AML/CFT Law which provides for the predicate offences and reads as follows:

5 (b) "Predicate offences are:
[…] b. Financing of Terrorism offences as these are specified in Section 4 of the Financing of Terrorism (Ratification and other provisions) Laws of 2001 and 2005, as well as the collection of funds for the financing of persons or organisations associated with terrorism.

(c) Drug Trafficking offences, as these are specified in Section 2 of this law."
Terrorist financing offences are considered to be predicate offences for money laundering and the provisions of the Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law of 2007 directly apply to these offences as well.

78. Direct reference for the aforementioned is made in Section 8 of the Ratification Law as follows:

"8. Acts that constitute offences by virtue of Section 2 of the Convention and Section 4 of this Law or acts that constitute a violation of Section 2 of the Convention, are considered, even if the Courts of the Republic do not have jurisdiction to try them, as predicate offences as if included in Section 5 of the Prevention and Suppression of Money Laundering Activities Law, and for the purposes of freezing or confiscating property or proceeds, the relevant provisions of this Law shall be implemented."

79. Apart from that Section 5 (b) covers only *"collection"* while provisions of SR II require that not only *"collection"* but also *"providing"* of funds should be criminalised.

Jurisdiction for Terrorist financing offence (c.II.3)

80. Section 7 of the Ratification Law of 2001-2005 specifies the following:

"7.(1) Notwithstanding the provisions of Section 5 of the Criminal Code, the Courts of the Republic have the jurisdiction to hear and try any offence committed in violation of Section 2 of the Convention and Section 4 of this Law, under the conditions, referred to in paragraphs 1 and 2 of Section 7 of the Convention.

(2) The implementation of sub-Section (1) is subject to the provisions and interpretations of subSections (2) and (3) of Section 5 of the Criminal Code."

81. In accordance with paragraph 3 of Section 7, the Republic of Cyprus declares that by Section 7.1 of the International Convention for the Suppression of the Financing of Terrorism (Ratification and other Provisions) Law No. 29 (III) of 2001, it has established jurisdiction over the offences set forth in Section 2 in all circumstances described in paragraph 2 of Section 7.

The mental element of the FT (applying c.2.2 in R.2)

82. The intentional element of the offence of Terrorist Financing can also be inferred from objective factual circumstances, as the same provisions of Section 4 of the AML/CFT Law apply.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

83. This aspect has remained unchanged. Section 5 (1) of the Law sets out provisions related to the criminal and civil liability of legal persons and in Section 5(2) additional administrative sanctions such as crossing out the legal entity from the relevant registry or postponing its operation for a set time period[10]. Legal persons criminally liable for TF are not precluded from parallel criminal, civil or administrative proceedings.

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

84. Section 4 of the Law provides that all offences contained in Section 2 of the FT Convention are punishable by imprisonment up to 15 years or with a fine of 1.700.000 € . Additionally, according to the AML/CFT Law, confiscation of the involved assets may also be applied.

85. It was mentioned in the third round report that Section 9 of the Ratification Law No. 29(III)/01 excluded liability of Cyprus citizens for committing financing of terrorism offences within the territory of the Cyprus Republic. On 22 July 2005, the Parliament enacted a law amending the Ratification Law (Law No. 18(III)/2005) and abrogating Section 9. Accordingly, citizens of Cyprus can now be liable for committing financing of terrorism offences within the territory of the Cyprus Republic.

[10] *"5.-(1) A legal person of any nature is subjected to the same criminal and civil liability in case where any person, in charge of the administration or control of the said legal person, commits under the said capacity an offence in violation of the Convention.*
(2) By virtue of any Law, a competent Authority to register, operate or control a legal person, as cited in subSection (1), may, in addition to any other power to impose sanctions against the said legal persons, order its crossing out of the relevant registry or the postponement of its operation for any time period it would consider necessary under the circumstances. The consequences of such a crossing out are governed, mutatis mutandis, by the provisions of the Law, by virtue of which the registration had been made."

86. As there has never been a conviction for terrorist financing, no sanctions have ever been imposed. The sanctions set out in the legislation have the potential to be dissuasive, however in the absence of case law, neither their dissuasiveness nor effectiveness can be established.

Recommendation 32 (terrorist financing investigation/prosecution data)

87. The statistics provided by the authorities indicate that a few investigations were initiated for FT: in 2005 in 9 cases (involving 38 persons) and in 2006 in 1 case (involving 4 persons). No additional information was made available regarding those cases nor whether any of those involved non-profit organisations. MOKAS has reported having opened 4 cases in 2007, 3 in 2008, and 1 in 2009 potentially relating to FT, and it seems that all of those cases related to UN/EU listed persons. As no evidence was gathered to support the allegations, there have not been any prosecutions or convictions for FT and all cases were closed.

Effectiveness and efficiency

88. The existing provisions have not yet been tested before the courts, as the investigations have not led to prosecutions, it is thus difficult to assess whether they would be effectively applied. The information above appears however to indicate the readiness of the Cypriot authorities to undertake investigations of potential FT cases that were drawn to their attention.

2.2.2 Recommendations and comments

Special Recommendation II

89. The evaluation team would like to recall in this context the previous recommendation formulated in the third round MER, in relation to the need to the additional requirements under SR.II, which goes beyond what is required by the TF Convention. In addition to criminalizing the activities enumerated in the TF Convention, countries are also obliged to criminalise a third type of activity - collecting or providing funds in the knowledge that they are to be used by a terrorist organisation or individual terrorist for any purpose. This type of activity is still not criminalised in Cyprus.

90. Although, as it was argued by Cypriot authorities that sub-Section 5 (b) of the Law for the Prevention and Suppression of Money Laundering Activities 2007 (AML/CFT Law) *("FT offences are offences specified in Section 4 of the Ratification Law No. 29(III)/01), as well as the collection of funds for the financing of persons or organisations associated with them)* covers that kind of activity, Section 2 of the same Law provides that *"Terrorist financing offences" means the offences defined in Section 4 of the International Convention for Combating Terrorist Financing (Ratification and other provisions) Law No. 18(III/2005)*. Apart from that, Section 5 (b) covers only *"collection"* while provisions of SR II require that not only *"collection"* but also *"providing"* of funds should be criminalised.

91. Therefore the evaluation team consider that the Third Round Report recommendation to introduce a "*clear separate criminal offence of financing of terrorism which covers all the essential criteria in SR II and all the characteristics of a financing of terrorism offence as explained in the Interpretative Note of June 2004"* remains relevant in this context.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• In the absence of a complete offence consistent with SR II (i.e. adequate coverage of the provision/collection of funds for an

		individual terrorist or terrorist organisation), the financing of terrorism constitutes an incomplete predicate offence for money laundering; [11] • The effectiveness cannot be tested in the absence of prosecution of terrorist financing.

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

2.3.1 Description and analysis

Recommendation 3 (rated C in the 3rd round report)

Summary of 2006 MER factors underlying the rating

92. Cyprus received a Compliant Rating in the Third Round Evaluation Report and so no issues were raised in this context. The Third Round evaluation team were concerned, however, about the statutory basis for the suspension of financial transactions, although it noted that this was not a criterion directly applicable to FATF Recommendation 3 and did not impact on the rating. The relevant provision appeared limited to the absolution of liability without providing a specific power to suspend. The Cyprus authorities were urged to review this in the light of Section 14 of the new Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). This issue is addressed elsewhere within this report.

Legal framework

93. The provisions on confiscation, freezing and seizing of proceeds of crime are set out in Parts II, III, V and VI of the AML/CFT Law. The confiscation regime is value based (Section 12(1)) and in certain circumstances permits the making of statutory assumptions as to the providence of property and any assets used to pay expenses (Sections 7 and 51 of the AML/CFT Law). Confiscation is discretionary and under paragraph 6 of the AML/CFT Law, the court may make a confiscation order in respect of a convicted defendant on the application of the Attorney General, or may instead choose to impose a pecuniary penalty following a summary inquiry into the property holdings of a defendant and his family under Part VI of the AML/CFT Law. Confiscation orders may also be made in respect of property held by a suspect who is outside the jurisdiction of the Republic or who has died (paragraph 33 of the AML/CFT Law). Confiscation orders are enforced as a pecuniary penalty under the Criminal Procedure Law (Section 9 of the ML/CFT Law). In practice, responsibility for the enforcement of the confiscation orders made, rests with the police with the assistance of the MOKAS. Enforcement has not been an issue, as the AML/CFT Law provides that the confiscation or pecuniary penalty orders should be made in a sum that may be met by the sale of identified realisable assets (see Sections 10 and 53(3) of the AML/CFT Law).

Confiscation of property (c.3.1)

94. The AML/CFT Law provides for the confiscation of property that has been laundered or which constitutes:

- Proceeds from crime (see Sections 6, 7, 8 of the AML/CFT Law 2007);

[11] See earlier footnote regarding Law 110(I) 2010 on the Suppression of Terrorism adopted after the visit.

- Instrumentalities used or intended for use in the commission of money laundering, financing of terrorism or other predicate offences (Section 8 (1) (b) of the AML/CFT Law).

95. The above provisions apply to money laundering, the financing of terrorism and other predicate offences.

96. The procedure for applying for confiscation orders is defined in Part II, Sections 6 -13, 17-21, 28-30 and 33 of the AML/CFT Law. Confiscation is conviction based, except in cases where a suspect is outside the jurisdiction of the Republic or has died (Section 32 of the AML/CFT Law).

97. The definitions of "proceeds" and "instrumentalities" are given in Section 2 of the AML/CFT Law 2007, which defines "proceeds" as "any kind of property or economic benefit which has been generated directly or indirectly from the commission of a predicate offence". "Instrumentalities" are defined as "any property used or intended to be used, in any manner, wholly or in part, to commit a prescribed offence". "Prescribed offences" include both instrumentalities used, or intended to be used, for predicate and/or laundering offences. Accordingly, both proceeds from and instrumentalities used in or intended for use in the commission of any ML, FT or other predicate offences and property of corresponding value are permitted under the legislation.

98. The confiscation order is value based and is assessed according to the provisions of Section 7 of the AML/CFT Law. The court may assume that any property acquired by the accused after committing the offence for which he has been convicted or transferred into his name at any time during the six years before the commencement of proceedings against him, constitutes proceeds, payment or reward from the commission of a predicate offence and that an expenditure incurred by the accused during that period was met out of payments or rewards made to him in connection with a predicate offence committed by him. These assumptions apply unless the contrary is proven, or the court considers that to make an assumption would create a serious risk of injustice to the accused, however, in that case, the court has to set out the reasons for reaching that conclusion.

99. Property that is derived directly or indirectly from the proceeds of crime, including income, profits or other benefits from the proceeds of crime are subject to confiscation. For example, Section 15 (6) of the AML/CFT Law provides that "where a Court makes a charging order on any asset, it may order that the charge be extended so as to cover any interest on dividend or on interest payable in respect of the asset." These benefits will at the end be taken into account by the Court when assessing the proceeds of the accused from the commission of a prescribed (predicate or laundering) offence.

100. The above provisions apply equally to all property regardless of whether it is held or owned by a criminal defendant or by a third party, who has received the property as a prohibited gift. According to Section 13 (1) of the AML/CFT Law, "realizable property", that is property which can be confiscated, is defined as:

"(a) any property held by the accused; and
(b) any property held by another person to whom the accused has directly or indirectly made a gift prohibited by this law."

101. The AML/CFT Law also defines in Section 13 paragraphs(7) and (8) "prohibited gifts" :

"(7) Gifts, including gifts made before the commencement of this Law, which are prohibited gifts under this Law are-
(a) those made by the accused at any time during the last six years prior to the institution of criminal proceedings against him; and
(b) those made by the accused at any time and relate to property-

(i) received by the accused in connection with a predicate offence committed by him or any other person; or
(ii) which in whole or in part, directly or indirectly, represent property received by the accused in connection with a predicate offence committed by him or by another person; or
(c) those made by the accused after the institution of criminal proceedings against him.
(8) For the purposes of this Law the accused is to be treated as making a gift where he transfers property to another directly or indirectly for a consideration the value of which is significantly less than the actual value of the property at the time of transfer. In such a case, the preceding provisions of this Section shall apply as if the accused has made a gift of that part of the property which by comparison to the total value of the property represents the proportion of the difference between the value of the consideration he accepted for the transfer of the property and the actual value of the property at the time of transfer."

102. Apart from the procedure stipulated in Section 7 (*Assessing the proceeds from the commission of a predicate offence*), the court according to Section 6 (2) may impose a corresponding pecuniary penalty by applying the procedure under Part VI of the Law.

103. According to Section 28 of the AML/CFT Law, the court may also make a confiscation order upon the application of the Attorney General against an accused, who has died or absconded.

104. Thus, according to the abovementioned facts, Cyprus law allows for the confiscation of proceeds of and instrumentalities used or intended to be used for the commission of laundering and predicate offences.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

105. The provisional measures are provided for in the AML/CFT Law of 2007, as follows:
- Restraint/freezing order (Section 14 of the AML/CFT Law),
- Charging order (Section 15 of the Law),
- Freezing Order of property against an absent suspect (Section 32 of the Law).

106. Sections 16, 18, 19, 20, 22 and 24 of the AML/CFT Law are also relevant in this context.

107. Restraint orders under Section 14 referred to any kind of property, except those kinds of assets/property for which charging orders can be obtained, as explained below. Under Section 14 (2), "A restraint order made under Section 14 sub-Section (1) prohibits transactions in any way in realisable property."

108. Section 15 (2) provides that "An order made under Section 15 (1) shall be called a charging order and notwithstanding the provisions of other laws, it shall create a charge on the realisable property specified in the order". The following kinds of assets can be charged:

"(5) Subject to the provisions of sub-Section (12), the kind of assets referred to in sub-Section (4) above are-
(a) immovable property;
(b) the following bonds;
(i) government stocks,
(ii) bonds of any legal body incorporated in the Republic;
(iii) bonds of any legal body incorporated outside the Republic being stocks registered in a register kept at any place within the Republic;
(c) units of any unit trust in respect of which a register of the unit holders is kept at any place within the Republic;
(d) funds in court."

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

109. Provisional orders are issued by the courts on the application of the Attorney General (Public Prosecutor Members of MOKAS) and are made ex-parte. This is expressly provided for in Sections 14 (5), 15 (3) and 32 (1) of the AML/CFT Law. After issuing the ex-parte provisional order, the court directs that the order be served on affected persons (legal or natural), who have the right to appear before the court and oppose the order.

110. The evaluation team was informed that in practice there are no particular difficulties in obtaining freezing orders of this kind. The MOKAS applies ex parte and the defence generally attends on the return hearing. In 90% of the cases, the representatives of MOKAS succeed in such applications.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

111. Law enforcement agencies and most importantly the FIU, in its investigative function, have all the necessary powers provided for in Part II of the Criminal Procedure Law (Cap. 155) concerning the investigation of offences and proceedings antecedent to prosecution. Of most importance is Section 6 on the order to produce documents (production order). According to this provision, the investigator (including of the FIU) during an investigation may issue a written order to anyone who possesses a document, which might be necessary for the purposes of the investigation, requiring him/her to produce that document. Refusal to comply with such an order amounts to a criminal offence itself, which is punishable with imprisonment.

112. In addition to the above, in relation to an investigation into a prescribed offence or an inquiry for the determination of proceeds or instrumentalities, Section 45 of Part V of the AML/CFT Law permits an application to be made to the court for a disclosure order requiring a person to disclose or produce information to an investigator or other specified person within seven days or such other longer or shorter period of time as the court considers expedient.

Protection of bona fide third parties (c.3.5)

113. Common law rights of "bona fide" third parties are safeguarded consistent with the standards in the Palermo Convention. Therefore, the application of the legislation is subject to the protection of such rights.

114. Legal provisions are in place under the AML/CFT Law for all parties affected by the order to be notified and served with the order and to apply to the court to object to the order issued.

115. Furthermore bona fide claims against the accused as considered by the AML/CFT Law as obligations that have priority over others. According to Section 13 such claims have to be deducted from the amount that may be realised under a confiscation order as far as the claim is deemed just by the Court.

Power to void actions (c.3.6)

116. Under the provisions of the Contract Law Cap. 149 as amended, contracts may be held null and void in different circumstances, including illegality, contracts where consideration and objects are unlawful, contracts induced by fraud, and misrepresentation. It should be mentioned that charging orders affecting contracts of sale of realisable property may be issued at the very early stages of the investigation in order to avoid any actions which might prejudice the recovery of the property in a future confiscation.

Additional elements (c.3.7)

117. The Cyprus authorities indicated that the court may confiscate property held by organisations that are found to be primarily criminal in nature applying the provisions of the AML/CFT Law .

118. Cyprus law does not provide for civil forfeiture or confiscation of property Nevertheless, in certain cases, confiscation of assets is possible without the prior conviction of any person. These cases are inter alia, the confiscation of assets against a suspect, who is outside the jurisdiction of the Republic of Cyprus, or has died.

119. The AML/CFT law includes extended confiscation provisions and the shifting of the burden of proof. According to Section 7 (2) of the AML/CFT Law, the court may, for the purpose of determining whether the accused has acquired proceeds from the commission of a predicate offence and assessing the value of these proceeds, assume, unless the contrary is proved, that the proceeds are criminal proceeds. Therefore, the burden of proof is shifted to the defendant who has to demonstrate the lawful origin of the property. The procedure to be followed is provided in Section 11 of the Law. Furthermore, Section 72 of the AML/CFT Law, provides that a court which adjudicates applications for the making of any order under this Law, shall apply the civil burden and standard of proof and so decides issues on a "balance of probabilities.

Recommendation 32 (statistics)

120. Statistics relating to restraint/freezing, charging orders and confiscations are maintained only by MOKAS.

121. The statistics provided by MOKAS on the application of provisional and confiscation measures in all cases (money laundering and predicate offences) are as follows:

Table 10: Statistics on the application of provisional and confiscation measures (2005-2010)

2005												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in €)	**cases**	**amount** (in €)	**cases**	**amount** (in €)
ML	379	415	6	6	1	1	9 (freezing/restraint orders)	€890.382 5 offices 6 plots of land 1 Shop			1	€5.605
FT	9	38										

2006												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in €)	**cases**	**amount** (in €))	**cases**	**amount** (in €)
ML	512	487	96	33	64	18	3 (freezing/restraint orders)	€2.730.375 3 cars			1	€2.645.039
FT	1	4										

2007												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in €)	cases	amount (in €))	cases	amount (in €)
ML	23	34	16	25	3	6	4 (freezing/restraint orders)	€945.221			1	€7.388.602
FT												

2008												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in €)	cases	amount (in €))	cases	amount (in €)
ML	72	56	58	47	39	18	7 (freezing/restraint orders)	€7.603.653			3	€34.853
FT												

2009												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in €)	cases	amount (in €))	cases	amount (in €)
ML	69	45	6	19	1	2	18 (freezing/restraint orders)	€3.956.060 €20.000.000 in Hedge Funds 1 House 1 Plot of land			4	€5.457,236
FT												

30.4.2010												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in €)	cases	amount (in €))	cases	amount (in €)
ML	15	2	15	2	0	0	4 (freezing/restraint orders)	€663.041			3	€295,980
FT												

Effectiveness and efficiency

122. Since 2005, the confiscation regime has produced 51 domestic and foreign freezing orders and 14 confiscation orders, of which nine confiscation orders were made in money-laundering cases. MOKAS has continued to use its powers to apply for provisional measures not only in ML investigations but also in respect of investigations into other profit generating predicate offences. Statistics provided by the Cyprus authorities reveal that there have been 17,798 convictions for

predicate offences since 2006. Many of these convictions will have been in respect of low value offences, however, in the circumstances, the evaluators would have expected a greater volume of confiscation orders to be made.

123. Although the statistics provided indicate that confiscation and provisional measures are being used, the evaluators noted a potential imbalance between assets frozen and those finally confiscated. The authorities put forward several reasons to explain the imbalance. It was explained that as confiscation orders are expressed in money in a value based system, it is often difficult to link assets with the value of confiscation orders made. Assets could be frozen pursuant to foreign and domestic restraint orders for a number of years before a final confiscation order was made. Following assessment of the proceeds to be confiscated, a lesser amount might be ordered by the court, e.g. as a result of a successful third party claims. Furthermore, in some cases, restraint orders were discharged as a result of the acquittal of the defendant (in Cyprus or abroad) or as a result of the accused returning the funds. There were no cases where instrumentalities were confiscated.

124. It was clarified that representatives of MOKAS are the only ones, who make applications to court for provisional orders, its staff being well trained, and having acquired experience in such cases. Further, all confiscation orders are either made by prosecutors within the MOKAS, or made with their assistance. As was mentioned previously, the MOKAS reported that it succeeds in almost 90 percent of cases, which relate to freezing or confiscation.

2.3.2 Recommendations and comments

125. Cyprus has undoubtedly a comprehensive and generally robust well-balanced confiscation and provisional measures regime. The authorities should, however, eliminate the deficiencies in the criminalisation of the FT offence[12] in conformity with the standard as set forth in SR II, so that instrumentalities used and to be used and proceeds could be frozen and confiscated if such a case were to appear in practice.

126. The volume of confiscation orders obtained, appears low in comparison with the number of convictions for predicate offences and this impacts negatively on the effectiveness of the confiscation regime.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• Deficiencies in criminalisation of the FT (noted in SR. II) may limit the ability to freeze and confiscate. • Effectiveness issues: the volume of confiscation orders obtained appears low in comparison with the number of convictions for predicate offences.

[12] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit. Section 8 of this Act (in force on 22.11.2010) is relevant in this context, however these changes were made after the two month period following the on-site evaluation visit.

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

2.4.1 Description and analysis

Special Recommendation III (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

127. In the Third Round Evaluation Report, Cyprus received a Largely Compliant rating. The evaluators considered that a comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons, including publicly known procedures for de-listing, was not fully in place.

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

128. The legal framework for implementing the United Nations Security Council Resolutions (UNSCRs) has remained unchanged since the Third Round Mutual Evaluation Report. It continues to be based upon Decision No. 54.374 issued by the Council of Ministers of the Republic of Cyprus on 4 October 2001, pursuant to Section 54 of the Constitution, and on the direct application of the regulations of the European Union (EU). New resolutions are sent with a proposal to the Council of Ministers and are then published in the Gazette and are sent to all ministries.

129. Updates of the UN and EU lists are received from the delegations in New York and Brussels. They are then circulated with a covering letter by the Ministry of Foreign Affairs to the competent ministries and in particular to MOKAS, the Governor of the Central Bank, the Chief of Police (Department C), the Permanent Secretary to the Ministry of Justice, the Ministry of Commerce and Tourism (Export Licences), Ministry of the Interior, Ministry of Communication and Works, Department of Shipping and the Security Services, who then forward the lists to the entities that they supervise[13]. The evaluation team were told that it could take a number of days to communicate amendments to the lists. Although the Ministry does not have a web-page where all relevant information can be accessed, it noted that entities would have immediate access to the revised lists on the EU and UN websites.

130. The EU has separate sanction regimes for non-EU based entities, non-EU residents, or citizens listed as terrorists (EU externals) and for persons, group and entities based or resident with the EU (EU internals). EU internals are not covered by Council Regulation No. 2580/2001 due to the scope of the EU Common Foreign and Security Policy. The EU has adopted two Council Common Positions, No 2001/930/CFSP and No 2001/931/CFSP on the fight against terrorism, which are also applicable to EU internals, but their implementation requires enactment of national legislation. Cyprus has not implemented domestic legislation to give this effect and does not independently list EU internals to supplement the EU regulations.

131. The Decision of the Council of Ministers instructed all competent authorities and persons in the Republic to proceed with the necessary enquiries in order to identify whether persons and/or entities included in the lists issued under the UNSCRs have any assets in the Republic and if such assets are identified, that they be frozen immediately until further decision on the issue.

[13] The authorities indicated after the visit that provisions of the Law 110(I)/2010 on the Suppression of Terrorism cover specifically the issue of communication of updated EU and UN Security Council lists, through publication in the Cyprus Government Gazette.

132. For assets under the UNSCRs, once identified and frozen, the evaluators were told that an application would be made to the court under the Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law for a freezing order. Under Section 14 (1) of the law such action could only be taken, if (a) either criminal proceedings had been instituted and had not been concluded or were about to be instituted for a predicate offence, or (b) MOKAS possessed information that a person may be charged with the commission of a laundering offence and (c) that the court had reasonable grounds to believe that the person had benefited from the commission of a predicate offence. The evaluators were concerned that it would generally not be possible to apply for a restraint order if the only information available was the fact that a person was listed. In the light of the above, it therefore appears that freezing measures cannot be deemed to be taken without delay in such cases.

Freezing actions taken by other countries (c.III.3)

133. MOKAS is the competent authority to undertake any necessary inquiries to identify and freeze terrorist assets initiated under the freezing mechanisms of foreign jurisdictions by virtue of Section 10 (now Section 9) of the Ratification Law of the UN Convention on the Suppression of the Financing of Terrorism (Law No. 29(III)/2001).

134. MOKAS referred evaluators to Section 8 of the Ratification Law, which makes the acts set out in Section 2 of the Convention for the Suppression and Financing of Terrorism predicate offences for the purposes of freezing or confiscating property or proceeds related to terrorist financing under the relevant provisions of the AML/CFT Law. Clearly, such action could only be taken pursuant to the AML/CFT Law, if there was admissible evidence of a predicate offence or money laundering offence to support applications for freezing and/or confiscation to be made under the Law.

135. The incomplete criminalisation of the terrorist financing offence could be an issue when seeking to give effect to the freezing mechanisms of other countries, although it has not been in practice.

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

136. The collection or provision of funds knowing that they are to be used by a terrorist organisation or individual terrorist for any purpose is not criminalised in the Republic of Cyprus (please refer to commentary on SRII) and so would not be a predicate offence for the purposes of the AML/CFT Law.

Communication to the financial sector (c.III.5)

137. The Ministry of Foreign Affairs informed the evaluators that it only plays a co-ordinating role. As soon as any communication concerning persons subject to financial sanctions (designated persons by UN and EU), including and in particular updates, is received this is forwarded immediately to the competent authorities (MOKAS, CBC and other supervisory authorities, the Police, and others, including the Permanent Secretaries of certain ministries, such as the Ministry of Justice, the Ministry of Finance, the Ministry of Communication and Transport, and others). These authorities are then responsible to circulate them to those under their remit. Communication is made through a covering letter explaining the appropriate communication, as the Ministry does not have a web-page where all relevant information could be accessed. During the meeting, the team was advised that this could take up to a month[14].

[14] The evaluators have been informed by the Cypriot authorities that the procedure has been changed in accordance with the Law no. 110(I)/2010 on the Suppression of Terrorism which came into force on 22.11.2010.

138. The CBC has advised that it informs all banks on designated lists and also circulates the lists to other supervisory authorities of the financial sector, including the associations of banks. The CBC further informed that apart from receiving the lists from the Ministry of Foreign Affairs it also checks the relevant websites for any updates persons through its Banking supervision regulation department and its legal unit. The CBC has further instructed all banks to follow all amendments to the list and to download same to update their databases. Indeed, in its circular letter of 17 December 2008, the CBC informed all banks that it is their responsibility to monitor on a continuous basis the UN and the EU lists on the respective websites as well as to check and ensure that the persons included in the said lists do not maintain or enter into business relationships or involved in transactions with their banks. To this effect, as from the date of the circular, the CBC informed that it will no longer issue circular letters with regard to amendments or additions in the said lists of persons found to be associated with terrorism and subject to financial sanctions. Since the CBC appears to be the focus for such circulations, the effects of this decision can be wider.

139. However, in the discussions with MTBs the evaluators were informed that these mainly follow the lists provided by their parent institutions. On the other hand, banks informed that they receive the lists both from the CBC and from the Association of Banks.

140. The ICCS has informed that it does not receive the list of designated persons but still it requires those it supervises to use the lists as supplied to them by the CBC. Some of the industry met by the evaluators informed that they make use of international electronic systems while they receive updates from their parent institution, where applicable.

141. On the non-financial sector side, DNFBPs representatives met were not clear how and from where they receive the lists of designated persons, if received at all. For example the CBA informed that it receives the lists from the Advisory Committee for Combating Money Laundering Offences and Terrorist Financing. From the information received, it remains unclear how these lists are circulated to lawyers and it appears that other DNFBPs, such as real estate agents, dealers in precious metals, accountants and others, do not receive them.

Guidance to financial institutions and other persons or entities (c. III.6)

142. There is no specific guidance to financial institutions and other persons or entities on the use and measures to be taken in the case of UN or EU lists of designated persons beyond the need to freeze and then notify the authorities. The authorities consider that these measures are self sufficient and that no further guidance is necessary.

143. In its letter of 17 December 2008, the CBC advises banks that in case they ascertain that, as a result of future amendments or additions as downloaded from the relevant websites, any person subject to the designated lists maintains funds and/or credit balances with the bank, then that bank should proceed immediately with their freezing and informing the CBC accordingly. Moreover, in its D-Banks the only reference to lists of designated persons is found in Section 4.13.2 dealing with the identification for non-resident natural persons. But this only to the extent that the identification information becomes useful for banks to identify whether an applicant for business is a designated person. Similar references can be found in the D-MTBs.

144. Likewise, similar references are found in the D-Securities under paragraph 2(c) of the Fifth Appendix and in the D-Insurers under Section 3.3.1 – Specific Identification Issues.

145. There are no references to the lists of designated persons in the Directives or Guidelines issued to the DNFBPs sector.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

146. There is no local effective or publicly-known procedure for considering delisting requests and for unfreezing the funds or other assets of de-listed and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations. The evaluation team were told that following the Third Round Mutual Evaluation , it was decided by the Advisory Authority that all supervisory authorities should inform immediately all persons and entities under their supervision of instances of de-listing and unfreezing in order to take action without delay.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

147. There are no effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. The Ministry of Foreign Affairs does not have a website to assist in this regard.

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

148. The MEQ states that persons affected can make claims for basic living expenses and for the payment of certain types of fees and that reasonable amounts for such expenses can be exempt from the frozen amount based on the fundamental rights of any person, however, no mechanism or procedure was identified to enable this. Persons affected may be heard on the application for a legal freezing order, but this cannot assist when there is insufficient evidence to apply for a legal freezing order. It is unclear whether a judge would have power to grant relief in these circumstances in a manner that would cover the ambit of expenses as set out in the S/RES/1452(2002).

Review of freezing decisions (c.III.10)

149. The evaluation team were told that a person or entity whose funds or assets have been frozen pursuant to the UNSCR lists may challenge such a measure before the Administrative Court under Section 146 of the Constitution and may claim damages or compensation for any costs or damage sustained. As there have been no instances of assets being frozen in Cyprus, this procedure has yet to be tested in practice.

150. In the event that a court makes a freezing order under the AML/CFT Law, persons affected, including third parties, may file their opposition to the order within the time set by the court.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

151. The relevant provisions of the AML/CFT Law which relate to confiscation and provisional measures apply to the financing of terrorism offence, as the offence is a predicate offence for money laundering and may also be the basis for a confiscation order following conviction.

Protection of rights of third parties (c.III.12)

152. The Cyprus authorities rely upon the fact that Section 8 of the Terrorist Financing Convention is part of the domestic law and has superior force. In addition, the rights of bona fide third parties are safeguarded by the common law.

Enforcing obligations under SR.III (c.III.13)

153. The Cyprus authorities stated that in the case of non-compliance by a financial institution in the administrative freezing procedure, the relevant supervisory authority has the power to impose administrative sanctions, in application of the general provision under Section 59 (6) (ii). They explained that this would fall under the general requirement that the financial institutions should have procedures in place to prevent terrorist financing, and as such to freeze such assets. The provision to which the team was referred explicitly provides though that the sanctions can be applied by the supervisory authority "*in cases where a person fails to comply with the provisions of this part of the Law [ie. Part VIII] or with the Directives issued by the competent Supervisory Authority*" in accordance with paragraph 4 of Section 59. There are no specific provisions in the Directives on the freezing procedures, other than the general requirements for the institutions to have in place preventive TF procedures.

154. The Cyprus authorities additionally relied upon Section 137 of the Criminal Code, which creates an offence of wilful disobedience of lawful orders. At the time of the Third Round onsite visit, a general bill was said to be before Parliament that would deal with sanctions to be imposed in violation of obligations to implement UN Resolutions and EU Common Positions, however the bill was subsequently withdrawn[15].

155. The evaluation team remained concerned about the overall capacity to verify and enforce compliance of obligations pursuant to SR III in practice, in particular as regards the non-financial sector.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14) & Implementation of procedures to access frozen funds (c.III.15)

156. It is unclear whether relevant measures from the Best Practices Paper have been considered and implemented.

157. There are no procedures to authorise access to funds or other assets that were frozen pursuant to S/RES/1373(2001) and have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. This would presumably need to be done on application to the Administrative Court on the basis of fundamental rights, as in the case of criteria III.9 above.

Recommendation 32 (terrorist financing freezing data)

158. No freezing has occurred under SRIII.

159. As regards enforcing obligations under SR.III, no cases have been instituted against entities for failure to comply with such requirements.

Effectiveness and efficiency

160. In view of uncertainty regarding the receipt by the non-financial sector of the relevant lists and of an effective system for monitoring their compliance, concerns remain regarding effectiveness and efficiency. The lack of domestic legislation to designate national, foreign and EU internals persons and entities also has the potential to adversely affect effectiveness, as has the incomplete

[15] The authorities indicated after the visit that provisions in the Law 110(I)/2010 on the Suppression of Terrorism set out the sanctions applicable for infringements of obligations under the relevant EC Regulations (Sections 2, 3, 4 for the EC Regulation 2580/2001, Sections 2, 3, 5 for the EC Regulation 881/2002 and 467/2001). This act was adopted on 2 November 2010 and came into force on 22.11.2010 and thus cannot considered for the purpose of this evaluation.

criminalisation of the financing of terrorism offence. The authorities however consider that the system in place is effective. [16]

2.4.2 Recommendations and comments

161. A comprehensive and effective system for freezing without delay of the assets of designated persons, including publicly known procedures for de-listing and the unfreezing of accounts in a timely manner upon verification that the person or entity is a non-designated person is not yet in place. Although there is an administrative procedure to freeze accounts pursuant to the UN resolutions and EU regulations, there is no domestic legislation apart from the Decision of the Council of Ministers and this impacts negatively on the ability of Cyprus to deal effectively with the assets of EU internals and with freezing actions initiated by foreign jurisdictions.

162. The five recommendations set out in the Third Round MER have yet to be fully implemented, namely:

a. Create and/or publicise procedures for considering de-listing requests and unfreezing assets of de-listed persons.
b. Create and/or publicise a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the person is not a designated person.
c. Clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian ground in a manner consistent with S/Res/1452 (2002).
d. Publicise the procedure for court review of freezing actions.
e. Consideration and implementation of relevant parts of the Best Practice Paper.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**PC**	Implementation of S/RES/1267 • The situation envisaged by the UN resolution for the freezing of assets in the event of control or possession of assets by persons acting in the name of or at the direction of designated persons or entities, which is not covered by the EU regulation, does not appear to be covered: • Concerns remain as to whether funds and assets can be frozen without delay as required under the UN resolution outside of the financial sector; Implementation of S/RES/1373 • There is no national mechanism for evaluation of requests to freeze the funds of EU internals (citizens or residents). Effective procedures, communication systems, instructions, monitoring of compliance • There is no effective and publicly known procedure for the purpose of considering de-listing. • There is no effective national procedure for unfreezing in a timely manner upon verification that the person or entity is not a designated person. • There is no specific guidance to financial institutions and other persons

[16] The authorities referred to changes to the procedures which were introduced after the visit through Law 110(I)/2010 on the Suppression of Terrorism.

		or entities on the use and measures to be taken in the case of UN or EU lists of designated persons beyond the need to freeze and then notify the authorities. • The incomplete criminalisation of the financing of terrorism offence is potentially an issue when seeking to deal with freezing actions instigated by other countries. • No appropriate measures to monitor and sanction effectively compliance with obligations under SRIII by persons and entities [other than financial institutions]. • In view of uncertainty regarding the receipt by the non-financial sector of the relevant lists and of an effective system for monitoring their compliance, concerns remain regarding effectiveness and efficiency.

Authorities

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

2.5.1 Description and analysis

Recommendation 26 (rated C in the 3rd round report)

Summary of 2006 MER factors underlying the rating

163. In the Third Round Evaluation Report, Cyprus was rated Compliant and thus no factors were mentioned in this context.

Legal framework

164. The FIU of Cyprus (Unit for Combating Money Laundering Offences - MOKAS) was established according to Section 53 of the Prevention and Suppression of Money Laundering Activities Law No. 61(I) of 1996 (amendments between 1996-2004) and became operational in January 1997. This law was amended and consolidated with the Prevention and Suppression of Money Laundering Activities and Terrorist Financing Law No. 188(I) of 2007 (hereinafter referred to as AML/CFT Law).

165. According to the new AML/CFT Law transposing the EU third Anti-Money Laundering Directive 2005/60/EC and its supplementary Implementation Directive 2006/70/EC, which entered into force since the 1st of January 2008, MOKAS is the authority responsible for receiving and analysing information relevant to laundering and terrorist financing offences and investigating such offences. The competency for combating the financing of terrorism was already assigned to MOKAS under Section 9 of the Law No. 29 (I) 2001 on the Ratification of the UN Convention on the Suppression of the Financing of Terrorism. The organisational structure (including the composition of staff), the tasks and responsibilities of MOKAS in connection with R.26 (Section 55 of the AML/CFT Law) have remained basically unchanged since the last evaluation.

Establishment of an FIU as national centre (c.26.1)

166. Part VII of the AML/CFT Law sets out in detail the composition and functions of MOKAS. Section 54 of the AML/CFT Law establishes the Cyprus FIU and defines its composition. MOKAS is a multidisciplinary unit established within the structure of the Law Office of the Republic and composed of officials from the Attorney General's Office, the Police, and Customs as well as its own operational staff, recruited under the Law Office of the Republic.

167. According to Section 55 (1) of the Law, which sets out the functions of the Unit, MOKAS is a) " responsible for the gathering, classification, evaluation, and analysis of information relevant to laundering offences and terrorist financing" ("**receiving"** and **"analysis"** core functions).

168. In addition to the FIU's core functions, MOKAS is also responsible for: (b) conducting investigations whenever there are reasonable grounds for believing that a laundering offence and a terrorist financing offence has been committed; c) cooperating with other FIUs as well as with Asset Recovery Offices in its investigative functions through exchange of information and other relevant ways of co-operation; d) issuing directives for the better exercise of its functions; e) issuing instructions to obliged entities for the suspension or non execution of a transaction; f) providing feedback on the results of the investigation of the reports submitted to the Unit.

169. Since the Third Round Evaluation, MOKAS has also been entrusted with additional functions, such as acting as the supervisory authority for real estate agents and dealers in precious metals and stones (Section 59 (2) (c) of the AML/CFT Law). Furthermore the Cyprus FIU was designated as the Asset Recovery Office (ARO) for the purposes of the Framework Decision 2007/845/JHA, and the national contact point of the Camden Assets recovery Inter-Agency Network (CARIN).

170. The AML/CFT Law does not explicitly set out the "**dissemination function"** nor is this covered elsewhere in secondary legislation. This was explained by the fact that given that MOKAS is also responsible for the investigation of offences (AML/CFT Law, Section 55 (1) b), in its capacity as a law enforcement authority. MOKAS analysits are also investigators and as such, they handle cases from the initial receipt of an STR or other information up to the conclusion of the criminal investigation. It is to be noted that both the Police and Customs can also investigate ML offences under their respective competences. MOKAS has indicated that it can disseminate financial information to these other law enforcement authorities, when and if needed in the criminal cases investigated by them, based on the general principle of law enforcement co-operation at national level, and that such instances happen on a regular basis. This issue is further elaborated under c.26.5.

171. With regard to the FIU's **receiving** function, Section 55 (1) refers to "information relevant to laundering offences and terrorist financing". MOKAS receives reports filed by both financial institutions ('financial businesses') and service providers engaged in 'other activities' (described under Section 2 of the Law) in application of the reporting obligation as set out in Section 69 of the AML/CFT Law.

172. Upon receipt of a report, the Head of the FIU conducts an initial evaluation and allocates the report to an investigator or a team of investigators. In this phase, the investigator may undertake several actions, including: data mining, various searches against the databases (private and public) to which the FIU has access, transaction analysis, intelligence analysis, initiation of requests for information (ie. FIU, Interpol and Europol channels). This is considered to be primarily the analysis phase.

173. At the investigation stage, the investigator may undertake additional actions such as taking statements, interrogating persons involved, obtaining court orders/warrants (arrest, remand, disclosure, freezing etc), operative action and undercover operations if necessary, preparing formal rogatory letters (for evidence gathering), visiting other countries for evidence gathering purposes.

174. As a rule, the process is initiated with the analysis stage and the investigation stage follows. However, MOKAS indicated that given its law enforcement functions, there is no absolute line separating the two phases, that is that MOKAS may, during the analysis stage, apply some of the basic investigative tools. In some cases, the analysis is finalised and the formal investigation is undertaken with interrogations and search warrants. The result of these interrogations and the

evidence found might create a need for further analysis of new information. In many cases, the analysis takes place throughout the process or is part of the criminal investigation.

Guidance to financial institutions and other reporting parties on reporting STR-s (c.26.2)

175. As indicated in the Third Round MER, guidance regarding the manner of reporting has been issued in the form of "directives" in application of Section 59 (4) of the AML/CFT Law by the relevant Supervisory Authorities (listed under the same Section), which are legally binding.

176. Supervisory authorities have now been appointed for all sectors of the industry that fall within the obligations of the Law, with the exception of trust and company service providers (TCSPs) when they are not lawyers or accountants. All supervisory authorities identified under the new AML/CFT Law have issued directives to those they supervise, with the lead being taken by the Central Bank of Cyprus, with the assistance of MOKAS which designed the template reporting form . In accordance with Section 59 (4) of the AML/CFT Law the CBC, ASDCS, CYSEC, ICCS have issued directives for financial institutions involved in financial businesses, while ICPAC, CBA and MOKAS for professions carrying out non-financial activities.

177. The directives issued by the supervisory authorities, which were in force at the time of the on site visit are the following:

- The banking sector (issued by CBC): Basic Directive (third issue) to banks issued in April 2008; amendment No. 1 issued on 5/1/2008; amendment No. 2 issued on 17/1/2009; amendment No. 3 issued on 17/1/2009
- Money transfer businesses /MTBs/ (issued by CBC): Basic Directive issued in February 2009; amendment No.1 issued on 2/9/2009.
- Cooperative Credit Institutions /CCIs/ (issued by ASDCS): Directive to Cooperative Credit Institutions for the Prevention of Money Laundering and Terrorist Financing issued in May 2008.
- Securities and Exchange Business (issued by CYSEC): Directive DI 144-2007-08 for the prevention of money laundering and terrorist financing issued in February 2009.
- Life-Insurance Companies and Intermediaries (issued by ICCS): Orders for Life-Insurance Companies and Life-Insurance Intermediaries (third issue) issued in February 2009.
- Certified Public Accountants and auditors (issued by ICPAC): Directive to the Members of the Institute of Certified Public Accountants of Cyprus on Prevention of Money Laundering and Terrorist Financing issued in September 2008; amendment issued in 2010.
- Lawyers (issued by CBA): Directive to the Members of Cyprus Bar Association concerning Prevention of Money Laundering and Terrorist Financing, firstly issued in 2005 and than replaced by the 2009 issue.
- Dealers in precious metals and stones, real estate agents (issued by MOKAS): Guidelines to the members of the Cyprus Jewellers Association (The Prevention and Suppression of Money Laundering Activities and the Financing of Terrorism Law of 2007 (Law No. 188(I)/2007) issued on 18/4/2008 and Guidelines to the members of the Cyprus Estate Agents Registration Council - The Prevention and Suppression of Money Laundering Activities and the Financing of Terrorism Law of 2007 (Law No. 188(I)/2007, both issued on 11/10/2007).

178. Guidance on the manner of reporting (including the specification of the reporting forms and reporting procedure) is described under the relevant chapter of the specific directive described as follows:

- Directive issued by CBC for the banking sector: Part 7. – Recognition and reporting of suspicious transactions/activities, point 7.4 – Reports to MOKAS, Appendix 4 – MLCO's (revised) mandatory reporting template to MOKAS, under point 7.4., Para. 190 – physical manner of reporting: post, facsimile or by hand.
- Directive issued by CBC for money transfer businesses: Part 6. – Recognition and reporting of suspicious transactions/activities, point 6.4. – Reports to MOKAS, Appendix 3 – MLCO's

mandatory reporting template, under point 6.4., Para. 52 – physical manner of reporting: post, facsimile or by hand.

- Directive issued by CYSEC: Part VI.- recognition and reporting of suspicious transactions/activities to MOKAS, point 27. – Reporting of suspicious transactions to MOKAS, Appendix 3 – MLCO's mandatory reporting template to MOKAS, point 29 (1) – physical manner of reporting: post, facsimile or by hand.
- Directive issued by ICCS: Part 2. - the main provisions for the prevention and suppression of money laundering activities Law of 2007., point 2.6. – Reports to MOKAS (Section 27 of the Law); Appendix 2 – MLCO's mandatory reporting template to MOKAS. There is no description on the requirements regarding the physical manner of reporting.
- Directive issued by ICPAC: Part 6. – Recognition and reporting of suspicious transactions, point 6.05 – Reporting of suspicious transactions, Appendix B – MLCO's reporting template to MOKAS, which according to point 6.24 is not mandatory. The method of reporting is described under points 6.24 and 6.25, stating that disclosures can be forwarded by post or by facsimile message or in urgent cases by phone, which must be followed by a written report.
- Directive issued by CBA: Part 6. – Recognition and reporting of suspicious transactions, 6.05 – Reporting of suspicious transactions, Appendix B – MLCO's reporting template to MOKAS, which according to point 6.24 is not mandatory. The method of reporting is described under points 6.24 and 6.25, stating that disclosures can be forwarded by post or by facsimile message, or in urgent cases by phone, which must be followed by written report.
- Guidelines issued by MOKAS to dealers in precious stones and metals: Page 5 – Reporting of suspicious transactions, Page 7 – Suspicious transaction report template to MOKAS (not mandatory), Page 6 – Method of report: via mail or fax or in urgent cases by phone, which must be followed by written report.
- Guidelines issued by MOKAS to real estate agents: Page 9 - Reporting of suspicious transactions, Pages 12-14 – Reporting template to MOKAS for the compliance officers (not mandatory), Page 10 – Method of report: via mail or fax or in urgent cases by phone, which must be followed by written report.

179. The directives' scope is generally much broader and covers other AML/CFT requirements apart from the reporting obligation. With regard to the manner of reporting, the directives provided to financial institutions in general contain provisions on the method of reporting, an Internal Money Laundering Suspicion Report form, a Money Laundering Compliance Officer (MLCO) Internal Evaluation Reporting form, a MLCO reporting form to MOKAS, examples of suspicious transactions, activities related to ML and TF, the contact details of the Cyprus FIU, etc. The provisions on the procedure that should be followed when reporting orients reporting entities to submit STRs '*by post or facsimile or by hand*'. It was also explained by the Cyprus FIU that when it comes to financial institutions the usage of certain secure electronic communication channels (e-mail accounts requiring digital signatures) like CISCO or another software produced by CBC, is also accepted, although not defined in the directives.

180. The overall picture shows more or less a consistence practice, however minor gaps like not describing the contact details of MOKAS in the directive for CYSEC, or missing the instruction on the method of reporting in the ICCS directive still requires some fine tuning from the part of the competent Supervisory Authorities. Some of the directives the evaluation team were adopted shortly after the adoption of the AML/CFT law and were not subsequently kept up to date.

181. As for the directives and guidelines issued to DNFBPs their content could be more comprehensive if supplemented with appropriate sector based guidance on ML/TF indicators (examples). It must also be noted, that the directives may not necessarily be harmonised and, in some instances, are a repetition of the legal provisions, therefore the evaluators strongly advise the Cyprus Supervisory Authorities to take steps toward jointly developing a more uniform content for the directives, that could be updated when necessary and is not an impediment for presenting sector specific characteristics, which would help avoiding similar imperfections.

182. As a positive step, the evaluators have also been informed that a new secure electronic reporting regime – further elaborated under R.13 - is under development.[17]

Access to information on a timely basis by the FIU to the financial, administrative and law enforcement information (c.26.3)

183. The FIU has access to financial, administrative and law enforcement information, although there is no specific power laid down for the FIU to request such information. It was unclear for the evaluators what legal provisions authorise MOKAS to have access to all prescribed information under c. 26.3 other than financial information. This can be inferred from the prescription on how financial information is obtained, as well as from the judicial and investigative role of MOKAS and the procedure it follows, its investigative powers which enable MOKAS in order to have access to information needed to properly undertake its functions.

184. The Cyprus authorities explained, that as regards the legal basis for the power of the FIU to investigate, Section 54(3) of the AML/CFT Law provides that "the members of the Unit shall be deemed to be investigators by virtue of Section 4 of the Criminal Procedure Law". Thus, apart from the members of the Unit who are police officers, all the other members of the Unit are directly considered as investigators having all investigative powers under the relevant Laws.

185. According to Section 6 (1) of the CPC, the investigating officer during the investigation of an offence may, if he considers the production of a document necessary or desirable for the purposes of such investigation, issue a written order to the person in whose possession or under whose control such document is, or believed to be, requiring him to produce it at such reasonable time and place as may be specified in the order. Refusing to comply with such measures without a reasonable cause in both cases constitutes an offence punishable by imprisonment for a term up to 3 years or by a fine or both .

186. Under Part V of the AML/CFT Law (Orders for the disclosure of information), the Court may, on the application of the investigator of a case, make an order for disclosure. which makes it obligatory to the addressed person who appears to be in possession of the necessary information to disclose the said information to the investigator within an average time of 7 days. This procedure is undertaken in relation to the receipt of information or documents in the course of investigating the possible commission of offences, for the purposes of inquiry in relation to prescribed offences or in relation to inquiry for the determination of proceeds or instrumentalities.

187. Apart from its own database, MOKAS – through the police officer members of the FIU - has direct unlimited access to the following databases: law enforcement databases such as criminal records, departure/arrival records, stop list records and personal data and home registry, the latter operated by the Ministry of Interior and the Crime analysis Database of the Police. MOKAS members also have access to the weapons registry and stolen vehicles registry (operated by the Police), administrative information like immigration records and vehicle registration,. In relation to police information the Cyprus authorities clarified, that although only the police officers of MOKAS have access to such databases, the retrieved information is then provided to the other members for analysis, evaluation and investigation. at the time of the visit, a new joint police database was being tested, which would allow the simultaneously conduct of checks on certain targeted individuals in 8 different police databases. The idea and implementation is well supported and encouraged by the evaluators.

188. MOKAS has also direct access to the Customs cash declarations database of all ports and airports, as well as to the seizures database. customs information in relation to cash declarations.

[17] The Cypriot authorities have now informed that the new secure electronic reporting regime has been implemented and is operative for the financial sector.

This access is direct and provided to the Unit members as a whole, and not only to the customs officers of the Unit, and a relevant agreement was authorised by the Commissioner of Personal Data Protection for this purpose. As far as the Customs investigations database , the FIU has indirect access either through a written request or oral request in the course of meetings between MOKAS Customs staff and the investigation department of the Customs authority, and those were answered timely according to the authorities.

189. MOKAS has also direct online access to company registration operated by the Registrar of Companies, which is limited to basic information like the name and registration number of the company. Other necessary company related information (e.g. name, ID or passport number, address, shares, nationality of shareholders) is obtained indirectly by having one of the administrative staff of the Cyprus FIU go the premises of the Registrar, while other requesting authorities could be informed via e-mail. The Cyprus authorities indicated that although the obligation to reply has no fixed timeframe, an answer is provided in average within 5 working days, taking into consideration that the Registrar receives approximately 3000 domestic applications per day. It was also explained that based on an agreement with the government it is planned to make the register electronically accessible by the end of 2010.[18]

190. MOKAS has indirect access to financial information, tax records; land registry information; and supervisory bodies' records (the latter based on Section 59(8) of the AML/CFT law). At the time of the on-site visit, MOKAS had also indirect access to the arrest/investigation/intelligence records.

191. The authorities have indicated that MOKAS has indirect access to tax data (records). The Section 4 Sub-Section (3) of the Assessment and Collection of Taxes Law 4/1978 as amended provides that the Minister of Finance may authorize any such information (any document, return or assessment list relating to the object of the tax of any person) or anything contained in any document, return or list to be communicated to such person or persons as he shall clarify. It was explained that based on the above mentioned provisions the indirect access to tax information is assured by sending a formal letter of request to the Minister of Finance - with whom MOKAS has an understanding to facilitate co-operation - seeking his authorisation to check the relevant tax files in order to obtain tax related information. A designated official of the Ministry, with whom the FIU has direct contact, collects the requested tax information and hands it in person to a member of MOKAS. The Cyprus authorities explained that the authorisation is given automatically as a routine, no objections or refusals were ever encountered. Moreover MOKAS indicated also that Section 36(3) (a) of the AML/CFT Law (Court Disclosure Order) can also be applied when requesting tax information, though this was never applied in practice. However it seems that it is exclusively in the minister's discretion to provide the necessary tax related information to person(s) specified by him, therefore – as it is also a potentiality issue - it remains a question whether the indirect access of MOKAS faces/faced/or could face any obstacles when trying to collect tax information for criminal investigative purposes (including financial analysis). There should be clear legal guarantees that tax information is accessible by MOKAS.

192. With regard to the Land Registry, the Cyprus authorities also indicated that in order to obtain the necessary information concerning Cyprus real estate, Section 6(1) [Order to produce documents] of the CPC is the primarily applied measure. The Director of the Registry after receiving the answers from the district registries will eventually (within a few days) provide the requested data to MOKAS.

193. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions (in connection with R.26), including the analysis of STRs. Access to the information is considered

[18] Direct online access to all information held by the Registrar of Companies in relation to Cyprus registered companies was given in 2011.

timely if a response from another agency is provided in a time frame that does not impede the analytical process. The factor of timeliness differs in relation to the different measures applied by MOKAS in order to obtain the requested information. Information from databases MOKAS has direct access to, can be retrieved instantaneously. Section 6 (I) of the CPC as applied, it is the order to produce documents that specifies the timeframe within which this coercive measure should be fulfilled – this depends on the type of information (as it was indicated, either on the same day or within 7 days or more). As for the disclosure order, the Section 46(1) clearly defines that the addressed person is to disclose or produce the required information within 7 days or within such a longer or shorter period of time as the Court may specify in the order if it considers expedient under the circumstances. The disclosure order is obtained on the same day. As regards access to the supervisory bodies' records, MOKAS sends a written request based on Section 59(8) of the AML/CFT Law and the authorities indicated that no delays have been experienced.

Additional information from reporting parties (c.26.4)

194. The AML/CFT Law does not establish explicitly the power of MOKAS to request additional information from reporting entities.

195. The Cyprus authorities explained that the additional information requested by the FIU from the reporting entities on the STRs filed is part of the general obligation they have to report and submit all relevant information on which the report is based. Consequently, the FIU investigator can contact the compliance officer of the reporting entity and obtain the additional information requested, which is considered to be part of the STR. They referred in this context to the requirements under Section 69 (Internal procedures and reporting to MOKAS) as well as the respective Sections of the sectoral directives covering the reporting obligation. While those Sections refer to the obligation of the reporting entities to have procedures in place to secure that the information or other matter contained in the report is transmitted to the Unit, they do not appear to explicitly cover instances where additional information is requested.

196. MOKAS indicated that it has the authority to request and obtain from reporting entities all additional information needed without a need of a Court order, simply with a letter to the reporting entity. It is done as routine when additional information requested by the FIU is necessary in order to carry out its analysis. The authorities later explained that MOKAS, under Section 55 (1) d) of the AML/CFT Law can "issue directives for the better exercise of its functions" and that this provision is interpreted by MOKAS as giving it the power to direct entities and obtain additional information.

197. In addition, the authorities also referred to Section 68B of the AML/CFT Law which requires persons engaged in financial business activities to apply systems and procedures which make possible the timely response to enquiries of the Unit as to whether they keep or have kept during the last 5 years a business relationship with specific persons and the type of this business relationship. For the communication between the FIU and the banks, MOKAS may use either normal e-mail communication or encrypted e-mail depending on the content of the communication.

198. It was explained that requests based on Section 68B are used for getting immediate information from a reporting entity. If information is needed from another entity than the entity having submitted the STR, in such cases a disclosure order will be sought from the Court as part of the investigation process (Section 45 of the AML/CFT Law).

199. The authorities also stated that a person shall commit an offence if he/she does not disclose the said information to the Unit under Section 27 of the AML/CFT Law. This offence applies to any person, whether or not that person is engaged in 'financial business' or 'other activities', with the limitation that the information that raises the suspicion should come to that person's attention in

the course of that person's trade, profession, business or employment, when the STR is filed by other reporting parties (e.g. individuals, as categorised in the table on statistical information on reports received by the FIU).

200. It was also noted that the directives and guidelines include, with varying levels of detail, provisions covering the obligation of the MLCO to reply to further inquiries of MOKAS requesting additional information:

- CBC bank directive: Part 2, point 2.2 Duties of the MLCO, Para. 13.(xi) - the MLCO responds to requests from MOKAS and provides all the supplementary information requested and fully co-operates with MOKAS; In addition Para. 172 states that banks must ensure that in the case of a money laundering investigation by MOKAS, they will be able to provide a wide range of financial information.
- CBC money transfer businesses directive: Part 3, Point 3.2 Duties of the MLCO, Para 14. (vii) - the MLCO responds to requests from MOKAS and provides all the supplementary information requested and fully co-operates with MOKAS
- CYSEC directive: Part VI, Para. 30 (submission of information to MOKAS) creates similar obligation for the relevant financial organisation as Para. 172 for banks.
- ICPAC directive: Part 6. Point 6.12. (f) - the MLCO responds to requests from MOKAS and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with MOKAS.
- CBA directive: Part 6. Point 6.12 (f), identical to the wording of the ICPAC directive.
- The guidelines issued by MOKAS: the duties of the compliance officers of the certified real estate agents includes (point e, page 10) the 'obligation' to respond to MOKAS' requests for additional information and to cooperate fully with the FIU; whilst the members of the Cyprus Jewellers Association must do exactly the same (page 5).

201. In practice, MOKAS does not seem to experience any difficulties in obtaining additional information from reporting entities, and this was confirmed during the visit both by the authorities and the representatives of the reporting parties.

Dissemination of information (c.26.5)

202. As mentioned above, there is no dissemination function of the FIU clearly established in the domestic legislation, as in practice the reception of an STR on a transaction leads to the beginning of a criminal investigation and there is no formal distinction between the analysis and investigation phase.

203. The Cyprus authorities explained during the visit that the FIU does not disseminate information to domestic authorities for investigation and action since according to Section 55 (1) b) of the AML/CFT Law, it has the authority to conduct investigations whenever there are reasonable grounds for believing that a money laundering or TF offence has been committed. MOKAS confirmed that a ML or TF investigation – depending on the underlying predicate offence – is conducted with the assistance of the Police and Customs authorities whenever it is needed, as each competent authority can request another law enforcement authority to provide support to the investigation. Thus, case files are not disseminated to the police for investigation purposes, but where relevant, MOKAS shares financial information in order to facilitate co-operation on specific cases. The authorities indicated that all the indictments in Table 12 of the report have been achieved from STRs where MOKAS was assisted by the Police. On average, 10% of the suspicious transaction reports received in relation to persons or companies residing or registered in Cyprus are forwarded to the Police for further investigation on the predicate offense. Moreover, when the Police investigates serious offenses, they may require and receive from MOKAS any relevant information contained in the STRs and the authorities estimate that in the last 2 years (2009-2010, this happened approximately in 15-20 instances.

Operational independence and autonomy (c.26.6)

204. The Cyprus authorities consider that as the FIU functions within the Law Office of the Republic, headed by the Attorney General of the Republic, this safeguards and guarantees the autonomy and operational independence of MOKAS. According to Section 112[19] of the Constitution of Cyprus, the Law Office of the Republic is an independent office from the executive.

205. Sub-Section 2 of Section 113 of the Constitution defines, that the Attorney General of the Republic has power, exercisable at his own discretion in the public interest to institute, conduct, take over and continue or discontinue (*nolle prosequi*) any proceedings for an offence against any person in the Republic. Such power may be exercised by him in person or by officers subordinate to him acting under and in accordance with his instructions. Since MOKAS processes STRs through the commencement of a criminal investigation, the Attorney General, on the grounds of his constitutional powers hypothetically could interfere with any proceedings for an offence. However the authorities vigorously emphasized that this has never happened, as the Attorney General never exercised his powers to direct the termination of an investigation for ML. Moreover, such decisions are taken for the public interest and would have to be justified. Furthermore, the Attorney General is not involved at the analytical process phase of the FIU. During meetings, they referred to only 2 cases where given the sensitive nature of the case and potential media coverage, they had informed the Attorney General.

206. With regard to the appointment of staff, MOKAS is presided by a representative of the Attorney General of the Republic (Section 55 (4) of the AML/CFT Law) who is appointed directly by him as well as the lawyers, without the involvement of the Executive (it is not a political appointment) and cannot be removed from the office with the change of the government. The police and customs officers of the Cyprus FIU are appointed by the Chief of Police and the Director of the Department of Customs and Excise and the authorities indicated that an informal consultation usually takes place with the MOKAS head of the Unit. Moreover since the last evaluation on the basis of Section 54 (5) permanent operational posts were created for financial analysts and accountants within the Law Office of the Republic. As a safeguard the members of the FIU shall be appointed by detachment and by name for duration at least three years. Neither the Chief of Police nor the Director of the Customs and Excise Department can interfere or instruct any member of MOKAS in the course of their duties.

207. Although not having an independent budgetary line, the representatives of MOKAS indicated that they are currently able to undertake all functions with the present resources. The evaluators, taking into consideration factors like the considerable participation ratio of MOKAS on relevant international and national programmes, trainings and forums and also the domestic and international performance of MOKAS when undertaking its core FIU functions, found no evidence that the current budgetary rules impact on the operational capacity and independence of the Cyprus FIU.

[19] Section 112.2 and 4 provide: "2. The Attorney-General of the Republic shall be the Head and the Deputy Attorney-General of the Republic shall be the Deputy Head of the Law Office of the Republic which shall be an independent office and shall not be under any Ministry.
4.The Attorney-General and the Deputy Attorney-General of the Republic shall be members of the permanent Legal service of the Republic and shall hold office under the same terms and conditions as a judge of the High Court other that its President and shall not be removed from office except on the like grounds and in the like manner as such judge of the High Court."

Protection of information held by the FIU (c.26.7)

208. With regard to the security and legal protection of information, in general 'personal data' or 'data' protection is based on the Processing of Personal Data (Protection of Individuals) Law 138 (I) 2001 and amending Law 37(I) 2003 (hereinafter referred to as: Data Protection Law). Section 3 defines the scope of the law stating that the provisions shall apply to any processing (including collection /for an explicit and legitimate purpose/, recording, organization, preservation, storage, alteration, extraction, use, transmission, dissemination or any other form of disposal, connection or combination, blocking, erasure or destruction) of personal data (any information relating to a living data subject) […] by automatic means, or otherwise[…]. Section 10 (1) clearly states that the processing of data is confidential. Sub-Section (3) of the same Section makes the obligation of the controller (any person who determines the purpose ad means of the processing of personal data) to take the appropriate organizational and technical measures for the security of data and their protection against accidental or unlawful processing.

209. Section 67 of the Public Service Law regulates the duty of confidentiality for all civil servants, including MOKAS staff. Pursuant to this article, "all information, written or oral, which comes to the knowledge of a public officer, in the execution of his duties, shall be confidential and its communication to any person shall be prohibited except for the proper performance of an official duty or at the express direction of the appropriate authority". Violation of this provision constitutes a disciplinary offence.

210. Moreover the FIU is subject to the provisions of prohibition of disclosure, Section 48 of the AML/CFT Law makes it an offence punishable by imprisonment if any person discloses the information or other relevant material regarding the knowledge or suspicion for ML have been submitted to the FIU or makes a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the ascertainment of proceeds, knowing or suspecting that the said interrogation and investigation are taking place. No such cases were reported or initiated. STR data is handled as confidential information.

211. Besides the legal protection, with regard to the physical protection of the information held by the Cyprus FIU, in order to secure the data received or disseminated from/to foreign FIUs, MOKAS is using Egmont Secure Web (ESW) and applying the same security standards and procedures as for domestic information.

212. In 2010 MOKAS was relocated to new premises. The evaluation team visited the new premises to have a general overview about the facilities, equipment available and the physical protection and safeguards of data protection. The evaluators were pleased to note that adequate measures were taken to ensure the protection of the premises and of information kept.

Publication of periodic reports (c.26.8)

213. There is no provision in the AML/CFT Law that would explicitly require the release of periodic or annual reports, however Section 76 of the Law obliges the competent Supervisory Authorities, MOKAS, MojPO, the Cyprus Police, the Department of Customs and Excise to maintain comprehensive statistics on matters related to their competences. Such statistics shall, as a minimum, cover STRs made to MOKAS, the inspections made and the administrative penalties and the disciplinary sanctions imposed by the Supervisory Authorities, the number of cases investigated, the number of criminal prosecutions, the number of convictions and the assets frozen, seized or confiscated.

214. Accordingly the Cyprus FIU issues periodic reports including statistics, typologies and trends which are sent to the reporting entities, to various government departments, financial institutions

as well as to foreign authorities. The reports provided to the team show these take the form of warning notices, addressed mainly to the banking sector, containing lists of persons suspected to be involved in illegal activities, or also contain information on the underlying suspicious transactions, descriptions on the illegal activities (e.g. investment fraud) recommending to take the necessary steps and exercise additional diligence.

215. MOKAS also publishes annual reports which contain a wide range of information including powers and responsibilities of the Cyprus FIU, the Supervisory Authorities and the Advisory Authority, international conventions, statistics on SARs (STRs), international co-operation, freezing and confiscation orders as well as sanitised money laundering cases. The evaluation team had the opportunity to review the 2007 and 2008 reports. These reports are distributed domestically to the six supervisory authorities, to all banks in Cyprus (14 domestic banks and 26 IBUs), to the President of the House of Parliament and the Parliamentary Committee for Criminal Matters and Legal Issues, to the Police (Chief of Police, Drug Enforcement Unit and Financial Crime Unit), to the Customs Excise Department, to the Stock Exchange, to the Companies' Registrar and Official Receiver, the Ministry of Justice and Public Order, the Ministry of Finance, the Ministry of Foreign Affairs, as well as to various foreign interlocutors.

216. The Law Office of the Republic also runs a website, in the framework of which MOKAS operates its homepage[20] where all relevant information regarding the AML/CFT legislation , the relevant Conventions, the EU Directives, the evaluation reports of International Organisations related to Cyprus, and the directives of the Supervisory Authorities can be found. The evaluators are of the view that the annual reports should be made publicly accessible on the homepage of MOKAS.

217. Moreover, the Head of the FIU chairs the Advisory Authority which is comprised of representatives from the Public and Private sector. Within this Authority, information is given by the FIU to the members of the Advisory Authority regarding evaluation reports and actions undertaken by international bodies on this area etc.

218. As explained, the FIU, when deemed necessary, proceeds with press releases to the media regarding certain court cases and/or other issues which may arise.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

219. MOKAS is a member of the Egmont Group since June 1998 and actively participates in the Working groups and Egmont Group meetings. It hosted the Egmont Group Working Group meeting in March 2001 and also the Plenary Egmont Group meeting in June 2006. At the time of the evaluation visit, the head of MOKAS was a member of the Committee of the Egmont Group, representing the FIUs of the countries of Europe.

220. Also MOKAS, though not being legally required to do so, had concluded at the time of the on-site visit Memoranda of Understanding (hereinafter referred to as MOU) with the FIUs of Belgium (CTIF/CFI), France (TRACFIN), Slovenia (OMLP), Czech Republic (FAU), Israel (IMPA), Ireland, Malta (FIAU), Australia (AUSTRAC), Poland (GIIF), Ukraine (SDFM), Albania (DCFAML), Canada (FINTRAC), Russian Federation (FMC), Bulgaria, South Africa, USA, Romania, Chile, Netherlands Antilles, South Korea, Syria, Georgia, Moldova, and Aruba.

221. Regarding the international information exchange, MOKAS is authorised to co-operate and exchange information with counterpart FIUs on the basis of Section 55 (1) c) of the AML/CFT Law.

[20]This webpage can be accessed at : http://www.law.gov.cy/law/mokas/mokas.nsf/

222. However Section 9 (1) of the Data Protection Law requires that the license of the Commissioner for Protection of Personal Data shall be obtained prior subject to the transmission of data which have undergone processing or are intended for processing after their transmission to any country. The Commissioner shall issue the license only if he considers that the said country ensures an adequate level of protection. For this purpose, he shall take into consideration the nature of the data, the purpose and duration of the processing, the relevant general and special rules of law, the codes of conduct and the security measures for the protection of data, as well as the level of protection in the countries of origin, transmission and final destination of the data. MOKAS obtains every two years a renewed licence from the Commissioner for Protection of Personal Data. Countries included in the licence include Egmont Group members, countries which are parties to multilateral and bilateral agreements for the exchange of information, and when new FIUs are established or other authorities (eg. ARO) are relevant for the purpose of exchange of information, these are added to the renewed licence.

223. Although the AML/CFT Law does not contain any restrictions concerning the range of co-operation MOKAS can provide to foreign FIUs, exceptions appear to exist in the practice of the Cyprus FIU, in certain occasions, excluding certain sensitive financial or administrative data (i.e. banking, tax and land registry information, information on the beneficial owner) from the exchanging of information with requesting counterpart authorities, as a result of the examination on a case by case basis of the request. It was highlighted that MOKAS follows the Egmont Group Statement of Purpose and its Principles for Information Exchange between FIUs for money laundering cases.

224. On the grounds of the statistics below, provided by the Cyprus FIU, it can be concluded that the number of requests sent and received (including spontaneous referrals) from/to counterpart FIUs have generally increased between 2005 and 2010. The Cyprus FIU primarily uses Egmont Secure Web, and as regards EU member States, the FIU.NET seems to be an increasingly applied channel to facilitate safe and effective information exchange with its foreign counterparts. The Unit has been connected to the FIU.NET since 2006. The authorities indicated that their response time depends on the complexity of the request and that it usually is between 5 to 20 working days.

225. The following statistics were provided by MOKAS for the reference period covering the exchange of information via ESW and FIU.net as well as the breakdowns:

Table 11: Statistics on FIU international information exchange

	2005	2006	2007	2008	2009	2010
Requests received by MOKAS	223	209	301	292	366	406
Requests sent by MOKAS	96	124	251	168	176	295
Spontaneous referrals received	-	-	4	12	12	4
Spontaneous referrals sent	-	3	3	7	18	7

ESW	2006	2007	2008	2009	2010
Requests received by MOKAS	205	298	285	331	348

Requests sent by MOKAS		244	164	171	287

FIU. NET	2009	2010
Requests received by MOKAS	10	19
Requests sent by MOKAS	30	54

226. MOKAS indicated that the response time depends on the complexity of requests and the average response is usually between 5-20 working days.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

227. The evaluators welcomed the developments regarding MOKAS since the last evaluation round. Apart from the relocation of the Cyprus FIU into a modern well structured building, its staff has been substantially increased, with the employment of 5 additional financial analysts/accountants as permanent staff. One lawyer and one additional administrative worker had also been recruited. As a result the number of personnel has increased from 14 to 21 and MOKAS currently comprises of 3 lawyers, 8 financial/analysts, 4 police officers, 2 customs officers and 4 administrative staff. All 14 staff members are considered investigators in application of Section 54 (3) of the AML/CFT Law.

228. As mentioned above, the members of the FIU shall be appointed by detachment and by name for duration at least three years. Nevertheless the fluctuation/rotation of staff is insignificant, as it was explained that the assignment of those who have already been selected for detachment are usually prolonged in practice.

229. The lawyers and the customs officers are appointed in this position by an independent body which is the Public Service Commission , established under the Public Service Law, and are seconded to the FIU through a decision of the Attorney General and the Director of the Customs Department respectively. The members of the police are appointed according to the procedures set out in the Police Law and are seconded to MOKAS through a decision of the Chief of Police. The financial analysts who hold a permanent position in the FIU have been appointed following written exams and oral interviews by the Public Service Commission.

230. All the abovementioned positions are advertised in the Official Gazette and applications are received from a large number of candidates, based on the relevant scheme of service. The competitive selection process includes a written examination on the basis of tests prepared by the Ministry of Education, to which MOKAS contributes by providing the legal examination tests and by participating directly in the correction of the written tests, and oral interviews. At the level of the interview, either the Attorney General or the head of MOKAS are part of the interviewing panel of the Public Service Commission and provide their comments before the Public Service Commission takes a collective decision.

231. The financial resources of MOKAS are integrant part the budget provided for the yearly operation of the Law Office of the Republic of Cyprus lead by the Attorney General. No estimation on the yearly available financial resources could be provided since there is no specific budgetary line for MOKAS within the overall budget of the Law Office of the Republic. MOKAS prepares its financial annual needs which are forwarded to the accounting Department of the Law

Office in order to be incorporated in the general annual budget. In the explanation given by the Attorney General before the Parliament for the approval of the budget of the Law Office, the latter provides any clarifications as to the amount corresponding to MOKAS' needs (which includes expenses related to hardware-software; participation to seminars and other conferences, other expenses for the FIU premises). Other day to day costs like travelling, stationary, electricity, water supply etc are controlled and added to the general budget of the Law Office by the competent personnel of the Law Office in co-operation with the accounting department and MOKAS. It has to be clarified that the salaries of every civil servant including the Law Office and the members of MOKAS (including the Police and Customs Officers) are controlled, monitored and added to the annual budget by the Treasury Department of the Ministry of Finance. This is a completely different and separate procedure in which the Law Office and the FIU are not involved Salaries are fixed for every civil servant according to his/her ranking scale. For any other unpredicted or unexpected expenses, if needed, the Unit may request, additional funds from the Ministry of Finance via the Attorney General's Office. The representatives of the Cyprus FIU indicated that they are able to undertake all functions with the current resources.

232. To illustrate the annual workload per person in relation to the staff of MOKAS in the period between 2005 and 2009, the Cyprus FIU had received 263 STRs on average per year and initiated just as many criminal investigations by opening case files**.** Considering the fact that all STRs are being analysed the workload for 1 analyst per year is 33 cases projected to 8 financial analysts. The 6 investigators handle on average 44 cases per head annually, emphasizing that the Cyprus FIU only investigates ML or TF offences, it never deals with predicates.

233. Regarding IT facilities, MOKAS has a networked server system and all employees of the Cyprus FIU work through networked computer stations. Moreover the investigators of MOKAS use the i2 Analyst's Notebook Version 7, which is sufficient investigative software suitable for database management, for analysing and following money trails, a useful tool for investigators and financial analysts in the course of investigations.

234. Although MOKAS does not have its own budget, the evaluators found no evidence that the budgetary arrangements affect the operational capacity and independence of the Cyprus FIU. MOKAS seems to be adequately funded and provided with adequate technical and financial resources to fully and effectively perform their functions.

Integrity of FIU authorities (c.30.2)

235. All staff members of MOKAS have appropriate educational skills required for fulfilling their functions. Members of the Cyprus FIU have varied backgrounds and skills: the lawyer members representing cases before the court are in possession of a degree of law and they are all registered advocates with previous practice in the profession. The police officer members are graduates from the Cyprus Police Academy (3 years, containing a special course on combating AML/CFT issues). The customs officers receive basic training on customs legislation and procedures during a three weeks in house training upon their recruitment with the Department of Customs and Excise. The customs officer members of MOKAS - as explained – all possess university degrees and they were posted, before joining the FIU, at the Investigation Section of Customs Headquarters. The Cyprus authorities highlighted that they all have experience on investigation matters and received additional training both inland and abroad on investigation techniques related to economic crime especially on the prevention and suppression of ML and TF issues. According to the scheme of service for financial analysts/accountants all financial analysts/accountants must have a University Degree in Economics or Finance Accounting or be a member of a recognized professional body of certified and chartered accountants.

236. The staff of MOKAS are required to maintain high professional standards. The Public Service Law and the Police Law 73 (I) 2004 includes provisions for the employees to be of high integrity and requirements to ensure that they have no previous criminal record.

237. According to the Code of the Cyprus Police Ethics, the Police leadership takes effective measures to ensure the integrity of character and moral standards of its members as well as their power performance. The leadership as well as al its members take effective measures to prevent and combat police corruption (Sections 16 and 17). Moreover Section 19 describes, that the Police members should be able to demonstrate sound judgement, maturity, fairness, communication skills, an open attitude and where necessary leadership and management skills. They possess a good understanding of social, cultural and community issues. The Code of Ethics of the Department of Customs and Excise states that the Department expects a high standard of honesty and integrity of all its staff, both in their official duties and their lives in general, this inter alia shall include to safeguard all confidential information, and not disclose any that they may have unless allowed and there is a valid reason for doing so (Section 2.1). Customs and Excise personnel must not take part in any activity, which in any way compromises, or might be seen to compromise, their impartiality and integrity. In particular, Departmental personnel must not make use of their official position to further their own private interests, or those of others – whatever the nature of those interests may be (Section 3.1.1.). Newly recruited staff will receive training in the ethical standards expected of them within 3 months of joining the Department.

238. All the information held by the MOKAS and its members is dealt with utmost confidentiality and in case of breach of this duty the members of the Unit could be criminally liable according to Section 48 of the AML/CFT Law and the Public Service Law. Disciplinary measures can also be taken against them, including dismissal. All members of the FIU fall under the civil servants disciplinary code. Furthermore, the Police officers members of MOKAS are also bound by the Police Disciplinary Code.

Training of FIU staff (c.30.3)

239. The Cyprus authorities indicated that all members of MOKAS receive adequate ongoing relevant training for combating ML and TF both domestically and abroad. The Cyprus authorities highlighted that domestic training includes training on the issues of tracing assets, obtaining disclosure orders, analysing financial information, on investigation and supervision techniques, trends and typologies studies, as well as IT training and software training. Moreover all new members of staff, following the decision for their employment, receive basic training on the relevant legislation and on investigation issues.

240. MOKAS staff also participate in training seminars relevant for performing AML/CFT tasks organised by international organisations, institutions and entities such as the Council of Europe, the European Union (OLAF, Eurojust, Europol, the Commission), the Egmont Group and also bilaterally with other jurisdictions (including bodies within public administrations and educational institutions) e.g. Poland, Scotland, Moldova, etc. According to the list of trainings provided by the Cyprus authorities, between the relevant time intervals MOKAS was involved in 26 different international training events. The Cyprus FIU indicated that it regularly organises training for its staff concerning topics like: analysis software updates, intelligence gathering and evaluation, interrogation procedures and techniques, training of new software or new databases, legislation. The training is provided either by an FIU member that has received such training or from external personnel from the private sector etc. It should also be noted that MOKAS dedicates remarkable effort in providing trainings for a large variety of target audience. As an illustration, between 2008 and 2009, staff of MOKAS offered 44 trainings both on a national and at international level.

Recommendation 32 (FIU)

241. Under Section 76 of the AML/CFT Law, MOKAS is required to maintain comprehensive statistics on matters related to its competence. Such statistics include the number STRs received by the Cyprus FIU from different reporting entities. As it was explained earlier in the report, MOKAS analyses all reports through the commencement of a criminal investigation. This table shows the number of STRs analysed/investigated by the Cyprus FIU and the final outcome of its activity.

Table 12: Statistics on STRs received and investigated by MOKAS and results

Year	STRs		Investigation*		Dissemination to LEAs		Indictments				Convictions			
							ML		FT		ML		FT	
	ML	FT	ML	FT	ML	FT	cases	persons	cases	persons	cases	persons	cases	persons
2005	154	-	154	-	Not applicable		6	8	0	0	1	2	0	0
2006	257	-	257	-	Not applicable		12	14	0	0	7	8	0	0
2007	210	4	210	4	Not applicable		4	6	0	0	2	4	0	0
2008	259	3	259	3	Not applicable		5	7	0	0	2	3	0	0
2009	428	1	428	1	Not applicable		6	9	0	0	2	4	0	0
30.05.2010	214	-	214	-	Not applicable		0	0	0	0	1	2	0	0
Total:	**1522**	**8**	**1522**	**8**	**-**		**33**	**44**	**0**	**0**	**15**	**23**	**0**	**0**

*To note: investigation includes the analysis phase.

242. The authorities indicated that out of all STRs received, an average of 25%-30% of the cases close at the financial analysis phase. The table below shows the status of pending and closed cases:

Table 13: Statistics on cases (pending and closed) for the period 2006-2010

	2006	2007	2008	2009	2010
Pending	**44**	**69**	**120**	**269**	**487**
Case closed	**366**	**467**	**463**	**583**	**214**
Total	**410**	**536**	**583**	**852**	**699**

243. In addition statistics were also provided in relation to the number of postponements of transactions initiated by MOKAS. Section 55 (1) e) of the AML/CFT Law authorizes the FIU to issue instructions to persons engaged in financial and other business activities for the suspension

or non-execution of transaction, whenever there is reasonable suspicion that the transaction is connected with ML or TF (administrative order).

Table 14: Statistics on administrative orders issued by MOKAS

Administrative orders issued by MOKAS						
	2005	**2006**	**2007**	**2008**	**2009**	**June 2010**
	12	13	10	20	17	6

Effectiveness and efficiency

244. The statistics provided by MOKAS show that in the period between 2005 and 2009, the average reporting level is of about 263 STRs per year while the average ratio of STR generated cases reaching successful indictment annually is about 2,5 % (33 indictments in 5 years projected to 1316 STRs/investigations). The conviction rate compared to the number of indictments is quite considerable, almost 43 %, but when considered along with the number of STRs received and analysed, the percentage only exceeds 1% (14 convictions in 5 years projected to 1316 STRs/investigations), which means that averagely only this proportion of cases reaches successful conviction.

245. As regards the processing and analysis of STRs, there were no indications of lack of timeliness due to internal structural factors. As noted earlier, the number of investigators of MOKAS has increased in the recent years, which would in principle affect positively the division of cases and respective staff workload. However, the team noted that the statistics received on the number of pending cases has doubled in 2009 and again substantially increased in 2010.

246. The Cyprus authorities stated that on an average 75% of the investigations directly triggered by STRs are completed within the same year, and 25 % of them are taken over to the next calendar year. It was explained that the main reason for keeping such cases open is the need to rely on international information/evidence exchange channels and awaiting for information in order to obtain the necessary materials from foreign authorities does not justify to either close or to suspend a case. It was explained that the oldest investigations date back to 2007 and 2008, all waiting for a letter of rogatory to be answered.

247. The evaluators of the 3rd round had noted '*the low numbers of cases that result in prosecution arising out of the STR reporting system'*. The evaluators of this round acknowledge that the situation remained basically unchanged, although it should definitely be noted that between the 2nd and the 3rd round of evaluation, only 3 cases had been indicted, whilst between 2005 and 2010 the number of indictments increased significantly to 33 (out of which 11 for the reference evaluation period), which should be qualified as a significant leap forward.

248. In the light of the above, and given the manageable number of cases dealt by MOKAS, the evaluators would have expected bringing more cases to successful charges to approximate the results of police figures (182 indictments in 5 years projected to 1065 investigations: 17% indictment efficiency, 113 convictions in 5 years projected to 1065 investigations: almost 11% of conviction ratio), acknowledging of course the additional workload of the Cyprus FIU when using, or assisting other LEAs to apply certain provisional measures in the course of their investigation.

249. Although not having information on the predicate offences of the cases successfully indicted, the evaluators could establish that based on the information in relation to convictions triggered by STRs, the underlying predicate offences linked with the ML investigations of MOKAS that resulted in successful trials are the following: fraud, obtaining money by false pretences, drug offence, theft.

250. Operational co-operation between MOKAS and other law enforcement authorities takes place at the working level and seem to be well-balanced and operable.

251. In conclusion, there have been a number of substantive changes that have occurred since the previous evaluation regarding the staffing, training of staff and resources of MOKAS. The number of indictments and convictions based on STRs has improved. Concerns remain as regards the information reported to MOKAS and the understanding by the reporting entities of their reporting obligation as well as the important increase in the number of pending cases.

2.5.2 Recommendations and comments

Recommendation 26

252. The directives issued regarding the manner of reporting and procedures to be followed by the reporting entities should be reviewed jointly by the supervisory authorities and MOKAS, in order to ensure that they are sufficiently comprehensive, harmonised and up to date.

253. MOKAS should keep under constant review the number of pending cases, and take measures as appropriate, so as to ensure that those are processed in an efficient and timely manner.

Recommendation 30

254. This Recommendation is observed.

Recommendation 32

255. MOKAS is required by law to keep comprehensive statistics and its system demonstrates that it does keep statistics on STRs received, including a breakdown of the type of reporting entity, as well as of the STRs analysed and closed, and in respect of related investigations, prosecutions and convictions. This Recommendation is observed.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• Some of the directives which cover guidance regarding the manner of reporting suffer from minor gaps, such as the CYSEC or ICCS Directives, and require updating; • Effectiveness issues

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Law, regulation and other enforceable means

256. As indicated earlier, the main relevant texts are: the AML/CFT Law (2007 and 2010), which applies to all persons and entities subject to the AML/CFT requirements, the Central Bank of Cyprus Laws (2002 to 2007), the Banking Laws (1997 to 2009), the Law on Insurance Services and other related issues (2002 to 2005), the Investment Services and Activities and Regulated Markets Law (2007, as amended in 2009), the Cooperative Societies Laws (1985 to 2007). All these texts have been adopted by Parliament and they constitute primary legislation for the purposes of this assessment.

257. Section 59(4) of the AML/CFT Law empowers supervisory authorities to issue directives to those they supervise for the purpose of preventing money laundering and terrorist financing and for the purposes of the law. Such directives are binding and obligatory as to their application by the persons they are addressed to. The four supervisory authorities for the financial sector have issued such directives respectively for those they supervise:

- AML Directive to Banks, dated 2 April 2008 as amended in June 2009 (hereinafter D-Banks)
- AML Directive to the Cooperative Credit Institutions[21], as amended in June 2008, June 2010 and September 2010 (D-Cooperative Credit Institutions)
- AML Orders for life insurance companies and intermediaries, dated February 2009 (D-Insurers)
- AML Directive to the securities and regulated markets, dated February 2009 (D-Securities)
- AML Directive to money transfer businesses, dated February 2009 (D –MTBs)

258. In the Third Round Mutual Evaluation the evaluators had concluded, and the Plenary had agreed, that the Guidance Notes issued by the Cyprus supervisory authorities were not authorised by a legislative body as required by the FATF Methodology because they had only been issued under a general delegating power of the law without being considered by the legislative body (see paragraph 289 of the Third Round Mutual Evaluation Report). The evaluators for the Fourth Round Evaluation note the change in referring to the Guidance Notes as Directives or Orders and the mandatory obligation under the new Section 59.4 of the AML/CFT Law. According to the AML/CFT law, non compliance with the directives is subject to sanctions under Section 59(6). Notwithstanding, the evaluators conclude that for the purpose of this assessment, these directives/orders are considered *other enforceable means* according to the Methodology.

259. It should however be mentioned that, as indicated later in this Report, measures have been taken by the Cypriot authorities to ensure that the AML/CFT Law covers those requirements under the FATF 40 Recommendations that need to be included in law or regulation.

Scope

260. According to Section 58 of the AML/CFT Law, the obligations thereunder are applicable to any person carrying on financial business activities. The term 'financial business' is defined under Section 2(1) of the AML/CFT Law to include:

(a) Acceptance of deposits by the public.
(b) Lending money to the public.
(c) Finance leasing, including hire purchase financing.
(d) Money transmission services.
(e) Issue and administration of means of payment such as credit cards, travellers' cheques, bankers' drafts and electronic money.
(f) Guarantees and commitments.
(g) Trading in one's own account or on account of another person in-
    (i) Stocks or securities including cheques, bills of exchange, bonds, certificates of deposits;
    (ii) foreign exchange;
    (iii) financial futures and options;
    (iv) exchange and interest rate instruments;
    (v) transferable instruments.
(h) Participation in share issues and the provision of related services.

[21] To note: the ASDCS AML Directive is available only in Greek , however the authorities indicated that its content is identical with the CBC's D-Banks.

(i) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues and consultancy services as well as services in the areas of mergers and acquisitions of businesses.

(j) Money broking;

(k) Investment services, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this Section, the term "investments" includes long-term insurance contracts, whether or not associated with investment schemes.

(l) Safe custody services.

(m) Custody and trustee services in relation to stocks.

(n) Any of the services and activities-

(l) Safe custody services.

(m) Custody and trustee services in relation to stocks.

(n) Any of the services and activities-

(i) which are defined in Part I and III of the third Annex of the Investment Services and Activities and Regulated Markets Law which are from time to time in force and which are provided in relation to financial instruments listed in Part III of the same Annex.

(ii) which are defined in Sections 41 and 100 of the Open-Ended Undertaking for Collective Investment in Transferable Securities and Related Issues Law.

(o) Agent for the conclusion of insurance policies.

261. In the course of the evaluation meetings with the insurance sector authorities, the evaluators discussed the inclusion of insurance companies, intermediaries and agents under item (o) above which refers to 'agent' for the conclusion of insurance policies. The authorities explained that it is the insurance company that concludes the contract, yet in their view this provision captures life insurance companies, brokers, agents, and subagents. To this effect, the authorities further referred to the definition of "insurance business" in the Law on Insurance Services and other Related Issues of 2002 - 2005. Moreover, as the title indicates, the D-Insurers is addressed to life insurance companies and life insurance intermediaries.

262. Otherwise the scope of coverage for the financial sector under the AML/CFT Law complies in full with the definition of '*financial institution'* under the FATF 40.

263. In terms of Section 58 of the AML/CFT Law, any person carrying out financial (or other) business activities must apply appropriate systems and procedures covering:

- customer identification and customer due diligence;
- record-keeping;
- internal reporting and reporting to MOKAS;
- internal control, risk assessment and risk management in order to prevent money laundering and terrorist financing;
- detailed examination of each transaction which by its nature may be considered to be particularly vulnerable to be associated with money laundering offences or terrorist financing and in particular complex or unusually large transactions and all other unusual patterns of transactions which have no apparent economic or visible lawful purpose.
- informing their employees in relation to:
  (i) The internal systems and procedures;

(ii) the AML/CFT Law

(iii) the Directives issued by the competent Supervisory Authorities; and

(iv) the European Union's Directives on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

- ongoing training of their employees in the recognition and handling of transactions and activities which may be related to money laundering or terrorist financing.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

264. In requiring persons engaged in financial business activities to apply in full the CDD procedures as specified in the AML/CFT Law, Section 61(2) allows such persons to determine the extent of application on a risk sensitive basis depending on the type of customer, business relationship, product or transaction. This provided that such customers can demonstrate to the relevant competent authority that the extent of application is appropriate to the risks perceived. This allows persons undertaking financial business activities to apply the CDD measures on a risk based approach.

265. The AML/CFT Law does not allow the non-application or the partial application of the obligations in instances where a financial activity is carried out on an occasional or very limited basis and there is little risk of money laundering or the financing of terrorism.

266. Under Section 63(1), the AML/CFT Law does however allow discretion for persons undertaking financial business activities not to apply the CDD measures (except where there is suspicion) in specified instances where the applicant for business is:

a. An authorised credit or financial institution in another EU/EEA Member State;
b. A credit or financial institution in a third country that applies equivalent AML/CFT regulations and that is properly supervised;
c. Companies listed on a regulated market in an EU/EEA Member State or in a third country which imposes disclosure requirements;
d. Domestic public authorities in EU/EEA Member States.

267. This notwithstanding, a person carrying out financial business activities must still gather sufficient information to establish if the customer qualifies for an exemption as detailed above.

268. Moreover, in terms of Section 63(2) of the AML/CFT Law, CDD measures are not required in the case of specified products:

a. Life insurance policies with an annual premium of €1,000 or less;
b. Life insurance policies with a single premium of €2,500 or less;
c. Insurance policies for pension schemes with no surrender value and no collateral characteristics;
d. Contributory pension or similar schemes for retirement benefits with no assignment benefits; and
e. Electronic money where the device has a maximum of €150 and cannot be recharged or, if rechargeable, with an annual maximum of €2,500.

European "equivalence"

269. Throughout this Section of the report, there are references to the applications of exemptions or certain specific "low risk" measures designated within the AML/CFT Law, with respect to institutions, transactions, counterparties etc that originate from or are based in other EU/EEA

Member States. These designations are derived from the EU-wide regulations and directives, which work on the presumption that all Member States have AML/CFT regimes of a minimum common standard and can be treated de facto and sometimes de jure by each Member State as being part of its domestic environment. While in very specific cases (eg. SR.VII) the FATF has recognised within its standards the validity of the single European framework, there is no presumption by the FATF that the treatment of all EU Member States as being equivalent is appropriate in terms of a country fulfilling the requirements of the FATF Recommendations.

270. In addition to EU member states, the Cypriot AML/CFT framework provides that certain exemptions and "low risk" options also apply with respect to third countries that apply "equivalent" AML/CFT regulations. In implementing these provisions, the authorities instructed the financial institutions that they may rely on the EU member states ' equivalence list when determining which countries meet this test. This list, which has been established on a voluntary basis by member states, comprises most (but not all) non-EU member jurisdictions of the FATF (and also includes certain French and overseas territories of the Kingdom of the Netherlands and UK Crown dependencies).

271. No independent and autonomous risk assessment of the countries on the list has been undertaken by the Cypriot authorities outside the assessment by representatives of the EU-Member States. Consequently, where relevant in this report, the assessors have taken the view that the generic categorization of all EU Member States and other FATF member jurisdictions as adequately applying the FATF standards is unreasonable, in the absence of a proper risk assessment by the authorities that takes into account the specific risks for the Cypriot environment. It has also to be noted that a few Member States of the EU still fail to fully implement the provisions of the Third EU Money Laundering Directive[22], which provides the basis for Member States' comparability, and the assessment reports of other FATF member jurisdictions which have implemented the Directive show significant variations in the application of the standards.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 and R.6)

3.2.1 Description and analysis

Recommendation 5 (rated PC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

272. The Third Round MER had concluded a 'PC' rating for Recommendation 5 on the basis that:

a. no general rule to identify the beneficial owner except in the Guidance notes to banks;
b. no CDD measures required regarding occasional wire transfers; when there is a suspicion of money laundering or terrorist financing irrespective of the insurance premium exemption; and in cases of doubts regarding previously obtained customer data;
c. no general rule in an act of primary or secondary legislation except the Banking Law concerning identification using reliable and independent source documents and concerning ongoing due diligence.
d. the AML Guidance Notes other than the ones for the banks and the money transfer businesses need to be enhanced with regard to understanding ownership and control structures; obtaining information on the purpose and nature of business relationships;

[22] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. *OJ L 309, 25.11.2005, p.15*

the application of CDD requirements for existing customers; consideration of making STRs on terminating existing business relationships.

273. The Plenary held that, consequently, in order for Cyprus to be fully in line with the Methodology, Criteria 5.2(c), (d) and (e), 5.3 and 5.4 (a), 5.5 and 5.5.2 (b) and 5.7 should be in law or secondary legislation and not just in supervisory guidance, even though these supervisory guidance notes are enforceable and sanctionable.

274. The Cypriot authorities have since taken measures to rectify the position from both a legislative and an implementation perspective. The following paragraphs will analyse progress made in this regard and the continued effective implementation thereof.

Anonymous accounts and accounts in fictitious names (c.5.1)

275. According to Section 66(2) of the AML/CFT Law, it is prohibited for persons engaged in financial or other business activities to open or maintain anonymous or numbered accounts or accounts in names other than those stated in official identity documents.

276. Discussions with the industry in the course of the evaluation established that there are no anonymous accounts in Cyprus. This position was confirmed by the respective supervisory authorities.

Customer due diligence

When CDD is required (c.5.2)*

277. CDD requirements are governed by Section 60 of the AML/CFT Law which requires their application in four instances:

a) **when establishing a business relationship,** defined in the act as "business, professional or commercial relationship which is connected with the professional activities of persons engaged in financial and other business activities in accordance with this Section, and which is expected, at the time when the contact is established, to have an element of duration".
b) **when carrying out occasional transactions of €15,000 or more,** whether the transaction is carried out in a single operation or in several operations which appear to be linked. For the purpose of the AML/CFT Law, single operation means any transaction other than a transaction carried out in the course of an established business relationship formed by a person acting in the course of financial or other business.
c) **when there is suspicion of ML/FT regardless of the amount of the transaction**; and
d) **when there is doubt about the veracity or adequacy of previously obtained customer identification data**.

278. Although the AML/CFT Law does not cover instances where an occasional transaction is a wire transfer to the amount of €1,000 or more, as explained under Special Recommendation VII, Cyprus is covered by Regulation 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds.[23] Thus a payment service provider, before transferring the funds, has to identify all customers and verify the identity whenever the transfer is for a value of €1,000 or more.

[23] OJ L 345, 08.12.2006, p.1

279. Those parts of the industry met by the evaluation team confirmed that CDD is applied in accordance with the requirements of the AML/CFT Law and that they all have internal procedures stipulating the timing of the application of CDD requirements.

280. The evaluators however noted that in the case of MTBs there appears to be the tendency to monitor transactions for €1,000 and over on a cumulative basis as the average transaction is less than this amount. In accordance with paragraph 9 of the D-MTBs, MTBs are required to establish automated management information systems which will be able to aggregate the daily and monthly transactions of their customers. To this effect, the D-MTBs also requires MTBs to undertake a customer identification process of all persons requesting a money transfer irrespective of the amount of the transaction.

Identification measures and verification sources (c.5.3)*

281. Section 61(1) of the AML/CFT Law clearly stipulates that CDD measures comprise the requirement of identifying the customer and verifying that customer's identity on the basis of documents, data or information obtained from a reliable and independent source. This requirement includes the identification and verification of the beneficial owner as defined in the law.

282. The D-Banks (Section 4.13), D-Insurers (Section 3.3.1), D-Securities (Paragraph 22 with reference to Fifth Appendix) and D-MTBs (Section 4.3) all refer to the requirement for the verification of customer identification against independent and reliable sources, but with varying levels of detail in guiding the industry on the type of documents that are or could be considered as 'independent and reliable sources'. The D-Banks, D-Insurers, D-Securities and D-MTBs all refer to the requirement for the verification of customer identification against independent and reliable sources, but with varying levels of detail in guiding the industry on the type of documents that are or could be considered as 'independent and reliable sources'. Section 14 of D-Banks contains seven required documents for ascertaining the true identity of natural persons and verifying them with either a valid passport or a national identification card. Additionally, D-Banks goes further by verification by a visit to the place of residence and the production of recent utility bill. D-Insurers (3.3.1) similarly lists seven required identification information documents along with verifying these documents from a reliable and reputable source that bears a photograph, including a valid passport and a national identification card. D-Securities, Fifth Appendix on Specific Customer Identification Issues, also lists seven required documents but does not specify the type of acceptable method for the verification of the identification of customer's identity.

Identification of legal persons or other arrangements (c.5.4)

283. Section 65(2) of the AML/CFT Law requires the confirmation that a person who appears to act on behalf of a legal person is properly authorised for this purpose. Moreover his identity must be established and verified.

284. The AML/CFT Law however is silent on establishing and verifying the legal status of the legal person or legal arrangement. Notwithstanding the D-Banks, D-Insurers and D-Securities provide detailed requirements accordingly.

285. Although in the discussions with the industry the evaluators were assured that these measures are rigorously applied, and this has been corroborated by the supervisory authorities, yet in the light of the back log of updating at the Register of Companies the evaluators express concern to what extent can these requirements in practice be effectively applied.

286. The Cypriot supervisory authorities later stated that information is obtained directly from the applicant being the authorised representative of the customer and that updated certified copies of incorporation documents can be obtained from the Registrar by the financial institution upon the

payment of the respective fee . Furthermore, should the financial institutions not be able to obtain up to date information, based on the requirements of the law, they should not open a business relationship.

Identification of beneficial owner (c.5.5)*

287. Generally defining the "beneficial owner" as the natural person or persons who ultimately own or control the customer and/or the natural person on whose behalf a transaction or activity is being conducted, Section 2 of the AML/CFT Law provides a very broad definition of what constitutes a beneficial owner for both a legal entity and for legal arrangements. The definition places any person who owns 10% plus one of the shareholding in case of a legal person or 10% of the property of a trust or other legal arrangement as the beneficiary owner.

288. Section 61(1)(b) of the AML/CFT Law then requires as part of the CDD process identifying the beneficial owner and taking risk-based and adequate measures to verify the identity on the basis of documents, data or information obtained from a reliable and independent source so that the person carrying on an activity in financial or other business knows who the beneficial owner is. Moreover, as regards legal persons, trusts and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the customer.

289. Section 65(1) requires persons engaged in financial or other business activities to take reasonable measures for collecting adequate documents, data or information for establishing and verifying the identity of the third person on whose behalf the customer is acting. Hence, although there is no specific legal requirement for obliged entities to determine whether a person is acting on behalf of another, this is inferred from Section 65(1). In practice, the same identification and verification procedures for natural persons would then be applied to third persons on whose behalf the applicant for a business would be acting.

290. The respective D-Banks, D-Insurers and D-Securities elaborate further on the identification of the beneficial owner and in instances involving legal arrangements or nominees. D-Insurers however does not provide specific guidance on procedures for the identification and verification of the beneficial owner.

291. Discussions with the industry indicate that although there is an enhanced awareness and understanding of the CDD obligations with regards to beneficial owners. Yet certain concerns, such as the effective implementation of the concept of beneficial ownership remain for some parts of the sector, in particular as regards beneficial ownership of foreign entities. Moreover, as a result of the discussions with the ICCS representatives, the evaluators could identify possible conflict in understanding the beneficial owner concept particularly when the applicant for business is a legal entity, in the form of the beneficiary of an insurance policy and as the person on whose behalf and for whose benefit a nominee or agent is acting. Likewise for MTBs, there does not appear to be clear understanding of the beneficial owner concept, but the authorities informed that the customers of MTBs are mostly foreign workers in Cyprus.

Information on purpose and nature of business relationship (c.5.6)

292. In terms of Section 61(1) of the AML/CFT Law, customer identification procedures and customer due diligence measures shall comprise, among others, the collection of information on the purpose and intended nature of the business relationship.

293. Both the D-Banks and D-Securities elaborate further on this matter by requiring institutions falling within their remit to further request and obtain information on the expected pattern and level of transactions. This information should be collected before the establishment of the business relationship and should serve to assist the respective institutions in constructing the customer's

business profile. The directives further detail the nature and type of information which, as a minimum, should be obtained. However this is not the case with the D-Insurers which only makes reference to the purpose and intended nature of the business relationship in quoting Section 61 into the directive.

294. The parts of the industry that the evaluators have met have confirmed that this requirement is one of the priority requirements in the internal process in establishing the customer's profile and in matching that profile into the institutions customer acceptance policies. This has been confirmed by the relevant supervisory authorities.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

295. Section 61(1) of the AML/CFT Law requires persons carrying out financial or other business to conduct ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the information and data in the possession of the person engaged in financial or other business in relation to the customer, the business and risk profile, including where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date. Furthermore, Section 62(6) of the AML/CFT Law requires the application of CDD measures also to existing customers at the appropriate time.

296. This obligation is further elaborated in the D-Banks and D-Securities but to a lesser extent in the D-Insurers.

297. Discussions with the industry indicate that in general there is high awareness of this obligation, although to different degrees. This was mostly apparent for the banking sector where the evaluators could conclude for those institutions that the team met that the requirement is being applied in practice. No similar conclusion could however be reached on the basis of the discussions held and institutions interviewed for the other elements of the financial sector.

Risk – enhanced due diligence for higher risk customers (c.5.8)

298. Section 64(1) of the AML/CFT Law imposes an obligation on persons engaged in financial or other business activities to apply enhanced customer due diligence, in addition to the standard measures, in instances where the customer or the activity pose a higher risk. The law specifies such instances as in non-face-to-face business relationships, cross-frontier correspondent banking relationships with entities from third countries, and in the case of business relationships with PEPs. Moreover, Section 64(2) further requires the application of enhanced customer due diligence measures to be taken in all other instances which due to their nature entail a higher risk of money laundering or terrorist financing.

299. It is worth noting that the requirement to apply enhanced customer due diligence in the case of correspondent banking relationships is only required where the cross border activity is with an institution from a 'third country'. Although the term '*third country'* is not defined in the Law, it is positively assumed that this term is derived from EU legislation referring to countries that are non-EU members. This being the case, the obligation falls short from the FATF requirements although being compliant with the EU Third Anti Money Laundering Directive.

300. The D-Banks is very detailed on enhanced due diligence and gives practical guidance to banks. This is closely followed by the D-Securities, with the D-Insurers basically quoting the law.

301. Discussions with the industry, and in particular the banking sector, indicate that compliance with these obligations is mainly fulfilled through the institution's internal procedures to be applied to high risk customers. Some concern on the actual assessment of risk arises where an institution

takes on a business relationship through introduced business, even though there are procedures in place for reliance on third parties, particularly within the banking sector. Though the CBC does not share this view, the evaluation team remained concerned on this matter.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

302. As a general rule CDD requirements are to be applied consistently to all customers, products and transactions. However, the AML/CFT Law provides for instances where "simplified customer due diligence and identification procedures" can be applied.

303. In terms of Section 63(1) of the AML/CFT Law, persons engaged in financial or other business activities may not apply the requirements of paragraphs (a), (b) and (d) of Section 60, Section 61 and paragraph (1) of Section 62 in respect of the following:

a. An authorised credit or financial institution in an EU/EEA Member State;
b. A credit or financial institution in a third country that applies equivalent AML/CFT regulations and that is properly supervised;
c. Companies listed on a regulated market in an EU/EEA Member State or in a third country which imposes disclosure requirements;
d. Domestic public authorities in EU/EEA Member States.

304. More specifically, Section 63(1) provides an option for persons engaged in financial or other business activities not to apply the identification requirements (when establishing a business relationship; on occasional transaction; and when there is doubt on previously obtained identification), and not to apply other CDD requirements (verification of identify; beneficial owner; purpose and intended nature of business; and ongoing monitoring) as opposed to applying simplified or reduced measures.

305. It must be mentioned however that the AML/CFT Law still requires that, in such instances, persons engaged in financial or other business activities have to gather sufficient information to establish if the customer qualifies for an exemption as mentioned in these paragraphs.

306. Furthermore, also in terms of Section 63(2) of the AML/CFT Law, CDD measures are not required in the case of specified products:

e. Life insurance policies with an annual premium of €1,000 or less;
f. Life insurance policies with a single premium of €2,500 or less;
g. Insurance policies for pension schemes with no surrender value and no collateral characteristics;
h. Contributory pension or similar schemes for retirement benefits with no assignment benefits; and
i. Electronic money where the device has a maximum of €150 and cannot be recharged or, if recharge, with an annual maximum of €2,500.

307. Although the above situations faithfully transpose the EU Third Anti Money Laundering Directive, yet they do not faithfully reflect the FATF requirements in that they allow a full exemption from CDD requirements as opposed to the application of reduced or simplified measures.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

308. The *simplified* CDD procedures as detailed above can be applied to persons engaged in financial or other business activities when carried out in another EU/EEA Member State.

309. According to Section 57 of the AML/CFT Law, the Advisory Committee designated the third countries outside the EEA which impose procedures and take measures for preventing money laundering and terrorist financing equivalent to those laid down by the EU Third Anti-Money Laundering Directive. Within this context, in May 2008, the Advisory Committee adopted the list of equivalent countries developed by the EU Member States on the basis of the "common understanding". This list has been circulated to the entire financial sector who has confirmed that they apply it as the basis for their assessments when undertaking transactions that qualify for simplified CDD. The evaluators noted that the CBC circular letter issued in June 2008 to all banks specifies that the list does not override the requirement for the implementation of measures on a risk sensitive basis for transactions and business relationships with persons situated in an equivalent third country and were informed that the other supervisory authorities had issued also similar circulars.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

310. In terms of Section 63(1) of the AML/CFT Law, persons engaged in financial or other business activities may not apply the requirements of paragraphs (a), (b) and (d) of Section 60, Section 61 and paragraph (1) of Section 62 in respect of applicants for business as established by the said Section.

311. Paragraph (c) of Section 60 of the AML/CFT Law establishing the application of customer due diligence and identification procedures refers to situations where there is a suspicion of money laundering or terrorist financing, regardless of the amount of the transaction. This is excluded from Section 63(1) when establishing the application of CDD measures. Consequently, *prima facie*, it appears that simplified or reduced CDD as defined in the AML/CFT Law cannot be applied where there is suspicion of money laundering or terrorist financing.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

312. Further to the provisions in the AML/CFT Law on the application of CDD measures on a risk sensitive basis, the relevant directives issued by the supervisory authorities provide further guidance on implementation.

313. Section 3 of the D-Banks provides detailed guidance for banks identifying the scope and objective of implementing a risk based approach while detailing steps leading to the development of a risk assessment framework which banks are expected to have in place. Moreover, the D-Banks prescribes categories of customers that present a high risk to the sector in addition to those established under the AML/CFT Law. These include:

a. Accounts in the names of companies whose shares are in the form of bearer
b. Accounts in the names of trusts
c. "Client accounts" in the name of third persons
d. Private banking customers
e. Customers engaged in electronic gambling /gaming through the internet
f. Customers from countries which do not adequately apply FATF's recommendations.

314. Similar provisions, though to a lesser degree, are provided by the D-Securities. The D-Insurers however, whilst recognising the application of enhanced due diligence, falls short in guiding the insurance industry in the application of a risk-based approach. Likewise for the D-MTBs. It should however be noted that the risk of money laundering attached to money transfer businesses is considered low in Cyprus and that the services of MTBs are mainly utilised by low income foreign workers residing in Cyprus. Also, the D-MTBs (par.9) imposes limits in the amount of

inward and outward funds transfers per customer (cannot exceed the threshold limit of €3.000 per transaction) which further mitigates the ML/TF risk.

315. Indeed, in practice from the discussions with the industry, the evaluators could establish that whereas the banking sector is more aware of the risk-based approach and the requirements under the AML/CFT Law and the D-Banks, the same cannot be said to a similar level, for the rest of the financial sector.

Timing of verification of identity – general rule (c.5.13)

316. The AML/CFT Law requires that the identification and verification procedures are applied and completed before the establishment of a business relationship or the carrying out of the transaction.

317. On the basis of the discussions with those parts of the industry met by the evaluation team, it appears that in general the financial industry follows this requirement.

318. In accordance with the EU Regulation 1781/2006, the D-MTBs requires that in the case of transfers of funds not made from an account, the payment service provider of the payer should verify the information on the payer only where the payment amount exceeds € 1,000 (or the equivalent in foreign currency), unless the transaction is carried out in several operations that appear to be linked and together exceed € 1,000, or when suspicions arise that the transaction is likely to be associated with money laundering or terrorist financing activities.

319. To this effect, the D-MTBs requires that in all cases when MTBs execute transfers of funds up to € 1,000, they should always collect information concerning customers' identity as prescribed in the D-MTBs.

320. However, before executing a transfer in excess of € 1,000 or a series of linked transfers from the same customer that will exceed € 1,000, MTBs should verify the complete information on the payer (natural or legal person) on the basis of documents, data or information obtained from a reliable and independent source (Section 20 of D-MTBs).

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

321. The AML/CFT Law provides for two derogations from the general rule on timing of the verification process. First by completing the verification process during the establishment of the business relationship if this is necessary not to interrupt the normal conduct of business and where there is little risk of ML/FT. Second, in relation to life insurance business as regards the beneficiary of the policy (beneficial owner), which verification can take place after the business relationship has been established but before any payouts or the exercising of appropriate rights by the beneficiary.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

322. Section 62(4) of the AML/CFT Law states that in cases where the person engaged in financial or other business activities is unable to comply with the application of the full identification and due diligence requirements under the law, it may not carry out a transaction through a bank account, establish a business relationship or carry out the transaction, or it must terminate the business relationship and shall consider making a report to the Unit in accordance with the law. The words "may not" indicate an element of option or choice. The authorities however explained that the proper translation of the Greek text should be read as meaning "cannot", and the

evaluation team has accepted this clarification when considering whether the requirement under this criterion is satisfied.

323. Those parts of the industry with whom the evaluation team held discussions have confirmed that they have never filed reports where they failed to complete the full CDD because the occasion never arose, although they confirmed that they would file a report if necessary.

324. Although Section 62(4) of the AML/CFT Law is not addressing explicitly the situation where the person engaged in financial or other business activities has already commenced the business relationship, and that person is unable to satisfactorily complete the CDD measures in full. The authorities hold that this could further be inferred from two other sources: firstly, from the requirement to re-apply identification and CDD measures when there are doubts about the veracity or adequacy of previously obtained customer identification data (Section 60(d)), and secondly from the requirement under Section 62(6) to apply the identification and CDD requirements to existing accounts. The part of the industry met indicated that they have never met such circumstances.

Existing customers – (c.5.17 & 5.18)

325. The AML/CFT Law requires customer identification and CDD measures to be applied by persons engaged in financial or other business activities, among other circumstances, when there are doubts about the veracity or adequacy of previously obtained customer identification documents, data or information.

326. Indeed, Section 62(6) of the AML/CFT Law is more specific in requiring that identification procedures and customer due diligence requirements must be applied not only to all new customers but also to existing customers at appropriate times, depending on the level of risk of being involved in money laundering or financing of terrorism offences.

327. The D-Banks, D-Securities and the D-Insurers elaborate further on the legal obligation for financial institutions to apply the identification procedures and CDD requirements to existing customer. However, this is often tied to the requirement of applying identification requirements and customer due diligence measures whenever there is doubt on the identification previously obtained. That said, the D-Securities and the D-Banks both provide instances when the identification and CDD requirements are to be reapplied to existing customers. This is not the case with D-Insurers which is mainly making references to the obligations under the AML/CFT Law.

328. The evaluators could conclude from the discussion with the industry that, at least those institutions they met were fully aware of this obligation and claim to be applying it on an ongoing basis as part of their internal procedures. This has been confirmed through the discussions with the supervisory authorities.

329. As there is no history of anonymous accounts in Cyprus, no measures are required in respect of identifying such account holders.

Recommendation 6 (rated LC in the 3rd round report)

Foreign PEPS – Requirement to identify (c.6.1), Risk Management (c.6.2, 6.2.1); Requirement to Determine Source of Wealth and Funds (c.6.3); Ongoing Monitoring (c.6.4)

330. The Third Round MER had concluded an 'LC' rating for Recommendation 6 on the basis that the implementation of the requirements in the banking sector was adequately covered while no relevant provisions existed in the Guidance to MTBs, Investment Brokers, Insurers, and International Businesses.

331. Cyprus has amended its legislation, setting out the requirements in the AML/CFT Law, as complemented by the directives and orders. PEPs are now defined under Section 2 as "the natural person who have their place of residence in another European Union Member State or in third countries and who are or have been entrusted with prominent public functions and their immediate family members or persons known to be close associates of such persons. Complementing clarifications on the definitions of PEPs, immediate family members and close associates , as well as further requirements are included in D-Banks (Section 4.14.2.5) and D-Securities only, with D-Insurers and D-MTBs being merely a repetition of the main provisions of the AML/CFT Law.

332. Section 64(1)(c)(i) of the AML/CFT Law requires that, in respect to transactions or business relationships with PEPs residing in a country of the European Economic Area or a third country, persons carrying on financial or other business activities are required to:

a) have appropriate risk-based procedures to determine whether the customer is a PEP.
b) have senior management approval for establishing business relationships with such customers
c) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction;
d) conduct enhanced on-going monitoring of the business relationship.

333. The obligation for financial institutions to have risk based procedures to determine whether a customer is a PEP does not extend to the case of the beneficial owner, as the Law's definition of "customer" does not entail the one of "beneficial owner". Furthermore the AML/CFT Law obliges financial institutions to take adequate measures for establishing the source of wealth and of funds involved in the business relationship or transaction, placing a specific focus.

334. D-Banks (Section 4.14.2.5, Paragraph 131 (i)) requires banks to adopt additional due diligence measures when establishing a business relationship with a PEP. Particularly, in the case of companies, legal entities and arrangements, the banks should seek to verify whether the beneficial owners, authorized signatures and persons authorized to act on behalf of the company constitute PEPs. When one of the above is identified a PEP, then automatically the account of the company, legal entity or arrangement should be subject to the procedures stipulated in the AML/CFT Law. Likewise, D-Securities (Fourth Appendix, Paragraph 5 (g.i)) requires investment firms, in the case of legal entities and arrangements, to place similar verification requirements as above.

335. There is no obligation in the AML/CFT Law addressing the situation where an existing customer becomes or is subsequently found to be a PEP, nor a requirement for the approval at senior management level of the continuation of the business relationship. This is explicitly provided for in D-Banks (Section 131 (ii)), and in D-Securities (Section 5 (g) ii). There do not seem to be similar requirements for other financial institutions. This creates an uneven play field.

336. The requirements set out in the legislation, as further complemented by the D-Banks (Section 4.14.2.5) and D-Securities (Fourth appendix – High Risk Customers, part 5) raise nevertheless a number of issues. Leaving aside the fact that clearly the requirements in the directives and orders are not harmonised and often contain slightly different obligations, a number of aspects do not appear to be adequately covered in law or regulation or other enforceable means.

337. The AML/CFT Law limits the scope of the PEP requirements to individuals who have their place of residence in another European Union Member State or in third countries, thus it does not capture foreign PEPs residing in Cyprus, which falls short of the FATF standard.

338. D-Banks (Section 4.14.2.5, Paragraph 129) describes the PEP as natural persons who have, or had a prominent public function in a "foreign country." D-Securities (Fourth Appendix, Paragraph

5 (c)) defines PEPs as the natural persons who are residing in another member state of the European Union or a third country and who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons. D-MTB (4.4.2. Paragraph 32) refers to PEPs as one of three high risk customers who would require enhanced due diligence measures but falls short of defining who is a PEP. Similarly, D-Insurer (3.6.2) requires insurance companies to apply enhanced due diligence on PEPs, but it does not provide definition of a PEP and confines a PEP to those residing in the European Comic Area or a third country.

339. Furthermore, the definition of PEP does not cover PEPs who have been in office at least one year, pursuant to the additional requirements set out in D-Banks and D-Securities, the other directives and orders being silent on the matter. The general conclusions in the context of evaluations of other EU Member State's mutual evaluations was that the one-year limit as a threshold is not a material deficiency when there is still a general obligation to apply enhanced due diligence to customers, including PEPs, who still present a higher risk of ML or TF regardless of any timeframe. The D-Banks and D-Securities refer though to the application on a "risk sensitive basis" of enhanced customer due diligence measures in this context.

340. Representatives from financial institutions, money transfer businesses, investment firms, trust providers, and insurance companies stated that they have put in place risk management procedures to enable them to determine whether a prospective customer is PEP. These procedures commonly include the acquisition, installation, and regular use of commercially available electronic databases for PEPs, as well as designated individuals and entities in the UN, EU, and other sanctions lists. Additionally, one financial institution indicated that it was planning to create a list of domestic PEPs for its own use in co-operation with the Central Bank and Association for Commercial Banks.

Additional elements

Domestic PEPs – Requirements (c.6.5) and Ratification of the Merida Convention (c.6.6)

341. The AML/CFT Law does not explicitly extend the Recommendation 6 requirements to domestic PEPs.

342. Cyprus signed on 9 December 2003 the United Nations Convention against Corruption and ratified it on 23 February 2009.

Effectiveness and efficiency (Recommendations 5 and 6)

343. Since the Third Round MER, Cyprus has taken extensive measures to enhance its compliance with customer due diligence procedures. The authorities have taken on board most of the recommendations in the MER and transposed them into either legislative provisions or in directives addressed to the respective industry. Notwithstanding the explanations of the authorities during the onsite visit, it is further recommended that paragraph (o) of Section 2 of the AML/CFT Law be revised to clarify which elements of the insurance sector are covered under the law.

344. The CBC remains the driving force in this regard and it appears that other supervisory authorities follow suit. The evaluators note with satisfaction that the four supervisory authorities (CBC, CYSEC, ICCS and the ASCDS) have set up a Special Technical Committee in October 2009 whose terms of reference are focussed on co-ordination in the AML/CFT field. Harmonisation of the directives for the respective industries remains an important element for the effectiveness of the system.

345. These measures have been translated into more awareness throughout the financial sector. The banking sector however remains the dominant factor, probably driven by the ongoing initiatives of the CBC in guiding and monitoring the sector. Although the other sectors follow suit, the evaluators express some concern on the effectiveness of implementation and understanding of certain CDD concepts, such as the beneficial owner and the risk-based approach, within the insurance sector and the MTBs. Indeed, the D-Insurers in particular lacks proper and appropriate guidance to the industry in fulfilling its obligations under the law, particularly since the directive seems more to be quoting the law itself rather than interpreting it and providing guidance.

346. Furthermore, the efficiency of the system may be negatively impacted as the evaluation team considers that there is a legal uncertainty on third party reliance as provided for under Section 67 of the AML/CFT Law in that there is no clarity that third party includes domestic entities. The Central Bank, however, consider that D-Banks' requirement regarding nominees or agents of third persons to be broader than the one in Section 67 and thus captures those natural persons and legal entities in Cyprus. This discrepancy between the AML/CFT Law and Directive could lead to uneven application of CDD.

347. Finally, despite the position expressed by the supervisory authorities, the evaluation team considers that the efficiency of the system may be further negatively impacted by the fact that the industry could be facing problems in fully applying its CDD with regards to legal persons particularly as the Registrar of Companies has informed that there is a large backlog of amendments for registration for updating as the company registration electronic system is still not yet in place.

348. Cyprus financial institutions' application of Recommendation 6 appears to be effective. However, it must be acknowledged, as a general trend throughout the international community, the difficulty in reliably identifying PEPs. While commercial databases have proved effective, there is a risk that this approach may substitute in situations when independent due diligence is appropriate. Additionally, there will be inevitable gaps, errors, and inconsistencies in these commercial data services. Therefore, it behoves Cyprus financial institutions to exercise judgment in assessing risk related to persons identified as PEPs, whether foreign or domestic, and should consider the individual's position, size and complexity of the financial relationship, products or services used, and the geographic location.

3.2.2 Recommendations and comments

Recommendation 5

349. Although overall the AML/CFT system with regards to CDD measures is well established through legal and other provisions, some gaps remain which could have negative implications on the efficiency of the system.

350. Through the new legislation Cyprus has introduced the risk based approach principles for customer identification and due diligence. The risk based approach calls for the industry to have risk based systems in places and identifies the applicability of the measures at a lower and a higher risk situation. The AML/CFT Law is clear on this.

351. Notwithstanding the explanations provided by the authorities as detailed above, it is further recommended that paragraph (o) of Section 2 of the AML/CFT Law be revised to clarify which elements of the insurance sector are covered under the law.

352. Since the new law is transposing the EU Third AML Directive, in providing for simplified due diligence the law is actually allowing persons engaged in financial and other business activities

not to apply the CDD measures in circumstances specified by the AML/CFT Law which, under the FATF standards, would require simplified or reduced measures.

353. The Cyprus authorities may wish to revisit Section 67 of the AML/CFT Law in order to remove any legal uncertainty as to the application of third party reliance on domestic obliged entities.

Recommendation 6

354. Although Cyprus has enhanced its legal and other obligations for financial institutions in dealing with PEPs, there are still some gaps in meeting the international standards. These refer to the definition of PEPs and its applicability to foreign PEPs residing in Cyprus and PEPs as legal beneficial owners. Also missing are the procedures for the continued application of the enhanced procedures to existing customers who eventually become PEPS. Moreover the lack of harmonisation in the individual Directives issued to the industry by the relevant authorities could be conducive to different levels of application of the enhanced requirements and hence would affect the effectiveness of the whole system in this regard. Indeed in the course of the discussions during the on-site visit the evaluation team could sense that although on paper, as explained above, most of the industry claims to be well prepared in procedures to identify PEPs, this was less reflected in practical application. It is therefore advisable for the Cyprus authorities to continue to address the issue of PEPs in order to enhance harmonisation through the main law and thus improve effectiveness.

355. In order to fully comply with Recommendation 6, Cyprus should:

- redefine the definition of a PEP and requirements to ensure that foreign PEPs who are resident in Cyprus are not excluded from the scope of the AML/CFT law, and as such eliminate the conflict between the law and the directives.
- amend the current obligations so that the insurance sector is required to obtain senior management approval to continue business relationship when a customer/beneficial owner becomes a PEP or is found to be a PEP during the course of an already established business relationship
- clarify that financial institutions should ascertain the source of wealth and funds in all circumstances and not limited to business relations and transactions
- extend the obligation for the insurance sector to have risk based procedures to determine whether a customer is a PEP also in the case of the beneficial owner

3.2.3 Compliance with Recommendations 5 and 6

	Rating	Summary of factors underlying rating
R.5	**LC**	• Certain categories of low-risk businesses can be exempted from CDD and/or EDD instead of requiring simplified or reduced diligence measures • Enhanced customer due diligence for correspondent banking applies only to non-EU countries. • The above, together with the lack of awareness on some elements of the CDD concept and process by some sectors of the financial system mainly concerning the beneficial ownership concept and the risk-based approach for the insurance and MTBs sectors raise concern on the overall effectiveness of the system. • The efficiency of the system may be further negatively impacted by the fact that the industry could be facing problems in fully applying its

		CDD with regards to legal persons, given the large backlog of updating at the Registrar of Companies.
R.6	**LC**	• The PEP related requirements in the AML/CFT Law do not apply to foreign PEPs resident in Cyprus, while they may be covered under some of the directives, raising a conflicting legal situation; • No provision in the AML/CFT Law to confirm whether the beneficial owner is a PEP, although this may be covered under the Directives, with the exception of D-Insurers, which raises a conflict of obligations in the sector ; • No provision in the AML/CFT Law for senior management approval to continue business relationship where the customer or beneficial owner is subsequently found to be or becomes a PEP, although this is covered for banks and securities market participants, thus raising a conflict of obligations in the sector • The lack of legal provisions and the divergences in the Directives to the industry present vulnerabilities in implementation which could negatively impact on effectiveness

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

Recommendation 4 (rated C in the 3rd round report)

Summary of 2006 MER factors underlying the rating

356. Cyprus was rated Compliant in the third Round MER in respect of Recommendation 4. The evaluators however recommended that two actions be undertaken to improve inter alia the perception of Cyprus to co-operate with other jurisdictions, namely that Section 27(2) of the Banking Law be deleted so as to enable the CBC to disclose information relating to an individual deposit account, and that a direct link be introduced in the regulatory legislation to clarify the supervisory authorities' ability to disclose information relating to ML and FT.

Inhibition of implementation of FATF Recommendations (c.4.1)

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

357. The provisions governing banking secrecy, professional secrecy and the disclosure of information are set out in the AML/CFT Law (Section 45), for the CBC in the Banking Laws of 1997 to 2009 (Part X - Supervision and Inspection and Part XI - Banking Secrecy), for the ASDCS in the Cooperative Societies Law (Section 41H – Obligation of confidentiality, 41I – Obligation for secrecy), for the CYSEC in the Cyprus Securities and Exchanges Commission Law (Part V – Co-operation of the commission with the authorities of the Republic and Foreign countries – Duties of confidentiality and observance of professional secrecy) and for ICCS in Sections 6 and 7 of the Law on Insurance and Other Related issues of 2002-2005.

358. As discussed in Section 4.3, supervisory authorities have the necessary powers to obtain from regulated financial entities, notwithstanding any banking secrecy or professional secrecy requirements, information and relevant documentation. The information gathering powers of the supervisory authorities are covered under their respective laws, as follows:

- **CBC:** under its supervisory power for prudential purposes set out in Section 26 of the Banking Law, to be read within the empowerment of the CBC under the AML/CFT Law;
- **ASDCS:** under its supervisory power set out in Section 41D and other of the Cooperative Societies Law;
- **CYSEC**: Section 32 of the Cyprus Securities and Exchanges Commission Law of 2009 gives to the CYSEC the power to request and collect information necessary for the exercise of its responsibilities from supervised entities. However, the power to inspect and collect information in accordance with the provisions of Section 33 does not extend to the collection of texts constituting correspondence or communication and the person, natural or legal, under investigation shall have the right to refuse to provide the Commission with such information.
- **ICCS**: Section 196 of the Law on Insurance and Other Related issues of 2002-2005 clarifies the powers of the Superintendent to collect information necessary for the exercise of his functions under the Insurance Law and to address relevant written request, to every natural or legal person who is under his control and supervision, as well as to every other natural or legal person, who is reasonably assumed to be in a position to give the information. The person to whom the request of the Superintendent is addressed to has an obligation to provide the requested information on time, by complete and precise manner, unless the provision of the information offends any professional, banking or other protected by law secrecy. Section 198 sets out the details of the power of the Superintendent to enter and search. The obligation to provide information includes the obligation to bring and deposit every kind of written data and the disposal of information saved in computers.

359. **MOKAS** claims to have the authority to request and obtain information that is covered by banking or professional secrecy from reporting entities, either through a request to the reporting entity or as necessary, through a Court order. MOKAS also stated that it did not encounter any difficulties in getting this information.

360. The requirement on supervisory authorities to protect the confidentiality of information obtained is also covered under their respective laws. In each case, the duty to protect confidentiality of information is subject to a number of exemptions.

CBC

361. CBC Directors, chiefs executive, managers, officers or agents of a bank who have by any means access to the records of a bank are prohibited, during the period of their employment or professional relationship with the bank or after the termination of that period, to divulge, reveal or use for their own benefit any information whatsoever regarding the account of any individual customer of the bank. Section 29(2) of the Banking Law explicitly provides for a list of 9 instances when this prohibition shall not apply, namely where :

(a) the customer or his personal representatives gives or give his or their written permission to do so; or
(b) the customer is declared bankrupt or if the customer is a company, the company is being wound up; or
(c) civil proceedings are instituted between the bank and the customer or his guarantor relating to the customer's account; or
(d) the information is given to the police under the provisions of any law or to a public officer who is duly authorised under that law to obtain that information or to a court in the investigation or prosecution of a criminal offence under any such law; or
(e) the bank has been served with a garnishee order attaching moneys in the account of the customer; or

(f) the information is required by a colleague in the employment of the same bank or its holding company or the subsidiary of the bank or its holding company or an approved auditor or legal representative of the bank in the course of their duties; or
(g) the information is required to assess the creditworthiness of a customer in connection with or relating to a bona fide commercial transaction or a prospective commercial transaction so long as the information required is of a general nature and in no way related to the details of a customer's account; or
(gi) the information is supplied for the purpose of maintaining and operating the Central Information Register set up under the provisions of sub-Sections (3) and (4) of Section 41; or

- the provision of the information is necessary for reasons of public interest or for the protection of the interests of the bank.

ASDCS

362. Under Section 41H, the Commissioner, the members of the Committee, the employees of the Cooperative Society Supervision and Development Authority, any persons providing services according to sub-Section (6) of Section 4 of the Law, as well as any other persons who are the recipients of confidential information due to their position or during the exercise of their professional duties, according to the provisions of the present Law, are obliged to confidentiality and they must employ this information exclusively for the carrying out of their duties and not communicate any of it, unless, to the extent that this is necessary within the framework of an administrative appeal, that concerns the exercise of their duties or as long the information constitutes evidence in the case of a criminal or disciplinary offence. The communication of confidential information by these persons is permitted inter alia with a court order or within the framework of information exchange between the Commissioner and the Central Body for the purpose of them exercising their competence as by virtue of the Cooperative legislation.

363. These requirements do not apply in the following cases where:

(a) The client or his Authorised representative provides his written consent for this purpose;
(b) The client has declared bankruptcy by virtue of the Bankruptcy Law or in the case the client is a company, the company is under liquidation by virtue of the Companies Law;
(c) Judicial proceedings between the said society and the client or his guarantor as regards to the client’s account are pending;
(d) The information is submitted to the Police by virtue of the provisions of any law or to a public officer who is duly Authorised pursuant to the provisions of the relevant law to receive the information or to a court during the prosecution or the hearing of a criminal offence by virtue of a relevant law;
(e) A court order has been submitted to the society for confiscation of money in the client’s account;
(f) The information is demanded by a colleague employed by the same registered society or a subsidiary or by an auditor or a legal consultant of the said society for the proper execution of their duties;
(g) The information is requisite for the evaluation of the clients’ credit standing as regards or in relation to a bona fide business act or future business act, provided that the information demanded is general and unrelated to the account details of a specific client;
(h) The information is provided for purposes of keeping and operating the Central Information Registry by virtue of Section 41 of the Banking Law;
(i) The supply of information is imperative for purposes of public interest or for the protection of the interests of the registered society.

CYSEC

364. Similar provisions regarding the duty of confidentiality and observance of professional secrecy are set out under Section 30 (1) for the Commission and the members of the Board or any person who had formerly acted as member of the Board or any person who exercises or has exercised any activity for the Commission in connection with the exercise of its responsibilities or any other person who receives knowledge, as a result of his position or in the exercise of his duties, of any information concerning the exercise of the responsibilities of the Commission. Section 30(2) further clarifies that secrecy shall mean that the confidential information that the Commission or a person receives in the exercise of his duties may be disclosed only to other competent authorities of the Republic or abroad or to organizations and the Central Bank of Cyprus, if it refers to issues that come under the responsibilities under the law.

365. The AML/CFT Law sets out in Part V the provisions applicable to court orders for the disclosure of information. Section 44 and following establish the requirements for the issuing of a court order. The following conditions should be met in order for the court to issue such an order upon application by the investigator of a case, for the purposes of inquiry in relation to prescribed offences or in relation to inquiry for the determination of proceeds or instrumentalities:

(a) there is a reasonable ground for suspecting that a specified person has committed or has benefited from the commission of a prescribed offence;
(b) there is reasonable ground for suspecting that the information to which the application relates is likely to be, whether by itself or together with other information, of substantial value to the investigations for the purposes of which the application for disclosure has been submitted;
(c) the information does not fall within the category of privileged information;
(d) there is a reasonable ground for believing that it is in the public interest that the information should be produced or disclosed, having regard to:
    (i) the benefit likely to result for the investigation from the disclosure or provision of the said information; and
    (ii) the circumstances under which the person in possession of the information holds it.

ICCS

366. According to Section 7 of the Law on Insurance Services and other related issues of 2002-2005, the Minister, the Superintendent, the employees of the Service as well as every other person who carried on or has worked in the Service with respect to supervision on the carrying on of insurance business or intermediation business, as well as the approved auditors and experts acting on behalf of the Service and the members of the Insurance Advisory Committee have an obligation for discretion and observance of professional secrecy.

Sharing of information between competent authorities, either domestically or internationally

367. The legal framework sets out specific provisions as regards the co-operation and exchange of information with competent authorities, either domestically or internationally.

368. At domestic level, the Memorandum of understanding between supervisory authorities of the financial sector which came into effect in 2003 sets out the overall framework applicable to the exchange of supervisory information between them and the applicable procedure. The MoU is based on the application of the legislation in force which includes specific provisions related to the co-operation and exchange of information between them and/or with other foreign supervisory authorities.

- **The AML/CFT Law:** Section 58(8) sets out that the supervisory authorities, in relation to financial business, may exchange information with the FIU, within the framework of their obligations emanating from this law.

- **the Banking Laws of 1997 to 2009**: according to Section 27, the Central Bank of Cyprus may cooperate and exchange information with competent supervisory authorities responsible for the supervision of credit institutions, insurance companies, investment firms, financial institutions or regulated markets, either in Cyprus or in a third country, as well as with the competent supervisory authorities of credit institutions, insurance companies, investment firms, financial institutions or regulated markets of member states, to assist them in the conduct of their duties and responsibilities or to enable the effective conduct of its own duties, including the supervision on a consolidated basis. Any exchange of information will only take place when the Central Bank is satisfied that the information provided is subject to the same confidentiality rules in the hands of the receiving competent authority as apply to the Central Bank (Section 27(4)). Following up on the recommendations from the 3rd round report, the Banking Laws of 1997 to 2009 repealed the previous Section 27(2), which prevented the Central Bank of Cyprus from divulging any information relating to an individual deposit account.
- **Cyprus Securities and Exchange Commission Law of 2009**: Section 28 regulates the co-operation of the Commission with other public authorities (ie. Registrar of Companies and Official Receiver, the Central Bank, the Stock Exchange, any other authority, public or not), while Section 29 sets out the possibility to co-operate with foreign supervisory authorities and organisations abroad. The conclusion of protocols of co-operation covering exchange of information, collection of information and carrying out of inspections on their behalf is possible only if the disclosed information is covered by guarantees concerning the observance of professional secrecy, which is at least equivalent to those provided by the Cypriot law.
- **Law on Insurance and Other Related Issues:** According to Section 6, in the course of carrying out of his statutory functions, the Superintendent of Insurance may cooperate with other foreign competent supervisory authorities, charged with the carrying out of analogous functions and to exchange with them the necessary information for the carrying out of their functions. The Superintendent of Insurance may conclude with other foreign competent supervisory authorities co-operation agreements, providing for an exchange of information, only if the disclosed information is subject to, in the state where these authorities are residing, guarantees of complying with the professional secrecy at least equivalent to those provided for in the Law.

369. However, the above-mentioned provisions could be interpreted to be referring to prudential exchange of information and not to information related to anti-money laundering or the financing of terrorism. The situation seems to be the same for the other supervisory authorities and in particular ASDCS, CYSEC and ICCS, and thus the previously expressed concern regarding the lack of a direct link into the regulatory framework of the supervisory authorities of their ability to exchange information relating to ML and TF should be introduced.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

370. As regards the exchange of information between authorities where this is required by SR VII, this matter is undertaken in application of EU Regulation 1781/2006 on wire transfers, as all entities that can make payments by wire transfers are directly bound by it. Sections 5(1) and 7(1) of the Regulation require the provision of complete payer information with wire transfers and for domestic transfer or intra EU transfer where complete payer information was not supplied, Section 6 of the Regulation requires that an institution should make that information available to the payment services provider of the payee on request within three days.

Effectiveness and efficiency

371. None of the authorities with whom the evaluators met raised having experienced difficulties in obtaining the information required due to banking or professional secrecy provisions. Competent authorities have the ability to access information they require to perform their AML/CFT functions, and have the power to share it domestically and internationally, provided that adequate guarantees for the protection of confidentiality of the data exchanged are in place. The authorities

stated that in practice, they have shared information with other authorities. Financial institutions also share information between themselves where this is required by the EU Regulation 1781/2006.

3.3.2 Recommendations and comments

372. Financial institution secrecy laws do not inhibit the implementation of the FATF Recommendations.

3.3.3 Compliance with Recommendation 4

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

3.4 Record Keeping and Wire Transfer Rules (R.10 and SR.VII)

3.4.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

373. Recommendation 10 was rated "Largely Compliant" in the 3rd round report. It noted that the date of completion of all activities being treated as the date on which the business relationship was terminated is not line with Recommendation 10 and there was no definition of minimum information regarding the insurance companies.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)& Record keeping of identification data, files and correspondence (c.10.2)& Availability of Records to competent authorities in a timely manner (c.10.3)

374. The AML/CFT Law and Directives cover all of the FATF record keeping requirements. Section 68(1)(ii) of the AML/CFT Law requires persons carrying financial business to retain records and keep for a period of at least five years the relevant evidence and details of all business relationships and transactions, including documents for the recording of transactions in the accounting books. The prescribed period of five years commences with the date on which the transactions were completed or the business relationship terminated.

375. In addition, CYSEC Directive requires that financial organizations records should also include internal and external suspicion reports, annual reports of the money laundering compliance officer, information for suspicion of money laundering or terrorist financing that the financial organization decided not to act upon, records of training of employees and information for the effectiveness of training.

376. Directives issued by CBC, ASDCS, CYSEC, and ICCS now require that, for the purposes of enabling MOKAS to compile a satisfactory audit trail of illicit money and to establish the business profile of any policy holder and customer under investigation, insurance companies and intermediaries must ensure that in the case of a money laundering case by MOKAS, they will be able to provide the following:

- the identity of the policy holder(s);
- the identity of the beneficial owner(s);
- the value and volume of premiums or number of policies;
- for the selected policy(ies);
- the origin of funds;
- the type and amount of the currency involved;
- the form in which the funds were placed or withdrawn—such as cash, cheques, wire transfers;
- the identity of the person undertaking the transaction;
- the destination of the funds;
- and the form of instruction and authority.

377. Section 68(3) of the AML/CFT Law requires persons carrying on financial business to ensure that all the documents related to customer identity, transactions and relevant documents of correspondence with the customers are promptly and without any delay made available to MOKAS and the competent Supervisory Authorities for the purpose of discharging their legal duties. CBC, ASDCS, CYSEC, and ICCS transposed this requirement in their directives to their supervised financial institutions.

378. D-Banks (4.13.8) requires that banks should verify the identity of the authorized signatories/agents of the company, the registered shareholder(s) and ultimate beneficial owner(s). Similarly, D-Securities (Appendix 5.6.(d) (viii)) requires investment firms to obtain the identity of the persons that are authorized by the legal person to operate the account, as well as the registered shareholders and beneficial owners of the legal person. D-MTBs requires that in the case of a company requesting the transfer of funs of an amount in the excess of EURO 1,000, MTBs are required to verify the identity of the company, the natural person authorized to act on behalf of the company and the natural person(s) who is/are the beneficial owner(s).

Effectiveness and efficiency

379. In discussions with the evaluators, the representatives from financial institutions, money transfer services, and trust and estate companies stated that, in practice, they go beyond the minimum of five years in retaining records. With the exception of small commercial banks, they all maintain permanent electronic files of all activities, in addition to paper copies stored in safe warehouses. The authorities consider that all institutions are covered by the requirements and that they comply in a manner that meets the Recommendation, and that in practice, there have been no instances of difficulties in obtaining the necessary information in a timely manner. They have also stated that no sanctions were applied in the period 2007-2010 for shortcomings with record keeping requirements. The evaluation team recommend that the authorities remain attentive on the implementation and understanding of the beneficial owner concept within certain parts of the financial sector to ensure that this does not impact on the effective implementation of the record keeping requirements as far as they concern beneficial owners.

Special Recommendation VII (rated C in the 3rd round report)

Summary of 2006 MER factors underlying the rating

380. In the Third Round MER Cyprus was found to be Compliant (C) with Recommendation VII through the relevant provisions in the G-Banks (now renamed as D-Banks being a Directive of the CBC), and similar provisions in the G-MTBs (now D-MTBs).

Obtain Originator Information for Wire Transfers (c.VII.1)

381. With the coming into force of the EU Regulation 1781/2006, which is mandatory and binding on all EU Member States, does not need transposing into national law, and indeed overrides any other legal provisions at national level, most of the provisions in these two Directives have been removed and replaced by the mandatory principle of the EU Regulation. Whereas these have been replaced by a single provision referring to the Regulation in the D-Banks (paragraph 41 of Section 4.2), the D-MTBs elaborates further through paragraphs 19 and 20 of Section 4.1 of the D-MTBs in trying to clarify the provisions of the Regulation with respect to customer identification and verification procedures.

382. Payment services in Cyprus are only provided by banks and MTBs (payment service providers in terms of the transposition of the EU Payment Services Directive[24]). Both types of institutions are identified as persons carrying out a financial activity under the AML/CFT Law and therefore subject to the provisions of the law in accordance with the requirement of essential criterion VII.2. The Post Office is engaged in money transfer business as an agent of Moneygram under the provisions of the Payment Services Law.

383. Moreover, more recently Cyprus has also adopted the EU Payment Services Directive which further contributes to meeting the requirements of SR VII. The paragraphs that follow therefore reassess the compliance and effectiveness of applicability of the EU Regulation within the relevant industry.

384. Section 4 of the Regulation defines complete information on the payer as that information relating to the name, address and account number – the latter to be replaced by a unique identifier where a payer does not hold an account.

385. Moreover, Section 5 requires that, for payments not effected through an existing account, this information should be verified only where the amount exceeds €1,000 unless the transaction is carried out in several operations that appear to be linked and together exceed this threshold. Verification of identification data is to be carried out on the basis of documents, data or information obtained from a reliable and independent source.

386. For this purposes banks and payment services providers (MTBs) are expected to following the general relevant guidance in the D-Banks and D-MTBs respectively.

387. Section 5 further requires that the payment service provider of the payer shall maintain the complete information on the payer accompanying the transaction for a period of five years. Section 11 on the other hand requires the payment service provider of the payee to also retain this information for the same period. This is covered by the record keeping requirement under the AML/CFT Law.

[24] Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. *OJ L 319,05.12.2007, p.1*

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3); Maintenance of Originator Information (c.VII.4)

388. Section 5 of the Regulation requires that complete information on the payer is to accompany transfers of funds. The authorities have however informed that batch file systems are not used in Cyprus.

389. Section 6 of the Regulation provides derogation in the applicability of information accompanying transfer of funds where both the payer and the payee are within an EU Member State. In such circumstances the transfer of funds is considered as a domestic payment in which case the transfer of funds is to be accompanied only by the account number of the payer or a unique identifier that allows the transaction to be traced back to the payer. Moreover the payment service provider of the payer shall make all information available to the payment service provider of the payee within three working days of receiving the request. This is in accordance with the revised FATF IN for SR VII for essential criterion VII.3.

390. Section 12 obliges intermediary payment service providers to ensure that all information received on the payer that accompanies a transfer of funds remains with the transfer and consequently transmitted to the beneficiary payment services provider. However, where for technical limitations, an intermediary uses alternative procedures to inform the payment service provider of the payee of missing or incomplete information on the payer, the intermediary payment service provider shall keep all records of information received for five years in accordance with essential criterion VII.4.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

391. Section 10 of the Regulation provides for the payment services provider of the payee to consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious. In such an event, the payment service provider shall consider whether such transaction should be reported to the authorities in accordance with the provisions of national law transposing the EU Third anti-Money Laundering Directive – in the case of Cyprus this being the AML/CFT Law.

392. All obligations under the AML/CFT Law for the purposes of reporting suspicious transactions or terminating business relationships become automatically applicable under the circumstances defined under Section 10 of the EU Regulation.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

393. Section 15(3) of the Regulation required EU Member States to have competent authorities in place to effectively monitor and take necessary measures to ensure compliance with the requirements of the Regulation.

394. The CBC is the authority responsible to monitors MTBs. The CBC is also the authority responsible for the implementation of the provisions transposing the EU Payment Services Directive. Hence monitoring of compliance by payment services providers for the purposes of SR VII would fall within the remit of the CBC. To this effect the CBC, as already identified in this Report, has issued the D-MTBs and includes all payment services providers within its supervisory programme.

395. Section 5(1) of the Regulation further requires Member States to provide rules on penalties applicable for infringements of the provision of the Regulation that are effective proportionate and

dissuasive. To this effect, Member States must have procedures in place to ensure their implementation.

396. In accordance with Section 59(6) of the AML/CFT Law, the CBC as a supervisory authority is empowered to impose sanction for non compliance with the EU Regulation 1781/2006. Such sanctions can be in the forms of a letter requiring the entity to take certain corrective measures, the imposition of administrative fines and the revocation of the licence. For the purposes of payment service providers it appears that the administrative fines are adequate.

397. According to the Cyprus authorities, MTBs have been sanctioned on six (6) occasions during 2009 for minor shortcomings with all sanctions being in fact in the form of requests to take measures within a specified timeframe.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

398. Cyprus has not opted to eliminate the threshold of €1,000 for the provision of full and accurate originator information for both incoming and outgoing payment transfers.

Effectiveness and efficiency

399. Those parts of the industry met by the evaluators and which are subject to the provisions of the Regulation have confirmed compliance thereto. Except for minor shortcomings, the CBC assures that in the course of its supervisory work it confirms compliance to the provisions of the Regulation by banks and MTBs. Moreover, as stated above, the CBC has in practice imposed sanctions for non compliance, even though such sanctions were in the form of requests to take measures within a specified timeframe.

3.4.2 Recommendation and comments

Recommendation 10

400. The record keeping requirements appear to be comprehensive.

Special Recommendation VII

401. The requirements for SR VII seem to be comprehensively and adequately covered by the EU Regulation 1781/2006 which is mandatory for Member States and therefore implemented in Cyprus. By way of a general comment, the CBC may wish to increase its monitoring of payment services providers as, with the introduction of the EU Payment Services Directive, the money transfer business may increase and become more widespread.

3.4.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**C**	
SR.VII	**C**	

3.5 Suspicious Transaction Reports and Other Reporting (R. 13, 14 and SR.IV)

3.5.1 Description and analysis

Recommendation 13 (rated C in the 3rd round report) & Special Recommendation IV (rated C in the 3rd round report)

Summary of 2006 MER factors underlying the rating

402. Both Recommendation 13 and Special Recommendation IV have been rated as compliant (C) in the Third Round MER. Although at the time the analysis in the MER had indicated some concern on the extension of the reporting obligation to attempted transaction, the Plenary for the Third Round evaluation had concluded that Section 27 of the AML/CFT Law at the time implicitly extended the reporting obligation to attempted transactions. This has now been further clarified by the Cyprus authorities in the new AML/CFT Law.

Requirement to Make STR-s on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

403. According to the Cyprus authorities, the principal obligation for persons engaged in financial or other business activities to report transactions suspected to be related to money laundering or the financing of terrorism is found under Section 69 of the AML/CFT Law.

404. A general obligation for all persons to report transactions suspected to be related to money laundering or the financing of terrorism is found under Section 27 of the AML/CFT Law which also criminalises failure to report. The obligation under Section 27 is broad and applies to any person, whether or not that person is engaged in 'financial business' or 'other activities' as defined under Section 2 of the AML/CFT Law. The information that raises the suspicion should come to that person's attention in the course of that person's trade, profession, business or employment. According to these interpretations there seem to be two reporting obligations: one obligation under Section 27 and, more specifically with reference to persons engaged in financial and other business activities, that under Section 69.

405. Indeed the D-Banks, D-Insurers, D-Securities, D-MTBs, D-Lawyers and the MOKAS G-Estate and G Dealers[25] make different references to both Section 27 and Section 69 as the reporting obligation. For example D-Banks (paragraph 185), D-MTBs (paragraph 48), and D-Lawyers (paragraph 6.07) make reference to Section 26 of the AML/CFT Law in that internal reporting to the MLRO "will satisfy the reporting requirement under Section 27". The D-Insurers under paragraph 2.6 refers to Section 27 as the reporting obligation. Moreover, both the D-Jewelers (page 5) and the G-Estate (page 9) state that "According to Section 27, if any professional has knowledge or suspicion that illegal funds are being concealed, he must immediately report it to MOKAS." – with D-Estate making reference to Section 69 as part of the internal procedures and duties of the MLRO and the D-Jewelers with no reference to Section 69.

406. Moreover, the AML/CFT Law itself, under Section 70 seems to indicate two reporting obligations and states:

> "*Persons engaged in financial and other business activities refrain from carrying out transactions which they know or suspect to be related with money laundering or terrorist financing before they inform the Unit of their suspicion in accordance with Sections 27 and 69 of this law;"*

[25] References to DNFBPs are also made in Section 3 for the sake of establishing the overall reporting obligation, however these have not been taken into consideration in this Section when articulating the overall conclusion regarding the implementation of the reporting obligation by financial institutions .

407. However, Section 58(c) requires any person carrying on financial or other business activities to have adequate systems for *internal reporting and reporting to MOKAS in accordance with the provisions of Section 69 of this Law.* Consequently, for the purposes of this Report therefore since the analysis and comments are mainly with reference to persons engaged in financial or other business activities as defined under the AML/CFT Law, and since the authorities hold that the reporting obligation fall under Section 69, reference will mostly be made to Section 69 of the AML/CFT Law.

408. Section 69 requires the MLCO of a person engaged in financial or other business activities to ensure that when it is ascertained or there is reasonable suspicion that another person is engaged in money laundering or the financing of terrorism offences or that the transaction may be connected with such activities – the latter part not being included in Section 27 - then all relevant information is transmitted to MOKAS. The reference *that another person is engaged* can lend itself to interpretation and in particular that the suspicion is in the *present* and therefore may not be completely covering instances where past transactions raise suspicion of past involvement or where information available indicates that a person may be involved. The Cyprus authorities have informed that they interpret this provision in the continuous tense and in particular because of the latter part of Section 69(1)(d) "that the transaction may be connected with such activities" – an obligation not found under Section 27.

409. Moreover, through Section 59(7) the obligation to report is extended to supervisory authorities themselves in relation to those persons they supervise. Where supervisory authorities possess information and are of the opinion that that information indicates that any person subject to that authority's supervision is engaged in money laundering or terrorist financing, then that information is to be transmitted immediately to MOKAS.

410. The level of suspicion needed to make an STR is in accordance with the requirements set out in essential criterion 13.1.

411. Section 27 of the AML/CFT Law includes provisions that impose the obligation of reporting by creating a criminal offence if a person does not comply with the legal requirements set out in the said Section. The reporting obligation is therefore a direct mandatory requirement. Failure to report (disclose the relevant information prescribed under Section 27 of the AML/TF Law) is considered an offence and is '*punishable pursuant to Sub-Section (4) of Section 27 (up 5 years of imprisonment or a pecuniary penalty not exceeding €5,000 or by both of these penalties*').

412. Recommendation 13 however, requires a report to be filed where the funds are suspected to be proceeds of criminal activity, and at a minimum the reporting obligation should apply to predicate offences under Recommendation 1. The reporting obligation is tied to the definition of ML and FT offences in the AML/CFT Law. Section 4 of the said legislation defines money laundering on the basis of '*any kind of property that constitutes proceeds from the commission of a predicate offence*'. Predicate offences basically include '*criminal offences punishable with imprisonment exceeding 1 year…, financing of terrorism offences,… and drug trafficking offences*' (Section 5 of the AML/CFT Law). This basically means that the scope of predicate offences covers all criminal offences, which are subject to a maximum sentence of more than one year's imprisonment, including all "glossary offences". Therefore, it could be concluded that it is a mandatory obligation to report also predicate offences under Recommendation 1.

413. Under Section 69 the AML/CFT Law requires reporting where a person knows or reasonably suspects that another person is engaged in money laundering or terrorism financing or that the transaction may be connected with such activities. The Law, under Point (b) of Section 5 of the AML/CFT Law defines "financing of terrorism offences" as those offences specified in Section 4 of the Law No. 29(III)2001 to ratify the international convention for the suppression of the

financing of terrorism, including supplementary provisions for the immediate implementation of the convention amended with Law No. 18(III)2005). However, in its definition, the AML/CFT Law goes further and adds that '*the collection of funds for the financing of persons or organisations associated with terrorism*' also falls within the scope of the FT offence for the purposes of the AML/CFT Law. Such extended definition provides for the deficiencies as described under SR II in the incrimination of FT offences to be removed for reporting purposes.

414. The evaluators welcome the notification of the Cyprus authorities indicating the introduction of an electronic reporting system. It was explained that with the participation of MOKAS and the IT Department of the Cyprus Government a new internet based (https based) webpage intended to provide a secure electronic channel for reporting suspicious transactions is under preparation. If the try out version involving the two biggest banks is successfully tested, it is planned that the MLCOs will be granted with access to this separate webpage.

No Reporting Threshold for STR-s (c. 13.3 & c. SR.IV.2)

415. The obligation to report suspicions that a person is engaged in money laundering or the financing of terrorism is not limited by any threshold. The AML/CFT Law requires reporting where there is suspicion irrespective of the amount of the transaction.

416. Section 69 of the AML/CFT Law provides that the obligation to report to MOKAS includes also the attempt to carry out suspicious transactions, while this is not covered by Section 27.

Making of ML/FT STR-s Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

417. There are no specific provisions in the AML/CFT Law that a suspicion that a person is engaged in ML/FT should also cover instances where this is related to tax matters. However this is inferred from the reporting obligation (under Section 69 and 27) which does not impose any restrictions on the circumstances leading to reporting of suspicious transactions to MOKAS. Moreover fraudulent evasion of duty and/or tax, etc. are regarded as a criminal offence that could be punishable by imprisonment not exceeding three years in Section 91 of the Customs Code Law of 2004 (Law No. 94(I)2001) where evasion includes reference to unlawful refund or drawback as well (SubSection 2). Therefore, this criminal offence could be considered as a predicate offence for ML defined in Section 4 of the AML/CFT Law.

418. Nonetheless, subSection (3) of Section 4 of the Assessment and Collection of Taxes Law No. 4 of 1978 as amended makes it obligatory to a person having information or possessing or having control over or access to any document, return or assessment list relating to the object of the Tax of any person, not to communicate or attempt to communicate such information or anything contained in such document, return or list otherwise than the purposes of this Law. Law No. 72 (I) of 2008 that amends the Assessment and Collection of Taxes Law seems only to lift tax secrecy in order to comply with the provisions of agreements for the avoidance of double taxation. This should not however inhibit persons engaged in financial or other business activities to file an STR where they suspect that the funds could be linked to tax matters as in so doing a reporting person is not disclosing confidential tax information.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

419. Section 5 of the AML/CFT Law defines predicate offences as all criminal offences punishable with imprisonment exceeding one year; financing of terrorism offences as these are specified in the Financing of Terrorism (Ratification and other provisions) Laws of 2001 and 2005, as well as the collection of funds for the financing of persons or organisations associated with terrorism; and drug offences. Laundering offences under Section 4 of the AML/CFT Law are then defined within the context of the definition of predicate offences. Hence the reporting obligation (under

Section 69 and 27 of the AML/CFT Law) covers reporting in all instances of offences identified as predicate offences for the purposes of the Law.

Effectiveness and efficiency

420. The reporting level from the financial sector appears to be satisfactory. However, other institutions and, as indicated under Recommendation 16, DNFBPs still show a significantly low level of reporting. Furthermore, there appear to be no sector specific guidance and indicators in place for each obliged entity on reporting FT.

421. Discussions with those parts of the financial industry met by the evaluators indicate a broad awareness of the reporting obligation. Several reporting entities were aware that attempted suspicious transactions are to be reported, however, from discussions with the banks met by the evaluation team, it remained unclear whether such transactions had been reported in practice. Notwithstanding, MOKAS has provided the following statistics on attempted transactions:

Table 15: Statistics on attempted transaction reports (2005-2010)

Year	Number of reports of attempted transactions	Entity
2005	2	Banking institutions
2006	5	
2007	4	
2008	6	
2009	8	
April 2010	3	

422. Section 76 of the AML/CFT Law requires the competent supervisory authorities, MOKAS, the Ministry of Justice and Public Order, the Police, and the Customs and Excise Department, to maintain comprehensive statistics on matters related to their competences. Section 76 further requires that such statistics, among others, shall as a minimum cover the suspicious transaction reports made to MOKAS.

423. Within this context, MOKAS has provided detailed statistics on STRs, which are set out in the table below:

Table 16: Statistics on STRs (2005-2010)

Monitoring entities, e.g.	STRs		STRs		STRs		STRs		STRs		STRs	
	ML	FT	ML	FT	ML	ML	ML	FT	ML	FT	ML	FT
	2005		2006		2007		2008		2009		30.05.2010.	
Commercial banks	114	-	204	-	172	4	217	3	376	1	181	-
Insurance companies	-	-	2	-	-	-	-	-	-	-	-	-
Cooperative banks	3	-	5	-	5	-	4	-	4	-	8	-
Currency exchange	N/A	-	N/A	-	N/A	-	N/A	-	N/A	-	N/A	-
Broker companies	3	-	2	-	-	-	1	-	-	-	2	-
Securities' registrars	-	-	-	-	-	-	-	-	-	-	-	-
Lawyers	3	-	6	-	4	-	3	-	6	-	2	
Casinos	N/A	-	N/A	-	N/A	-	N/A	-	N/A	-	N/A	-
Accountants/auditors	4	-	7	-	1	-	1	-	2	-	-	-
Real estate agents	-	-	-	-	1	-	-	-	1	-	-	-

Dealers in prec. metals/stones	-	-	-	-	-	-	-	-	-	-	-	-
Company service providers	-	-	-	-	-	-	-	-	-	-	2	-
Supervisory authorities	2	-	4	-	5	-	6	-	5	-	4	-
Money remittance	5	-	9	-	-	-	-	-	1	-	4	-
Cyprus Police	13	-	11	-	13	-	15	-	19	-	8	-
Customs Admin.	3	-	-	-	3	-	3	-	4	-	1	-
Others (Credit card clearing, Gov. Depts., Embassies, Individuals, Publications)	4	-	7	-	6	-	9	-	10	-	2	-
Total	**154**	**-**	**257**	**-**	**210**	**4**	**259**	**3**	**428**	**1**	**214**	**-**

424. The overall number of STRs filed with MOKAS shows a continuous rising trend between 2005 and the time of the onsite visit – a total of 1,465 reports. In this respect, the evaluation team welcomes the assessment made by MOKAS that the quality of the STRs received also improved. Out of the total number of STRs, it was indicated that approximately 5% of reports related to KYC/CDD concerns, 10% relate to cases where the institution could not verify the legitimacy of the transaction or cases where there was public information related to law enforcement inquiries, about 15% relate to cases where the business activities of the customers are not in line with the declared business, 25% relate to suspected investment fraud and the rest relate to various reasons (ie. forged documents, matches in private databases, publications in media, law enforcement investigations, etc).

425. However, there has been a very small number of STRs in respect of terrorist financing, and these mostly by banks and as a result of checks against the UN and EU lists. Moreover, within the financial sector, STRs continue to be mainly filed by the banking sector and these mainly relate to their international business, which could be at the cost of more reporting on domestic customers. However the CBC has informed that, by effectively applying the Directives of the CBC, banks have introduced systems and procedures that should provide for the monitoring of all customers, accounts and transactions at both the domestic and international level, and thus identifying all unusual or suspicious activities that may exist.

426. Indeed, statistics provided by the Cyprus authorities indicate that for the period 2005 – 2010 (end April) 1,465 STRs have been filed with MOKAS, of which:

- 8 or 0.6% relate to financing of terrorism;
- 1,212 or 82.7% have been filed by the banking sector, including the 8 related to FT;
- 55 or 3.7% have been filed by non-bank financial institutions;
- 40 or 2.7% have been filed by DNFBPs;
- 26 or 1.8% have been filed by supervisory authorities;
- 132 or 9% have been filed by other persons not engaged in a financial or other business activity as defined in the AML/CFT Law.

427. Notwithstanding that the number of STRs filed by persons other than those engaged in financial or other business activity as defined in the AML/CFT Law is encouraging, the above, complemented by the number of STRs filed by the supervisory authorities, raises concerns on the effective spread of the implementation of the reporting regime. The insurance sector and the securities registrars have never reported to MOKAS, while money remittance agents have filed very few reports.

Recommendation 14 (rated PC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

428. Recommendation 14 was rated Partially Compliant in the 3rd round report in which the examiners found the "safe harbour" provisions not fully compliant with Criterion 14.1. They only referred to protection which may have been seen as a breach of any restriction imposed by contract and not to restrictions imposed by legislative, regulatory or administrative provision. The examiners expressed reservations as to whether this Section fully covered all civil liability, and very much doubted that it could cover any potential criminal liability that may rise from such a disclosure. Additionally, the 3rd round report stated that tipping off seemed unreasonably restricted in that it required knowledge or suspicion that a disclosure will obstruct an investigation that was already underway.

Protection for making STRs (c. 14.1)

429. Section 26(2)(a) of the AML/CFT Law reads as follows:

"Where a person discloses to the Unit, his suspicion or belief that any funds or investments are derived from or used in connection with a predicate offence in any matter on which such a suspicion is based

a) the bona fide disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by contract, and does not result in any kind of responsibility for the said person and
b) if he does any act in contravention of Section 4 (Laundering offences) and the disclosure is related to the act concerned, this person shall not commit the offence of assisting another to commit a laundering offence under the said Section, if the following conditions are satisfied: i) the said act was done with the consent of the police officer or Unit after the aforesaid disclosure ; or ii) if the act was done before the disclosure, the disclosure was made on his initiative and without delay as soon as it was reasonable for him to make such disclosure."

430. The evaluators agree that this amended provision is wide enough in its coverage to refer to "any person", including those listed in Criterion 14.1 of the Methodology (financial institutions, their directors, officers, and employees) and the explicit reference to the fact that such a disclosure does not result in any kind of responsibility for the said person can encompass both criminal and civil liability. The authorities consider that the amendments remedy the previously identified deficiency, and that the protection would extend to circumstances where there is no knowledge of the underlying criminal activity and regardless of whether the illegal activity actually occurred.

Prohibition against tipping off (c.14.2)

431. Amended Section 48 of the AML/CFT Law includes a clear provision sanctioning " *any person who discloses that, information or other relevant material regarding knowledge or suspicion for money laundering have been submitted to the Unit or makes a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the ascertainment of proceeds, knowing or suspecting that the said interrogation and investigation are taking place*". The Law charges any person who discloses ("tips off") information submitted to MOKAS with offence punishable by imprisonment not exceeding five years.

432. Pursuant to Section 49 of the AML/CFT Law, this prohibition is also waived for persons engaged in financial business, who can make such disclosures to other persons belonging to the same group and are operating in countries of the EEA or third countries (under EU terminology) which according to a decision of the Advisory Authority have been designated as having equivalent AML/CFT standards. This waiver is not in strict compliance with the FATF standard, which prohibits any disclosure to third parties other than the FIU, however it is noted that such previous evaluation reports considered such a waiver to be reasonable and represents a positive contribution to the overall effectiveness of preventive measures.

433. The Law does not prohibit institutions' directors, officers or employees to disclose the fact that a suspicious transaction has been identified and that an STR is in the process of being prepared. Furthermore, the tipping off provision appears to explicitly cover only disclosures or information and STRs that have been submitted to MOKAS regarding "knowledge or suspicion for ML" as opposed to the wider reporting obligation including also FT.

434. The Public Service Law also prohibits the disclosure of any information which comes to the attention of the public servant in the course of his employment, including the FIU staff.

Additional element – Confidentiality of reporting staff (c.14.3)

435. All information received by MOKAS from reporting entities, including the names of the compliance officer are dealt with utmost confidentiality.

Effectiveness and efficiency

436. The evaluation team notes that there is no case law for breaches of the safe harbour or for tipping off prohibitions that they were made aware of. One issue was however highlighted in discussions during the visit, namely the absence of a clearly defined timeframe for the decision of MOKAS on the removal or otherwise of the suspension period of a reported suspended transaction. Private sector representatives met during the on-site visit were unanimous in expressing their frustration at these prolonged periods of uncertainty and waiting, which they indicated taking at times over 72 hours. During such instances, especially when pressed by the client, they stated that at times, their banks were left with little choice but to release the funds with no explanation or to continue to refer back to MOKAS. When the funds are returned, they noted that the client often takes his business elsewhere to attempt the same transaction. Some representatives told the evaluators that they would simply block the account or terminate the business relationship to avoid being put in an awkward position as they wait for a decision by MOKAS. The evaluation team notes that such action only heightens the possibility of tipping off the client, as it would become evident to him or her that the attempted transaction has aroused suspicion at the bank and recommends to consider establishing a timeframe for the suspension period and issuing guidelines to assist the reporting entities in this process. MOKAS stated that they have no reason to believe that the industry is being put to such awkward situations of possibly tipping off the customer as it always does its utmost to release or sustain a suspension of a transaction in time.

3.5.2 Recommendations and comments

Recommendation 13 & Special Recommendation IV

437. Given the growth in the international business, it appears from the discussions with the industry that the compliance function within banks is more focused towards this side of their business. This is complemented by the fact that most STRs filed with MOKAS relate to non-resident customers. Given the fact that, as identified by the Advisory Authority, international

business is considered as the main vulnerability of the country for money-laundering, the evaluation team commends this positive development. However, the authorities must ensure that enhanced monitoring and reporting of suspicious activity from foreign business is not done at the risk of ignoring vulnerabilities in and threats from the domestic business.

438. Moreover, although the reporting obligation (*is engaged*) under Section 69 and including the obligation *or that the transaction may be connected to such activities* are given a broader interpretation by the Cypriot authorities to be covering the past, present and possible indication of future involvement in money laundering and financing of terrorism by another person, the latter part of Section 69 is not included under Section 27 and hence it is doubtful whether not reporting under this pretext would be an offence in terms of Section 27. It would therefore be appropriate for the Cyprus authorities to consider harmonising the text of Section 27 and Section 69.

439. STRs are mainly received from the commercial banks. Other financial reporting entities show a significantly low number of reporting. The Cyprus authorities should identify the possible reasons and take appropriate measures accordingly.

440. As indicated earlier in this MER, Cyprus should further criminalise the FT so as to bring it fully in line with SR II[26] and consequently amend Section 5 of the AML/CFT Law thus removing any legal ambiguity that could arise in interpreting the obligation to report FT suspicions in all instances.

441. The Cyprus authorities are encouraged to continue to take the necessary measures in order to introduce a secured user-friendly electronic reporting system at the earliest.

Recommendation 14

442. The Cyprus authorities should extend the tipping off prohibition to cover all cases when an STR or related information is reported to MOKAS, and not only those regarding money laundering suspicions, as well as cases when a suspicious transaction has been identified and an STR is in the process of being prepared.

443. The Cyprus authorities should consider establishing a timeframe for the suspension period of transactions and take measures, as necessary, to provide guidance to obliged entities on the steps to be taken to avoid tipping off.

3.5.3 Compliance with Recommendations 13, 14 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• Need to harmonise Section 27 (failure to report) and Section 69 (obligations of MLCO) for reporting purposes; • Concerns remain on the effective spread of the implementation of the reporting regime.
R.14	**LC**	• The tipping off prohibition does not cover all cases when an STR or related information is reported to MOKAS, as well as cases when a suspicious transaction has been identified and an STR is in the process of being prepared.
SR.IV	**LC**	• Need to harmonise Section 27 (failure to report) and Section 69 (obligations of MLCO) for reporting purposes • Concerns remain on the effective spread of the implementation of the

[26] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit. Section 8 of this act (in force on 22.11.2010) is relevant in this context, however these changes were made after the two month period following the on-site evaluation visit and cannot be considered for the purpose of this assessment.

		reporting regime.

Internal controls and other measures

3.6 Internal Controls, Compliance, Audit (R.15)

3.6.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

444. The 3rd round reported highlighted the following shortcomings in Recommendation 15: (1) terrorist financing was not covered in training; (2) access to information by the Money Laundering Compliance Officer (MLCO) was not necessarily timely; (3) there is mostly no requirement for an independent audit function to test compliance; (4) no reference in the Guidance Notes to training on developments in money laundering and terrorist financing techniques, methods and trends; and (5) there was no specific provisions on employee screening.

Internal AML/CFT procedures, policies and controls

445. According to Section 58 of the AML/CFT Law, financial institutions are required to establish appropriate systems and maintain internal procedures, policies and controls to prevent ML/FT. The AML/CFT Law requires financial institutions to apply systems and procedures in relation to customer identification and due diligence, record keeping, internal reporting and reporting to MOKAS, internal control, assessment and management of risk with the purpose of ML and TF prevention, detailed examination of specific transactions, employee awareness with regard to the AML/CFT systems and procedures and relevant legislation and ongoing training of staff to detect and handle transactions and activities which may be related to ML or TF.

446. The D-Banks requires the preparation of a risk management and procedures manual documenting specific measures (inter alia, the bank's customer acceptance policy, the procedures for establishing a business relationship, executing one-off transactions, opening of accounts and customer due diligence, including the documents and information that is required for the establishment of a business relationship and execution of transactions, the procedures for the on going monitoring of accounts and transactions, as well as, the procedures and controls for the identification of unusual and suspicious transactions and their internal reporting to the Money Laundering Compliance Officer).

447. A similar requirement, though less detailed, is also included in D-Insurers, whereby the MLCO has the primary responsibility for the preparation of the insurance company's intermediary's risk management and procedures manual for the prevention of money laundering and terrorist financing. Similarly, D-Securities (9.1.c) lists one of the compliance officer's duties as preparing a risk management and procedures manual regarding money laundering and terrorist financing. In D-MTB, Section 2, money transfer businesses are required to have effective procedures for the prevention of money laundering and terrorist financing, including a clear and short reporting chain of communication to the MLCO and conducing a MLCO evaluation at regular intervals the effectiveness and adequacy of the policy and procedures.

Compliance Management Arrangements

448. The Directives issued by supervisory authorities of the financial sector (CBC, ASDCS, CYSEC, and ICCS) require their supervised entities that the Money Laundering Compliance

Officer (MLCO), the Assistant MLCO, and other members of the compliance staff have complete and timely access to all information concerning customer's identity, transaction records and other relevant files in order to allow them to effectively discharge their duties. The Directives also require that the post of MLCO be part of the management to ensure appropriate command of authority. The issue of allowing timely access to information by the Compliance Officer has been addressed.

Independent Audit Function

449. The Directives by the supervisory authorities of the financial sector require or indicate that banks and other financial institutions are to establish Internal Audit Units in order to review and evaluate on a regular basis, the effectiveness and adequacy of the policy, procedures and controls applied for preventing money laundering and terrorist financing and verify the level of compliance. For example, the Central Bank's Directive on the *Framework of Principles of Operation and Criteria Assessment of Bank's Organizational Structure, Internal Governance and Internal Control Systems* require that all banks establish an Internal Audit Unit, which is administratively independent, not subordinate to any other operational unit of the bank, and reports directly to the Board of Directors through the Audit Committee.

450. According to CBC AML Directive (par 6), the Internal Audit Unit must review and evaluate, on an annual basis, the effectiveness and adequacy of the policy, procedures and controls applied by the bank for preventing money laundering and terrorist financing and verify the level of compliance with the provisions of the Central Bank of Cyprus' Directive and the Law. Findings and observations of the internal auditor must be submitted to the Board of Directors' Audit Committee as well as to the Senior Management and the Money Laundering Compliance Officer of the bank to decide the necessary measures that need to be taken to ensure the rectification of any weaknesses and omissions which have been detected by the internal auditor. Meetings with bank representatives of large commercial banks confirmed that the audit function was fully independent, and that they conducted special audit of the banks' international banking unit, as well as the compliance department. Similarly paragraph 6 of the D-Securities requires that the internal audit department of the Financial Organisation reviews and evaluates, at least on an annual basis, the appropriateness, effectiveness and adequacy of the policy, practices, measures, procedures and control mechanisms applied for the prevention of money laundering and terrorist financing.

451. It is not clear, however, whether this requirement is applied uniformly throughout the financial sector. Paragraph 3.11 of the Insurance Order states that the Internal Audit Unit, where one exists, should review, test and evaluate, on a regular basis, the procedures and controls applied for the prevention of money laundering and terrorist financing and verify the level of compliance with the present Orders and the Law. Similar provisions can also be found in the Directive to MTBs.

452. Although there are references to the internal audit function in most of the Directives issued by the respective supervisory authorities for banks, insurance and securities, not all carry a mandatory requirement to maintain an independent audit function, although for some institutions, for example for banks, this mandatory obligation is found in other prudential directives of the CBC.

453. The authorities informed that for example for the insurance sector according to Section 91 of the Law on Insurance Services and Other Related Issues of 2002-2011, all life insurance companies must submit once a year a certificate that is signed by the compliance officer, chairman and two members of the board confirming that they have followed the Money Laundering Law. Notwithstanding in such procedures there may not be an independent audit on the role of the MLCO. Indeed, the independent audit function should be proportionate to the institution's size

and the risk of money laundering that it presents and hence this function could be outsourced for those firms with few personnel to have its own internal audit.

Employee Training

454. Terrorist Financing: The AML/CFT Law includes training on terrorist financing pursuant to Criteria 15.1 to 15.4 of the Methodology. Section 58 of the Law requires all persons carrying on financial business to put in place regular training of staff to recognize and handle suspicious transactions and activities that may be linked to money laundering or terrorist financing. The same Section also requires the establishment of appropriate systems and procedures in relation to (1) customer identification and due diligence; (2) record keeping; (3) internal reporting and reporting to MOKAS; (4) internal control, assessment and management of risk with the purpose of preventing money laundering and terrorist financing; and (5) close review of transactions judged to be complex and unusually large but without obvious economic or explicit legal reason.

455. According to paragraphs 195-199 of the CBC AML Directive, the Money Laundering Compliance Officer (MLCO) has the responsibility, in co-operation with other competent units of the bank (i.e. the Personnel and Training departments etc), to prepare and implement, on an annual basis, training for the staff as required by the Law and Directive. The Directive allows each bank, according to its needs, adjusts the timing and content of the training provided to staff of the various departments. Furthermore, the frequency of training can vary depending on the amendments of legal and/or regulatory requirements, staff duties as well as any other changes in the country's financial system.

456. Training on Developments in AML/CFT techniques, methods, and trends: The Directives issued by CBC, ASDCS, and CYSEC contain reference to training on developments in money laundering and terrorist financing techniques, methods, and trends. The training programs should focus on educating staff on the latest developments in anti-money laundering and terrorist financing including the practical methods and trends used by criminals for this purpose. It is required that the training program should have a different structure for new staff, customer service staff, compliance staff, staff moving from one department to another or staff dealing with the attraction of new customers. Newly recruited staff should be educated in understanding the importance of preventive policies against money laundering and terrorist financing and the procedures, measures and controls that the bank has in place for that purpose. Customers service staff who deals directly with the public should be trained on the verification of new customers' identity, the exercise of due diligence on an on-going basis, the monitoring of accounts of existing customer and the detection of patterns of unusual and suspicious activity. On-going training should be given at regular intervals so as to ensure that staff is reminded of its duties and responsibilities and kept informed of any new developments.

457. Minor exception to providing this type of training appears to be ICCS. Although Insurance Order requires the MLCO to determine which of the insurance company's/ intermediary's units/branches, staff and employees need further training and education, it does not explicitly make reference to ensuring that such training contain developments in money laundering and terrorist financing techniques.

458. Large commercial banks indicated to the evaluators that AML training is compulsory for all employees, including those who work in foreign branches, offering comprehensive training every 6 months. They also offer specialized training for management and senior staff members. The banks' compliance officers and international business unit staff also receive additional intensive training.

Employee Screening

459. Paragraph 6 of the CBC Directive requires banks to apply explicit procedures and standards of recruitment of evaluation of new employees' integrity. Section 15 of the Investment Services and Activities and Regulated Markets Law of 2007, as amended, states that persons employed by a Cyprus Investment Firm must be of sufficiently good repute and have the necessary skills, knowledge and expertise for performing their assigned responsibilities. According to paragraph 3.12 of Insurance Orders, Insurance companies/intermediaries should implement explicit procedures and standards of recruitment so as to ensure that new employees are of high integrity and honesty. All of the Compliance Officers the evaluators met during the onsite visit seem to meet this criterion. Representatives from one bank indicated that they select MLCOs only from a pool of in-house candidates with minimum 12 years of experience to ensure confidence in the implementation of the bank's AML program.

460. The supervisory authorities of the financial sector also noted that they approve the appointment of new Compliance Officers in charge of overall compliance matters in each financial institution. For the appointment of a new MLCO, Paragraph 11 of the CBC Directive requires banks to notify the Central Bank on a continuous basis, the name and position of the person whom they appoint as MLCO. In practice, while the appointment of new MLCOs does not require the supervisor's approval, it can, object to the appointment, if the supervisor views that the candidate does not meet the necessary qualifications.

461. Additionally, the Directives by CBC, ASDCS, and CYSEC require the management of financial institutions to ensure that the MLCO has sufficient resources, including competent staff and technological equipment, for the effective discharge of his/her duties. ICCS, however, does not make this requirement clear in its Directive to insurance companies. The authorities note that this is due to the fact that insurance companies in Cyprus are "small risk" companies, and that MLCOs usually do not require additional resources. In case where extra resources are required, each insurance company maintains an internal procedure for obtaining such resources.

Additional elements

462. Although not specified in the Insurance Directive, Compliance Officers and their staff stated that the AML/CFT compliance officer was able to act independently and report to senior management or to the board of directors.

Effectiveness and efficiency

463. Cyprus has made progress in addressing many of the shortcomings outlined in the 3rd round report such as covering terrorist financing in training, allowing for timely access to information by the Compliance Officer, and requiring an audit function to test compliance.

464. The evaluators note with satisfaction that large commercial banks appear to uniformly conduct compulsory training for all employees, including those who work in foreign branches, as well as requiring specialized training for management and senior staff members. Regarding employee screening, commercial banks and investment firms appeared to effectively apply high-standards of recruitment and ensuring that only those of integrity and trust are selected as the MLCO.

465. However, concerns remain regarding the lack of requirement in D-Insurers for independent audit function among insurance companies. Signed annual certificates from each company falls

short of meeting the spirit of Section 58 of the AML/CFT Law, which requires institutions to establish appropriate systems and maintain internal procedures, policies and controls to prevent ML/FT. Moreover, in the evaluators' view, there is no way to ascertain which criteria of AML/CFT controls these signed certificates meet, and thus it would be difficult for ICCS to judge the soundness the annual certificates.

3.6.2 Recommendation and comments

466. There should be an explicit requirement for the insurance and money transfer businesses to maintain an independent audit function that is proportionate to the institution's size and risk of money laundering.

467. There are also two areas that require further clarification in the ICCS Directive.

468. For example, the Insurance Order states that the Internal Audit Unit, where one exists, should review, test and evaluate, on a regular basis, the procedures and controls applied for the prevention of money laundering and terrorist financing and verify the level of compliance with the present Orders and the Law. It is also unclear whether ICCS requires insurance companies' MLCO to maintain sufficient resources, including competent staff and technological equipment, for the effective discharge of his/her duties. This issues should be clarified and exceptions removed.

3.6.3 Compliance with Recommendations 15

	Rating	Summary of factors underlying rating
R.15	**LC**	• There is no explicit requirement to establish an independent audit function for all insurance and MTBs • Effectiveness concerns, in particular as regards the testing of compliance with procedures, policies and controls where an audit function is not in place, and whether the requirement for independent audit is applied uniformly throughout the financial sector

Regulation, supervision, guidance, monitoring and sanctions

3.7 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, and 17)

3.7.1 Description and analysis

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd round report)

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

Authorities/SROs roles and duties & Structure and resources

469. The AML/CFT Law designates the Central Bank of Cyprus (CBC), the Authority for the Supervision and Development of Cooperative Societies (ASDCS), the Cyprus Securities and Exchange Commission (CYSEC), and the Insurance Companies Control Service (ICCS) as the supervisory authorities for all persons licensed to carry on banking and financial business in Cyprus. The supervisory authorities are responsible for monitoring, supervising and evaluating the implementation of the Law and the Directives issued to persons under their supervision and are

empowered to issue directives to supervised entities which are binding and obligatory as to their application by the persons to whom they are addressed.

CBC

470. The Central Bank of Cyprus monitors banks' compliance with their anti-money laundering obligations through the following: The submission of a prudential monthly return, including: (1) all cash deposits from customers in excess of 10.000 €; (2) all their customers' incoming and outgoing fund transfers in excess of 500.000 € or equivalent in foreign currencies; (3) the total number of internal money laundering suspicion reports submitted by bank employees to the Money Laundering Compliance Officer ("MLCO"); and (4) the total number of reports submitted by the MLCO to MOKAS.

471. A copy of the Annual Report prepared by MLCOs which is addressed to the banks' Board of Directors and Senior Management is submitted to the Central Bank of Cyprus. This report is prepared and submitted within two months from the end of every calendar year.

472. The Central Bank of Cyprus regularly carries out on-site examinations of banks and MTBs with the objective of assessing and determining their compliance with their anti-money laundering obligations as set out in the AML/CFT Law and the CBC Directive. In this respect, the CBC developed a special "examinations manual" for checking and evaluating banks' and MTBs' internal control arrangements and preventive measures against money laundering and terrorist financing.

473. With regard to Money Transfer Business (MTBs), offsite monitoring is carried through the submission of a monthly return containing details on their incoming and outgoing transfers. Moreover, the CBC receives a copy of the Annual Report prepared by the MLCO and submitted to the Board of Directors and Senior Management of each MTB.

474. From 2006 to 2009, the CBC has conducted 52 on-site inspections, which always include AML/CFT components. Separately, the Central Bank has conducted 11 onsite inspections of MTBs from 2007 to 2009. These inspections take place every 2 years, each lasting up to three weeks.

ASDCS

475. The ASDCS monitors CCIs' compliance with their anti-money laundering obligations through the following:

(1) The submission of a prudential monthly return in which CCIs report the following:

- All cash deposits from customers in excess of 10.000 €

- All their customers' incoming and outgoing fund transfers in excess of 500.000 € or equivalent in foreign currencies.

- The total number of internal money laundering suspicion reports submitted by bank employees to the Money Laundering Compliance Officer ("MLCO").

- The total number of reports submitted by the MLCO to MOKAS.

476. A copy of the Annual Report prepared by MLCOs which is addressed to the CCIs' Committee and Senior Management is submitted to the Commissioner of the ASDCS. The said report is prepared and submitted within two months from the end of every calendar year.

On-site Supervision

477. The Supervision Department of the ASDCS carries out regular on-site examinations of CCIs and one of their primary objectives is to assess and determine the CCIs' compliance with their anti-money laundering obligations as set out in the AML/CFT Law and the ASDCS's Directive. The ASDCS has conducted 25 inspections since 2006, the highest number (13) in 2009, with money laundering obligation as a fixed feature of the on-site supervision program.

Computerization/Offsite monitoring

478. The Cooperative Movement acquired through the Cooperative Computer Society Limited, an electronic system for detecting Money Laundering and Terrorist Activities. This AML system has been installed in all CCIs and the ASDCS is on-line connected with it and thus has the ability of offsite monitoring of all CCIs by checking on a real-time basis the suspicious transactions and the way these transactions are handled by the Money Laundering Compliance Officers of CCIs. Furthermore the system provides the ability to the ASDCS to print monthly reports with the overall figures for evaluation.

Cooperative Societies' Mergers

479. Following the harmonization process and EU criteria, the Cooperative Movement has encouraged mergers of Cooperative Credit Institutions operating in the same geographical area so as to create stronger and more competitive Co-operatives. CCIs' mergers were successfully performed on a big scale and the number of CCIs has been reduced dramatically. Compared to 2005, by the end of 2009 the total number of CCIs was reduced from 361 to 111. The total number of CCIs will be further reduced in the near future.

480. Merged CCIs achieved critical mass and economies of scale, enjoy greater operational efficiency and are more capable of establishing a suitable organizational structure, leveraging technology investment, broadening product range and risk diversification. To this end, CCIs' ability both to comply with imposed regulations as well as to deal with increased competition is significantly enhanced.

CYSEC

481. The CYSEC monitors Cyprus Investment Firms' compliance with their anti-money laundering obligations through the following:

1. The submission of a Monthly Prevention Statement in which Cyprus Investment Firms report the following:
    - All cash deposits from customers in excess of €10,000.
    - The total number of Internal Suspicion Reports submitted by the Cyprus Investment Firms employees to the compliance officer.
    - The total number of Reports submitted by the compliance officer to MOKAS.

2. A copy of the compliance officer's Annual Report, which is addressed to the Cyprus Investment Firms' board of directors, is submitted to the Cyprus Securities and Exchange Commission, not later than three months from the end of each calendar year, together with the minutes of the board of directors meeting, during which the Annual Report has been discussed and approved.

3. The Cyprus Securities and Exchange Commission is carrying out regular on-site examinations of Cyprus Investment Firms with the objective of assessing and determining their compliance with their anti-money laundering obligations as set out in the AML/CFT Law and the CYSEC Directive.

482. The CYSEC has conducted 11 inspections since 2007 up to the time of the on-site visit.

ICCS

483. According to Section 87 of the Law on Insurance and other related issues, every insurance company in Cyprus must, at the end of its financial year, prepare a revenue account , a balance sheet and a profit and loss account or if it is a company that does not carry on business or profit, an income and expenditure account.

484. Every Cyprus insurance company must maintain full accounts and justification documents as well as registers and other information on which the accounts, balance sheets and also other documents and statements prescribed in this Part of this Law, are based, for a period of at least seven years, which will always be available to the Superintendent for inspection and audit.

485. According to Section 193 the Superintendent carries out, at its discretion, on-the-spot investigations, necessary for the exercise of his authorities as stated in the Law. The ICCS began conducting on-site inspections in 2008, and it had concluded 8 examinations by end of 2009.

Recommendation 30 (Resources supervisors) *Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)*

CBC

486. The Banking Supervision & Regulation Department of the Central Bank of Cyprus is responsible for the licensing and off-site monitoring and on-site inspection of banks. At present, the Department's staff consists of 39 persons dealing with off-site monitoring and on-site inspections and 3 persons in support role. Within the Bank Supervision and Regulation Department, an AML inspection team has been set up (composed of three persons) whose duties include carrying out on-site inspections and off-site monitoring of banks and MTBs in relation to money laundering and terrorist financing prevention. All persons involved in the examination of AML/CFT obligations of banks receive in-house training and some attend other several seminar and conference on this topic in Cyrus and aboard. The evaluators note that the CBC maintains rigorous employee screening procedure, including a written examination administered by an independent third party, four rounds of interviews, police background check, medical check, and review of the applicant's financial history.

ASDCS

487. The ASDCS' Supervision and Regulation Division is responsible for the on-site supervision and off-site monitoring, as well as for the regulation and licensing of the CCIs. During on-site supervisions, a series of inspections are carried out in relation to money laundering and terrorist financial prevention. Currently, the Division's staff consists of 20 persons: 1 person Head of the Division, 9 persons are employed in the on-site supervision unit, 4 persons in the off-site monitoring and 6 persons in the regulation sector. All staff employed in the Supervision and Regulation Division posses high academic or professional qualifications being holders of University degrees (BSCs and Masters' diplomas) or members of professional bodies (FCCA). Staff members involved in the examination of CCIs' compliance with anti-money laundering obligations receive in-house training and attend seminars and conferences in Cyprus and abroad.

CYSEC

488. The Investment Firms Department of CYSEC is mainly responsible for the licensing and on-going supervision (on-site inspections and off-site monitoring) of Investment Firms and Regulated Markets. Most of the staff employed by CYSEC possesses high academic and professional qualifications being holders of University degrees (undergraduate and postgraduate degrees) or members of professional accountancy bodies (i.e. ICAEW, ACCA). Technical resources appear to be adequate. At present, the Department's personnel consist of 1 Senior Officer, 10 Officers and 3 assistant secretarial officers. One officer is primarily responsible for covering the prevention of money laundering and terrorist financing.

489. All staff members in the Investment Firms Department are responsible for the on-going supervision (on-site inspections and off-site monitoring) of Investment Firms with the relevant legislation, which includes the examination of Investment Firms' compliance with the legislation for the prevention of money laundering and terrorist financing. Training of CYSEC staff does not appear to have been formalized. CYSEC staff stated that they receive training approximately on an annual basis on anti-money laundering and terrorist financing conducted by outside experts but also indicated a need for addition training, including learning more about securities trading.

ICCS

490. The ICCS is responsible for the regulation and the supervision of the insurance sector. It supervises 36 insurance companies, of which 13 are life insurance companies, and 1535 insurance intermediaries, of which 512 are life insurance intermediaries. Currently ICCS employs 14 qualified staff, including qualified accountants and actuaries, who are responsible for the licensing as well as off-side monitoring and on-site inspections of insurance companies. On-site inspections deal also with the checking of procedures and controls for the prevention of money laundering and terrorist financing. Three officers are responsible for the licensing and monitoring of insurance intermediaries. The ICCS also utilizes the services of the Government Actuaries Department of the UK as external advisor. Most of the staff employed by the Service has high academic qualifications, and retains a high level of professionalism. The staff comprises of fully qualified Accountants and Actuaries and a number of them are holders of professional designations.

491. As the ICCS indicated, the current staffing level has doubled since the 3rd round Report, which noted that ICCS was understaffed. Nonetheless, in light of large number of intermediaries (more than 1,500) and the time-intensive nature of proper intermediary supervision, additional staff is necessary to appropriately supervise this sector. While the insurance industry tries to police the intermediaries who direct business to them, the evaluators note that the expansion of staff numbers and stepped up supervision of insurance intermediaries will be key for ICCS, as it pursues a sustainable program for proper long-term supervision. Separately, lack of training on AML/CFT remains a concern for the evaluators. Similarly noted in the 3rd round Report, the ICCS indicated that it has yet to receive training on AML/CFT issues.

Recommendation 29 (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

492. In the Third Round MER Cyprus was rated as LC for Recommendation 29. The Third Round MER carried a very strong positive analysis of the implementation of Recommendation 29 with however one shortcoming relating to the need for a programme of on-site visits across the insurance sector. To an extent this shortcoming has been addressed as detailed in the following paragraphs.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4)

493. Section 59(1) of the AML/CFT Law designates the supervisory authorities for the financial sector for the purposes of monitoring compliance with the law by persons engaged in financial activities. The CBC is the authority responsible for banks, electronic money institutions and MTBs, the ASDCS for cooperative banks, the CYSEC for the securities markets and eventually for TCSPs, and the ICCS for the insurance business.

494. On the other hand, Section 59(2) of the AML/CFT Law establishes the supervisory authorities for other business activities. In this respect the CBA is responsible to monitor lawyers, the ICPAC for accountants and auditors, and MOKAS for real estate agents and dealers in precious metals and stones.

495. Section 59(4) of the AML/CFT Law seems to provide the regulatory powers to all designated supervisory authorities by empowering them, for the purpose of preventing money laundering and terrorist financing and for the purposes of the AML/CFT Law itself , to issue directives to persons falling under their respective supervision. Such directives are binding and obligatory as to their application for the persons they are addressed to.

496. Section 59(5) on the other hand establishes the right of on-site inspection by empowering the designated supervisory authorities to monitor, assess and supervise the implementation of the AML/CFT Law, as appropriate, and of the directives issued in accordance with paragraph (4) by the persons falling under their supervision.

497. The AML/CFT Law however stops short to further empower the supervisory authorities to enter the premises of those they supervise, to demand and obtain documentation, records and to access all necessary information to adequately and effectively carry out their supervisory responsibilities. It is therefore pertinent to seek the inference of such provisions under their respective laws, which interpreted within the supervisory powers under the AML/CFT Law would apply for the purposes of supervising AML/CFT compliance.

CBC

498. Section 26 of the Banking Law empowers the CBC to supervise banks. The Law thus obliges every bank, when so required by the CBC, to make available for examination by a duly authorised official of the CBC its liquid and other assets, books or records, accounts and other documents, including those relating to the granting of loans and other facilities as well as the reports obtained by the bank regarding the business and financial position of debtors. Although this provision is targeted towards the responsibilities of the CBC for prudential purposes, when read within the empowerment to the CBC in the AML/CFT Law to monitor banks for compliance thereto, these provisions would likewise safely apply for AML/CFT purposes.

499. The CBC adopts a two way approach to its supervisory functions through off-site monitoring and on-site examinations. Among other prudential and operational scope of supervision, the on-site examinations also focus on areas related to AML/CFT procedures and controls. The CBC plans and conducts its on-site examinations on a risk based approach with the frequency and intensity of the examinations being governed by the principle of proportionality according to size, nature, systemic importance, scale and complexity of the bank's operations.

500. The following table shows the number of onsite visits/examinations to banks carried out by the CBC for the period 2001 – 2010 (April) as per the Third Round MER and the Fourth Round MEQ. The visits do not necessarily all relate to focused AML/CFT examinations but, according to the Cyprus authorities, all include at least an AML/CFT component.

Table 17: Number of on-site visits by CBC – Banks

Year	N° of On-site visits	Comments
2005	14	
2006	12	
2007	11	
2008	18	
2009	11	
2010	3	Up to end April

501. During the on-site visit the evaluators were informed that the CBC is also responsible to supervise MTBs, and in fact on-site examinations have already been undertaken. Although the CBC Act does not provide for this responsibility, it appears that the CBC now exercises this power vested to it by virtue of the Payment Services Law of 2009, transposing the EU Payment Services Directive.

502. The Third Round MER had concluded that on-site visits on a risk based and random basis are necessary and that it is not effective and sufficient only to base supervision on the monthly returns of MTBs. Since then the CBC has undertaken on-site visits as follows, all of which, according to the Cyprus authorities, include an AML/CFT component:

Table 18: Number of on-site visits by CBC - MTBs

Year	N° of On-site visits	Comments
2007	1	
2008	4	
2009	6	
End April 2010	3	

ASDCS

503. Cooperative Credit Institutions (CCIs) fall under the supervisory remit of the ASDCS. Section 41D and other parts of the Cooperative Societies Law empower the ASDCS to undertake supervision of these institutions. These institutions, which have now been reduced to 111 as at end 2009 from 362 in 2005, are considered to pose a low risk of ML/FT due to the nature of their limited activity which centres round the members of the cooperative.

504. The ASCDS carries out its supervisory function through its supervision department which has a staff of 20 officers out of the whole complement of about 60 officers. During the visit the evaluators were informed that the ASDCS carries out about 30 onsite visits annually programmed on a risk based approach basis, and not necessarily all targeting AML/CFT issues. The ASDCS further informed that in some cases some CCIs were found to have some laxity in their systems, such as not fully obtaining customer information data. Also, during off-site assessments it transpired that some institutions were not fully complying with the obligations regarding the

handling of suspicious transactions (alerts) in the AML system. In such circumstances the ASDCS issued warning letters to the CCIs concerned who rectified the situation.

505. Notwithstanding, in the replies to the Fourth Round MEQ, Cyprus has reported the following on-site visits by the ASDCS for the period 2005 – 2010 (as at the time of visit) and which, accordingly, include an AML/CFT component:

Table 19: Number of on-site visits by ASDCS

Year	N° of On-site visits	Comments
2005	12	
2006	3	
2007	3	
2008	6	
2009	13	
2010	10	As at time of visit

Notes: 1. The examination of CCIs' compliance with anti-money laundering obligations is part of the on-site supervision programme.
2. The number of CCIs has rapidly reduced to 111 today from 358 in 2005, due to the ongoing mergers.

506. For off-site monitoring the ASDCS applies an electronic system, SIRON AML, which is installed at all CCIs and which gives the ASDCS the ability of checking suspicious transactions and how these would have been handled by the MLCO. Although this could shed some concerns as to the responsibilities for identifying suspicious transactions, the ASDCS has confirmed that the ultimate responsibility for identifying suspicious transactions however remains with the MLCOs of the respective CCIs.

507. The component of an AML/CFT compliance visit normally includes the checking of manuals, customer acceptance policies, interviews with the MLCO and the internal auditor, and sample testing of transactions.

CYSEC

508. Section 32 of the Cyprus Securities and Exchange Commission Law of 2009 empowers CYSEC to request and collect information necessary or useful for the exercise of its responsibilities from those entities it supervises. CYSEC can demand this information through a simple written request specifying the purpose of its investigation. Any person to whom the request of CYSEC for the collection of information shall be addressed shall be bound to provide the requested information timely, fully and accurately.

509. Moreover, Section 33 of the CYSEC Law provides that for purposes of inspecting the compliance of the persons who are subject to its competence with any of the provisions of this Law and the relevant legislation, CYSEC may carry out inspections and, for these purposes, it may request and inspect information, enter offices and places of work of the persons under investigation and inspect the records, books, accounts, other documents and data stored in computers and take copies or extracts thereof. However, the power to inspect and collect information in accordance with the provisions of Section 33 shall not extend to the collection of texts constituting correspondence or communication and the person, natural or legal, under investigation shall have the right to refuse to provide the Commission with such information. The law provides for remedies for CYSEC to collect this information if it is necessary for its supervisory work.

510. CYSEC carries out its supervisory function through its supervision department. Currently 10 officers are responsible for licensing entities and undertaking the supervisory duties. CYSEC is currently in the process of recruiting further officers.

511. According to the information available, CYSEC has carried out 75 AML/CFT focussed on site examinations for the period 2005 – 2010 (time of visit) spread as follows:

Table 20: Number of on-site visits by CYSEC

Year	Number of Onsite Examinations	Administrative Fine	Request to take measures
2007	1	1	-
2008	5	-	5
2009	1	1	-
2010	4	-	4

512. The above indicates a severe reduction in the number of visits which CYSEC writes off to the lack of resources. CYSEC confirms that it expects to catch up again on its supervisory programme once it has more resource capacity.

ICCS

513. Part XIII of the Law on Insurance provides for the powers of the Superintendent of the ICCS to collect information, to enter the premises of those under his supervision and to inspect and impose administrative sanctions. Through these provisions of the law, the Superintendent is commissioned with the financial supervision of the Cyprus insurance companies for their business carried on within and outside the Republic, as well as the financial supervision of the foreign insurance undertakings, which hold a licence to carry on insurance business by virtue of the Insurance Law.

514. Moreover, Section 196 provides for the powers of the Superintendent of the ICCS to collect information necessary for the exercise of his functions as stated in the insurance law and to address relevant written request, to every natural or legal person who is under his control and supervision, as well as to every other natural or legal person, who is reasonably assumed to be in a position to give the information. Finally, the ICCS is empowered to carry out on-site investigations meant to ensure that insurance entities have sound administrative and accounting procedures as well as adequate internal control procedures and mechanisms.

515. The ICCS undertakes its supervisory function through its supervision Section which currently consists of 15 officers. Although according to the Third Round MER the ICCS had not undertaken any onsite examination, during 2008 - 2009 it undertook a total of 8 onsite visits which were either AML/CFT focussed or included an AML/CFT component.

Table 21: Number of on-site visits by ICCS

Year	Number of Onsite Examinations	Administrative Fine	Request to take measures
2008 & 2009	**8**	**-**	**-**

Enforcement and sanctioning powers of the Supervisory Authorities

516. According to Section 59(6) of the AML/CFT Law a supervisory authority may take all or any of the established measures in cases where a person falling under its supervision fails to comply with the provisions of the relevant parts of the AML/CFT Law or with the Directives issued by the relevant competent supervisory authority in accordance with paragraph (4) of the same Section 59

or the EC Regulation no. 1781/2006 of the European Parliament and the Council of 15th November 2006.

517. The measures and sanctions established by the AML/CFT Law, and that can be imposed by the supervisory authority, include requiring the supervised person to take such measures within a specified time frame as may be set by the supervisory authority in order to remedy the situation; impose an administrative fine of up to €200.000; or amend or suspend or revoke the licence of operation of the supervised person.

518. The sanctions and penalties / fines envisaged by the AML/CFT Law however do not provide for the relevant supervisory authority to apply them to an entity's directors and senior management. Again it appears from explanations given during the visit that, however, in most cases sanctions to directors and senior management can be applied through the respective laws governing particular sectors of the financial system

519. Thus for example, in terms of Sections 42 and 43 of the Banking Law, the Governor of the CBC can impose sanctions on the directors, managing directors, chief executives and other senior management personnel of a bank. Although this may indicate an overlap of sanctions, yet those sanctions under the Banking Law are applied for breaches of the Banking Law or any directives issued there under. The position appears to be similar for the other sectors of the financial system. It remains debatable therefore to what extent such sanctions from the respective laws can be applied for AML/CFT purposes as this has never been tested.

Recommendation 30 (Resources supervisors) *Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)*

520. CYSEC's Investment Firms Department is acutely understaffed to meet the challenge of supervising Cyprus' relatively large securities sector. This is reflected in CYSEC conducing only one onsite examination in 2009 to which CYSEC indicated results from lack of personnel. Currently, hiring freeze in place that prevents recruiting additional staff. =CYSEC hopes to increase staff level to 44 people in 2011. However, this is wholly dependent on the new budget bill that calls increased funding for CYSEC, which remains to be assured in the current economic climate in Cyprus.

521. For the Insurance Commissioner, in light of large number of intermediaries (more than 1,500) and the time-intensive nature of proper intermediary supervision, additional staff at ICCS is necessary to appropriately supervise this sector. While the insurance industry tries to police the intermediaries who direct business to them, the evaluators note that the expansion of staff numbers and stepped up supervision of insurance intermediaries will be key for ICCS, as it pursues a sustainable program for proper long-term supervision. Separately, lack of training on AML/CFT remains a concern for the evaluators. Similarly noted in the 3rd round Report, the ICCS indicated that it has yet to receive training on AML/CFT issues.

Recommendation 17 (rated PC in the 3rd round report)

522. In the Third Round MER the Plenary had agreed on an overall 'PC' rating for Recommendation 17 on the basis that the administrative fine of up to three thousand pounds (€ 5,125 – at the fixed € /£ 0.585274) was not effective, proportionate and dissuasive; and no sanctions had been imposed. Moreover, at the time, no specific supervisory authority for insurance intermediaries had been appointed under the AML/CFT Law.

523. In assessing Recommendation 17 for the DNFBPs sector, where it was also rated as 'PC', the Third Round MER had also identified that no authorities had been specified to apply sanctions on most DNFBPs and that no sanctions had been imposed.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

524. According to Section 59(6) of the AML/CFT Law, a supervisory authority may take all or any of the established measures in cases where a person falling under its supervision fails to comply with the provisions of the relevant parts of the Law or with the Directives issued by the competent supervisory authorities in accordance with the same Section 59 or the EC Regulation no. 1781/2006 of the European Parliament and the Council of 15th November 2006.

525. Thus, a supervisory authority may require the supervised person to take such measures within a specified time frame as may be set by it in order to remedy the situation; it can impose an administrative fine of up to €200,000 having first given the opportunity to the supervised person to be heard, and in the case the failure continues, to impose an administrative fine of up to €1,000 for each day the failure continues. Finally, the supervisory authority may amend or suspend or revoke the license of operation of the supervised person. It is further provided by the AML/CFT Law that the competent supervisory authority may, at its discretion, publicise the imposition of the administrative fine.

526. Moreover, the financial sector supervisory authorities are further empowered through their respective governing laws to impose sanctions. It is debatable however to what extent the provisions of the respective financial laws can by applied for breaches of AML/CFT obligations over and above those provided for under the AML/CFT Law. Indeed, if this was not the case, then there are overlaps on sanctioning between the AML/CFT Law and the respective financial laws.

Designation of Authority to Impose Sanctions (c. 17.2)

527. The AML/CFT Law, through Section 59, empowers the relevant supervisory authorities as established by the Law itself to impose penalties.

528. According to information received, supervisory authorities have applied sanctions against those falling within their supervisory remit. However, in their majority, sanctions imposed were in the form of requests to take measures to rectify weaknesses within a timeframe. Statistics provided (see below) indicate that during 2010 the CBC imposed 2 administrative fines on banks and one in 2007 while the CYSEC imposed two administrative fines, one in 2007 and one in 2009. However, no sanctions have been applied for the insurance sector and the credit co-operative sectors. Indeed, in the course of the evaluation, the evaluators could perceive a lack of awareness by the ICCS on its powers under the AML/CFT Law to impose sanctions.

529. The following tables give some indication on the number and type of sanctions imposed for the periods indicated as reported by Cyprus in its replies to the MEQ:

Table 22: CBC - Request to take measures within a timeframe (banks)

2007	2
2008	4
2009	6
2010	1

Table 23: CBC - Administrative fines to banks

2007	1
2008	0
2009	0
2010	2

Table 24: CBC - Request to take measures within a timeframe (MTBs)

2007	1
2008	4
2009	6
2010	3

Table 25: CYSEC – Administrative Fines and Request to take measures

Year	Administrative Fine	Request to take measures
2007	1	-
2008	-	5
2009	1	-

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

530. The sanctions provided for by the AML/CFT Law are applicable to the person engaged in a financial or other activity. The AML/CFT Law does not provide for the imposition of sanctions against the directors or senior management of a financial institution.

531. Although the respective financial laws provide for imposition of certain sanctions to directors or senior management as stated earlier, it remains debatable whether these can be applied for breaches of the AML/CFT Law. Indeed, in the evaluators view, sanctions provided for in the respective financial laws are only applicable for prudential breaches of the relevant laws and are not applicable for breaches defined in the AML/CFT Law and for which the AML/CFT Law provides specific sanctions.

532. It is interesting to note that in the Third Round MER the evaluators had commented (paragraph 447 of the MER) as follows with respect to criterion 17.3:

> "*Section 59 of the AML/CFT Law states that where an offence under Section 58 of the AML/CFT Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other officer of the body or any other person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of an offence and shall be liable to imprisonment of two years or to a pecuniary penalty of two thousand pounds or to both of these penalties. The evaluators conclude that Criterion 17.3 of the Methodology is met."*

533. This provision is no longer found in the new AML/CFT Law. Consequently sanctions under the AML/CFT Law do not appear to be applicable to the director or senior management of a person engaged in financial or other business activities.

Market entry

Recommendation 23 - (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1) & Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

534. The licensing procedure and the ownership changes in the banking, securities, and insurance market financial sector require that any natural or legal person who wishes to acquire or wish to increase their control (a result of which the proportion of the voting rights or of the capital held would reach or exceed the minimum limits of twenty per cent (20%), thirty per cent (30%) or fifty per cent (50%) or so that the bank would become its subsidiary) must notify in writing the respective supervisory authority and obtain its approval to that effect.

535. In assessing the notification received by any natural or legal person, the supervisors appraises the suitability and the financial soundness of the proposed acquirer against certain criteria, including the reputation of the proposed acquirer, the reputation and experience of any person who will direct the business of the bank as a result of the proposed acquisition, and whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of the AML/CFT Law, is being or has been committed or attempted, or that the proposed acquisition could increase the risk.

536. With regard to payment institutions, CBC assesses the management of the payment institution, and to the directors and persons responsible for the management of payment services activities, that is the requirement of good repute and possession of appropriate knowledge and experience to perform payment services. The process requires the following documents: a copy of criminal record, a non-bankruptcy report, a description of professional and academic qualifications, of the positions of manager or director they hold in other legal persons and of their previous employments.

537. In regard to the "fit and proper" criterion of directors and senior management of financial institutions, the Central Bank and CYSEC may reject any person whom the relevant authority views as not a fit and proper person to act as director, chief executive or manager of a bank. In determining whether the person's qualifications, the CBC considers his/her probity, competence, and soundness of judgment. Moreover, the Central Bank will not consider any person who is not of sufficiently good repute or lacks sufficient experience to hold any of the above positions. Other grounds for rejection include bankruptcy and criminal conviction. As part of the Central Bank's fitness and probity criteria Directives of 2006 and 2007, the banks are required to submit to the Central Bank of Cyprus a 'Personal Questionnaires' of the individuals proposed to hold any of the above posts. Similar requirement applies to payment institutions pursuant to the Payment Institutions and Access to Payment Systems Directive of 2009.

538. ASDCS indicated that a Regulative Decision for the Fitness and Probity of the Managers and Members of the Committees of CCI is in the final stage before being issued. This Regulative Decision will be similar to the corresponding directive of the Central Bank. [27]

539. The 3rd round Report noted that controllers, directors and managers of foreign insurance undertakings appear to be not actively vetted. Namely, it did not appear that their fitness and propriety—other than insurance intermediary—was verified by ICCS. The ICCS indicated before the onsite visit that Section 53 of the Insurance Law requires Superintendent of Insurance to determine fit and propriety of any person acting as a shareholder, managing director, chief

[27] The ASDCS later informed that this decision was published in the Official Government Gazette of Cyprus on 21 January 2011.

executive officer, and general manager. However, it remains unclear whether the issue raised in the 3rd round Report is satisfied.

540. With regard to a recommendation in the 3rd round Report on the need supervisory authority for insurance intermediaries, the Superintendent of Insurance has been designated as their supervisor in relation to activities determined by the Law on Insurance Service and Other Related Issues of 2003-2008, which covers the insurance intermediaries.

541. With regard to payment services, the Payment Services Law of 2009 prohibits the provision of payment services by a person not falling under one of the "payment service provider" categories. For a person other than a credit institution or an electronic money institution, provision of payment services is subject to authorization as payment institution. Such authorization is granted by the Central Bank, provided that the applicant is a legal person incorporated and having its head office in the Republic of Cyprus. Persons appointed by payment institutions to act as their agents are required be registered in a public register.

Licensing of other Financial Institutions (c. 23.7)

542. Although the Central Bank permits natural persons or legal entities to engage in currency exchange business as part of their business activity, it has not used this power up to present. In practice, currency exchange services may be provided only by (a) credit institutions and (b) investment firms, electronic money institutions and payment institutions.

On-going supervision and monitoring

Recommendation 23&32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4); Statistics on On-Site Examinations (c. 32.2(d))

543. According to Section 19(2) of the Banking Law, banks are required to have in place robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks which are or might be exposed to, and adequate internal control mechanisms, including sound and accounting procedures.

544. The Directive issued by the Central Bank of Cyprus on the "Framework of Principles of Operation and Criteria of Assessment of Banks' Organisational Structure, Internal Governance and Internal Control Systems" sets out the measures that banks are required to take to strengthen their organisational systems and internal governance arrangements. Among others, the Directive sets out the basic requirements of a sound internal control system, the composition and operation of banks' Boards of Directors, the role and responsibilities of Senior Management as well as banks' control units (Risk Management, Internal Audit and Compliance). In addition to the above, the said Directive (paragraph 28) requires banks to establish a Compliance Unit if:

(i) Their shares are listed on a Stock Exchange or

(ii) They have branches or subsidiaries abroad or

(iii) Their total assets, including off balance sheet items, exceed the amount of two billion €.

545. Moreover, it provides that the Compliance Unit should be administratively independent of any other units having operational responsibilities and reports to the Board of Directors and the Senior Executive Manager. The main function of the Compliance Unit is the establishment and application of suitable procedures for the purpose of achieving a timely and on-going compliance

of the bank with the existing regulatory framework. It should ensure, in particular, that the bank complies with the regulatory framework relating to the prevention of the use of the financial system for purposes of money laundering and financing of terrorism. It is noted that in the case of banks which are not required to establish a Compliance Unit under the provisions of the Directive, its functions are performed by the Risk Management Unit.

546. The Head of the Compliance Unit is appointed by the Board, after having obtained the consent of the Central Bank of Cyprus which reserves the right to request the substitution of the Head of the Unit if, in its opinion, he is no longer "fit and proper" to discharge his duties. The Head of the Compliance Unit is required to submit written reports to the Board, at least, on an annual basis, a copy of which is also sent to the CBC.

547. With regard to payment institutions, Section 7(3) of the Payment Services Law of 2009 is relevant. This provision transposes into Cyprus law Section 10(4) of the Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market) requiring an applicant payment institution to have robust governance arrangements for its payment services business, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective procedures to identify, manage, monitor and report the risks to which it is exposed, and adequate internal control mechanisms, including sound administrative and accounting procedures.

548. The authorisation requirements need to be fulfilled at all times throughout the functioning of the payment institution (Section 17(1)(b) of the Payment Services Law of 2009 transposing Section 12(1)(c) of Directive 2007/64/EC).

549. Before the enactment of the Payment Service Law of 2009, money transfer services were regulated by means of a Central Bank of Cyprus Directive. According to paragraph 2(1)(c) of the said Directive, the applicant was required to have the required organisation, the financial and technical means as well as the appropriate staff, effective internal control mechanisms and the appropriate accounting system for recording transactions.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

550. With regard to persons appointed by payment institutions to act as their agents, paragraph 9 of the Payment Institutions and Access to Payment Systems Directive of 2009 of the Central Bank of Cyprus is relevant. The said provision transposes into Cyprus law Section 17(1) of the Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market) requiring agents of a payment institution to have in place internal control mechanisms that ensure compliance with national and Community AML/CFT requirements.

551. According to Sections 59(1) and (6) of the AML/CFT Law, the Central Bank of Cyprus is the supervisory authority for all persons engaged in money transfer business in Cyprus for the purpose of monitoring, assessing and supervising the implementation of the preventive measures prescribed in the Law and CBC Directive.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

Application of Prudential Regulations to AML/CFT (c. 23.4); Statistics on On-Site Examinations (c. 32.2(d)) & Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6) & Supervision of other Financial Institutions (c. 23.7) & Statistics on On-Site Examinations (c. 32.2(d), all supervisors) & Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

552. According to Sections 76(1) and (2) of the AML/CFT Law, the Supervisory Authorities, MOKAS, the Ministry of Justice and Public Order, the Police, the Customs and Excise Department, have to maintain comprehensive statistics on matters related to their competences. Such statistics shall as a minimum cover, inter alia, the inspections made as well as the administrative penalties and the disciplinary sanctions imposed by the Supervisory Authorities. The statistics available are set out above.

Effectiveness and efficiency (market entry [(R. 23 [c. 23.1, c. 23.2]; R. 29c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3]) , R.29 and R. 30 (all supervisors))

553. None of the supervisors noted any severe anti-money laundering weaknesses or deficiencies. In the CBC and ASDCS's view, the risk of money laundering has decreased since the 3rd round evaluation largely stemming from the fact that financial institutions are more proactive in exercising enhanced due diligence on customers. The CBC believes the overall quality of the financial sector has improved. The ASDCS indicated that almost all of CCI's customers are local and physical persons, with their core activity concentrated on traditional housing and consumer loans and consequently, the risk of money laundering is small.

554. On supervision of banks, the CBC has begun implementing a risk-based model to inspections. CBC regularly receives internal suspicious transactions reports (STR) from banks to assess trends or patterns of possible money laundering activity. When asked about possible reasons for a steady increase in the number of these internal STRs filed since 2006 (especially a near 100% increase between 2008 and 2009) the CBC observed that this was a reflection of the banks' increased awareness their compliance duties. If the CBC disagrees with the MLCO's analysis, which did not result in the filing of a STR with MOKAS, the Central Bank can file the report itself or instruct the bank to do so.

555. Despite the large number of CCIs, the ASDCS's supervision appears to be effective. Its adoption of risk-based approach to classifying customers should be commended. Moreover, the supervisor's real-time remote monitoring of transactions, especially with emphasis on compliance regarding sanctioned entities/individuals and PEPs seem to be appropriate as long as the responsibilities for the identification of suspicious transactions are clearly delineated and applied.

556. As regards money transfer businesses, the CBC believes the risk of money laundering is low. While the Cyprus authorities have issued a Directive to money transfer providers and began conducting onsite inspections subsequent to the 3rd Round evaluation, the evaluators think that adequate information is still lacking to arrive at such conclusion. The two licensed MTBs interviewed during onsite appear to have highly technical system in place to monitor activities; however, in the evaluators' view, the existence of the large number of MTB outlets, especially large number of sub-agents (there are 6 master agents, 19 master agents units, and 144 sub-agents, the latter figure excluding 82 branches of credit institutions acting as sub-agents), and ever increasing volume of outbound transfers, demand much more monitoring and scrutiny to judge for effectiveness**.**

557. Although the CYSEC notes that it is satisfied with the industry's compliance with AML/CFT obligations, its lack of risk-based approach and inability to conduct regular onsite inspections are of particular concern. The supervisor conducted only one on-site inspection in 2009 and 4 by the time of the on-site visit in 2010. The current situation is a sharp about-face from the 3rd round Report, which had welcomed the increase in the number of onsite visits in the period of 2001-2004 and had noted that the supervisor maintained a high level audit program for each inspection.

558. The sanctions contemplated by the AML/CFT Law, which are applicable to all persons engaged in financial or other business activity, appear to be effective, proportionate and dissuasive. However,

sanctions imposed have been mainly in the form of warning letters to take corrective action. The Cyprus authorities hold that this is due to the fact that no serious weaknesses have been identified by the supervisory authorities. It must be noted, however, that according to the authorities such letters have been effective and corrective action has always been taken. Notwithstanding, the CBC has informed that it had imposed in two instances administrative fines of the amount of 100.000 €. There have been no sanctions applied within the insurance and the CCIs sectors.

559. To sum up, the overall situation as regards sanctions applied by the Cyprus supervisory authorities are:

a. For the period 2007 – 2010, in the banking sector which comprises 42 banks only 13 warning letters and 3 administrative fines have been imposed;
b. For the same period for MTBs, of which there are 6 master agents, 19 master agents units, and 144 sub-agents, the latter figure excluding 82 branches of credit institutions acting as sub-agents only 14 sanctions in the form of warning letters have been imposed;
c. In the securities sector, for the period 2007 – 2009, sanctions in the form of 2 administrative fines and 5 warning letters have been imposed in a sector comprising 77 CIFs and one regulated market (Cyprus Stock Exchange);
d. For the period 2007 – 2010, no sanction for the current 111 CCIs and the 13 life insurance companies;
e. No indication of any sanctions imposed on the DNFBPs sector[28] .

560. Comparing the sanctions applied since 2007 for the financial sector it transpires that the overall number of sanctions imposed appears low in proportion to the sector implying a high degree of compliance – a position not necessarily endorsed by the evaluation team.

561. All the supervisory authorities for the financial sector have the necessary powers enabling them to fulfil their supervisory remits. These include the right to undertake off-site and on-site examinations, to enter the premises of those they supervise and to demand and obtain the necessary information to ensure compliance with the AML/CFT Law. Although overall the financial sector appears to be adequately monitored, with the exception of the concerns noted in respect of MTBs outlets and investment firms and regulated markets, the evaluation team is concerned by the noticeable decrease in the past recent years in the number of on-site visits. Moreover the implementation of sanctions for breaches of AML/CFT on directors and senior management does not appear to be adequately covered.

3.7.2 Recommendations and comments

Recommendation 23

562. The CBC should step up coordination with the licensed MTBs for enhanced onsite monitoring of more than several hundred MTB outlets. While highly technical systems appears to be in place at MTB outlets, the current number of examinations is woefully inadequate to effectively monitor them, especially a large number of sub-agents.

563. CYSEC should adopt a risk-based approach in its supervision. Additionally, CYSEC urgently needs to conduct more onsite inspections.

[28] Included for the sake of completeness

Recommendation 17

564. Although the respective financial laws provide for the imposition of sanctions at various degrees and levels, including their applicability to directors and senior management, in the opinion of the evaluators these are not extendable to AML/CFT breaches. Consequently there remains legal uncertainty as to what extent these provisions can be applied to impose the AML/CFT sanctions contemplated by the AML/CFT Law. Indeed no such sanctions have been ever imposed. It is consequently advisable to revise the AML/CFT Law with the intention of re-inserting the previous Section 59 or similar provisions, thus removing any legal uncertainty in any of the financial laws.

565. Efforts should be made all round to ensure that sanctions imposed are commensurate with the offence or repeated offence, thus the supervisory authorities would be applying a range of sanctions that are not necessarily in the form of warning letters.

Recommendation 29

566. Since the third round evaluation the ICCS has launched on-site visits of the insurance sector. This, complemented with the examinations undertaken by the CBC and the ASDCS and CYSEC, covers the supervision of the whole financial sector with the supervisory authorities having the necessary powers, including a sanctioning regime, through their respective laws to effectively fulfil this remit.

567. Notwithstanding, there is room for improvement in the number of on-site visits undertaken by the supervisory authorities. It is therefore recommended that, although applying a risk based approach to supervision is appropriate and welcomed, the coverage through on-site examinations is to be increased.

568. It is also recommended that the powers of the supervisory authorities to apply sanctions for breaches of AML/CFT obligations be clarified as implemented through the AML/CFT Law and the respective financial legislation with respect to applicability to directors and senior management of the institution.

Recommendation 30

569. The evaluators understand that CYSEC hopes to increase staff level to 44 people in 2011, but this is dependent on a new budget that calls for increased funding for CYSEC. If the new budgeting requirement is met, CYSEC should augment the Investment Firms Department to a proper staffing level. Currently, this Department responsible for compliance is acutely understaffed to supervise Cyprus' relatively large securities sector.

570. Increased staffing level is necessary at the Insurance Commissioner, especially in light of growing number of professional intermediaries and time-intensive nature of proper intermediary supervision. ICCS should promptly commence training on AML/CFT issues.

3.7.3 Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• There is legal uncertainty on the applicability of the AML/CFT sanctions to the directors and senior management;

		• Sanctions imposed are not proportionate to the sector and mainly in the form of warning letters; • No sanctions imposed in the insurance and credit cooperatives sectors.
R.23	**LC**	• CBC should work with licensed MTBs to devise ways to conduct more onsite inspections, especially sub-agents. • Very low number of CYSEC onsite examinations.
R.29	**LC**	• There is legal uncertainty on the applicability of the AML/CFT sanctions to the directors and senior management • Very low number of CYSEC onsite examinations.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

571. Further to the requirements of Section 59(4) of the AML/CFT Law, the supervisory authorities for the non-financial sector have likewise issued directives for those they supervise guiding them on the implementation of and compliance to their obligations under the law:

- AML Directive to the Members of the CBA (hereinafter D-Lawyers) - February 2009 (second edition);
- AML Directive to the Members of ICPAC (hereinafter D-Accountants) – 2nd edition September 2008; [29]
- AML Guidelines to the Members of the Cyprus Jewellers Association (hereinafter G-Dealers) – issued by MOKAS on 18 April 2008;
- AML Guidelines to the Members of the Cyprus Estate Agents Registration Council – hereinafter G- Estate).

572. Likewise as for the financial sector, the evaluation team took into account the decision taken in the Third Round Evaluation that these directives and guidelines shall be considered *other enforceable means* for the purpose of this assessment.

Generally

573. DNFBPs are recognised under the AML/CFT Law under the definition of 'other activities' under Section 2 of the law.

574. As indicated in the table below, with some minor exceptions, DNFBPs as defined in the Glossary to the FATF Methodology are broadly covered by Section 2 of the AML/CFT Law. However:

- The Cyprus authorities have informed that there are no casinos (land or internet based) in Cyprus. There are however a number of outlets providing gaming services in Cyprus which the evaluators could not conclude whether or not these comprise casinos. In any case currently there is no law governing casinos and no authority responsible for the activity. But the evaluators have been informed that a new law on betting is in front of Parliament. The law will not provide for internet (on-line) betting or gaming and will create a new supervisory authority for the sector (the National Betting Authority). It is not clear to the evaluators how the present gaming or betting houses will be incorporated in that law.
- Although the AML/CFT Law provides for 'Trading in goods such as….' it is not clear to what business activities other than dealing in precious metals and precious stones the Law applies as the focus remains the latter, which in the AML/CFT Law these are given as examples (see guidance issued by MOKAS)and there are no indications to any other activity.
- Notaries are not included under the legal profession as this profession does not exist in Cyprus.
- The accountancy and audit profession is shown as a separate profession and would thus positively cover all the operations of this profession as encouraged by the FATF Methodology – and as required under the EU Third AML/CFT Directive. According to the AML/CFT Law this includes when the profession undertakes transactions for

[29] ICPAC indicated having amended the D-Accountant to include the 2010 amendments to the AML/CFT law.

the account of their customers in the context of carrying out financial business. However, the activities for 'accountants' as defined and covered under the Glossary to the FATF 40 do not necessarily fall within the activities of this profession in Cyprus. It follows therefore that the accountancy profession may not be within the scope of coverage as required under the FATF Methodology. That said, however, the Cyprus authorities have assured that the activities as listed under the FATF Glossary and as applied to the legal profession in the AML/CFT Law are *traditionally* undertaken by the accountancy profession as part of its activities.

- TCSPs are now included in the AML/CFT Law as obliged persons but the relevant law for regulating and monitoring this activity is still pending.

575. The table below provides a comparison of the provisions under the AML/CFT Law for 'other activities' further to the financial sector with the definition of DNFBPs in the Glossary of the FATF 40.

Table 26: Comparative FATF/ AML/CFT Law Designated Non-Financial Businesses and Professions

FATF Methodology (Glossary)	AML/CFT Law
Casinos (which also includes internet casinos)	Not applicable. No casinos in Cyprus
Real Estate Agents	Real Estate Agents under Real Estate Agents Law
Dealers in precious metals Dealers in precious stones	Trade in goods such as precious metals and stones whenever payment is in cash and in amounts equal to or above €15,000
Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transaction for a customer re: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • creation, operation or management of companies; • creation, operation or management of legal persons or arrangements and buying and selling of business entities.	Independent lawyers, when acting for or on behalf of clients in transactions involving: • buying and selling of real property or business entities; • managing of client money, securities or other assets; • opening or management of bank, savings or securities accounts; • creation, operation or management of companies; • creation, operation or management of trusts, legal persons or similar structures. Also by acting on behalf and for the account of their clients in any financial or real estate transactions.
(see above)	Auditors, external accountants and tax advisors in the exercise of their professional activities, including transactions for the account of their customers in the context of carrying out financial business.
Trust and company service providers for any of the following services to third parties: • acting as a formation agent of legal persons; • acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; • providing a registered office; • acting as (or arranging for another person to act as) a trustee of an express trust; • acting as (or arranging for another person to act) as a nominee shareholder for another person.	The following trust services and company services to third parties: • forming companies or other legal persons; • acting as or arranging for another person to act as a director or secretary of a company, a partner in a partnership or a similar position in relation to other legal persons; • providing a registered office, business address, correspondence or administrative address and other related services for a company, a partnership or any other legal person or arrangement; • acting as or arranging to another person to act as a trustee of an express trust or a similar legal arrangement; • acting as or arranging for another person to act as a nominee shareholder for another person.

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5 to R.10)

4.1.1 Description and analysis

576. The AML/CFT Law does not make any distinction in the application of the obligations under the Law between those obliged persons and entities as identified within the scope of its application. Thus the AML/CFT Law, in determining the obligations to be observed under its scope always refers to the financial sector and DNFBPs jointly as "any person carrying on financial or other business activities" thus enforcing the overall applicability of the scope of the obligations.

577. This is clearly shown in Section 58 of the AML/CFT Law which applies all obligations of CDD; record keeping; internal and external reporting; the maintenance of internal controls, risk assessment and risk management; the ongoing monitoring of dubious transaction or transactions that are large and complex; and the provision of training to employees to *any person carrying on financial or other business activities*. In this regard, such persons are obliged to apply adequate and appropriate systems and procedures in relation to the foregoing.

578. The only exceptions made by the AML/CFT Law relate to those circumstances for the legal and the accountancy professions when, in the course of their duties, they are acting in the course of ascertaining the legal position of their client or performing their tasks of defending or representing that client in judicial proceedings, including advice on instituting or avoiding proceedings – see for example Section 62(5) of the AML/CFT Law.

Recommendation 12 (rated PC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

579. In the Third Round MER, Recommendation 12 has been rated as 'Partially Compliant' for a number of factors, mainly being those similar to the deficiencies identified for the individual component Recommendations making up the composite Recommendation 12. Some of these deficiencies, as already noted for the financial sector under the relevant Recommendations for Recommendation 12 and which have been assessed by the evaluators for the Fourth Round, have been addressed. The paragraphs that follow aim to apply the relevant assessment for the financial sector to the non-financial or DNFBPs sector.

Applying Recommendation 5

Casinos

580. Although there are a number of gaming / betting houses in Cyprus, and these are not currently regulated or supervised and do not therefore fall within the remit of the AML/CFT Law, the Cyprus authorities claim that there are no casinos in Cyprus as these are prohibited. Additionally, the Cyprus authorities note that a number of online casinos operate on the basis of licenses obtained from other European countries.

581. The evaluators are informed that a new Law on Betting will soon be enacted and this will provide the necessary regulatory and supervisory framework, while creating a new supervisory authority for the purpose – the National Betting Authority. The new law will not allow on-line or internet gaming and betting but is aimed at improving the existing legal framework of offline sports betting and regulating online sports betting .

Real estate agents

582. Real estate agents, as obliged entities under the AML/CFT Law, Section 2, under the definition of "other activities" are required to comply with the requirements set out in Criteria 5.1-5.18.

583. The G-Estate issued by MOKAS in terms of the AML/CFT Law provides some guidance to the industry on CDD requirements. It however mainly focuses on identification procedures but does not provide guidance on the full CDD requirements and how these should be applied in practice.

584. Real Estate Agents must be registered with the Estate Agents Registration Council and licensed accordingly. However, from discussions with the representative of the Council the evaluators understand that there are still a number of unlicensed persons providing the services of real estate agents. The Council has no remit in the AML/CFT structure in Cyprus as this is vested in MOKAS. It appears that no action is being taken by any authority to ensure regularisation of this situation.

585. Discussions with the industry however indicate that there is still a high degree of unawareness of the obligations under the AML/CFT Law for the real estate agents. It appears that the sector does not believe there is a big problem that its activities could be used as a vehicle for ML/FT as contracts are drawn by lawyers and payment is often done through the banking system.

Dealers in precious metals and dealers in precious stones

586. Dealers in precious metals and precious stones are obliged entities under the AML/CFT Law Section 2, under the definition of "other activities" by way of example for those persons trading in goods where payment is effected in cash for amounts equal to or above €15,000. As such they are required to comply with the requirements set out in criteria 5.1-5.18 when they engage in any cash transaction with a customer that is equal to or above €15.000.

587. The G-Dealers issued in terms of the AML/CFT Law by MOKAS provides some guidance to the industry. It is worth however noting that the Guidelines require dealers in precious metals and stones s not only to identify customers in all instances where payment is in cash and equal to or above €15,000 but also to notify MOKAS accordingly, irrespective of whether the transaction is suspicious or not. In the evaluators view this constitutes a Cash Transaction Reporting (CTR) obligation for this sector only and should not impact on the STR obligation for this sector by shifting the responsibility of identifying suspicious transactions onto MOKAS. Again the Guidelines fall short in providing guidance for the full application of CDD requirements and focuses mainly on the identification process.

588. The members of the Association are those persons who manufacture, import or sell jewellery and who are licensed accordingly by the Assay Office. Membership in the Association is compulsory. The Association is not directly involved in AML/CFT issues but the industry opines that since the issue of the guidance notes by MOKAS there is now growing awareness of the obligations by the industry.

589. Discussions with the industry however indicate that although there may be more awareness of the obligations – this mainly in the reporting of all transactions that are in cash and equal to or above €15,000, therefore more in relation to a CTR reporting system – there is some element of negative reaction to this reporting obligation for all large cash transactions as the industry believes this is to its disadvantage being the only industry required to report accordingly. In any case, the industry holds that such cash payments have become a rarity partly because of a fall in business and partly due to the use of credit and other electronic methods for effecting payment.

590. In conclusion, it appears that the customer identification and CDD requirements for this sector are mainly centred in the obtainment of customer information for large cash transactions.

Lawyers and other independent legal professionals and accountants

591. The CBA has revised its Directive of 2005 pursuant to the new AML/CFT Law and has distributed the new Directive to all lawyers. New and updated sections have been added in order to constitute the Directive as an important tool for the identification and verification of persons/customers (physical and legal) in cases where either they purport to deal with financial transactions and/or other related activities or where the lawyers purport to act on behalf of the customers in the same activities. The identification and verification procedures apply also for the beneficial owners as well as the persons who have ultimate control or significant influence over the established business.

592. According to Section 3.03 of the D-Lawyers, all lawyers should have appropriate procedures for: identifying clients (Sections 4.01-4.49 of the Directive); record-keeping (Sections 5.01-5.13 of the Directive); recognizing and reporting suspicions of money-laundering or terrorist financing (Sections 6.01-6.33 of the Directive); and education and training of partners and staff (Sections 7.01-7.16 of the Directive).

593. A new development in performing the CDD measures is the obligation, referred in Section 4.46 of the D-Lawyers, of the lawyer to put in place appropriate risk technological management systems to determine whether a potential client or the beneficial owner is a politically exposed person. This information can be obtained by publicly available information or having access to commercial electronic database of PEPS.

594. The revised D-Lawyers is quite thorough in highlighting the obligations of lawyers under the AML/CFT Law and in providing guidance accordingly. Some provisions may need to be reviewed to ensure harmonisation with the provisions of the law. For example, paragraph 4.05 indicates an element of third party reliance in the case where a new client is introduced by a partner, a trusted member of staff, a respected client of long standing or another reliable source, and the lawyer may take the view that no further verification of identity should be required so long as the introducer confirms in writing the identity of the prospective client. This may be against the provisions of Section 67 of the AML/CFT Law which establishes specific instances for third party reliance. It also goes against the principle introduced in Section 4.09 of the D-Lawyers. Therefore it could leave a gap in the effective application of the identification and verification procedures within the CDD process.

595. In the discussions with representatives of the CBA the evaluators could not establish the extent to which lawyers apply the CDD and customer identification procedures. However, it appears that there may still be deficiencies in its application as from visits undertaken by the CBA it transpired that a number of offices complied in full, others seriously lacked procedures to fulfil obligations while others were partly compliant.

Trust and company service providers

596. The AML/CFT Law recognises TCSPs as obliged entities under the law. TCSPs are defined in the AML/CFT Law in a similar way as they are defined under the FATF Glossary.

597. Currently there is no law governing this activity. Notwithstanding, it is noted that the vast majority of such activities are conducted by lawyers and accountants who are already regulated and supervised. It must be noted however that under the AML/CFT Law lawyers and accountants

are not directly identified as obliged entities for providing such services unless recognised as such under TCSPs.

598. In this respect the evaluators have been informed that a bill has been prepared which will govern the licensing, monitoring and regulating of these activities. It is foreseen that CYSEC will be designated as the Supervisory Authority – although the CBA and ICPAC both expressed their view in the understanding that they will retain their supervisory remit for lawyers and accountants respectively when these are acting as TCSPs.

599. In these circumstances, the customer identification and CDD requirements for lawyers and accountants would remain applicable when undertaking activities of TCSPs.

Certified Public Accountants, auditors and tax advisors

600. As explained above, the scope of the AML/CFT Law is applied to the accountancy and audit profession within the coverage of their professional activities. The operations for 'accountants' as defined and covered under the Glossary to the FATF 40 do not therefore necessarily fall within the operations of this profession in Cyprus as covered by the AML/CFT Law. In determining the scope of the Directive (see below) issued by IPAC, Section 1.08 attempts to define the activities undertaken by the accountancy and audit profession but these remain outside those activities applied by the FATF 40 as applied to the legal profession.

601. ICPAC has issued a revised D-Accountant in accordance with the AML/CFT Law No. 188(I)/2007 and distributed a new implementation manual to all its members in September 2008, shortly after the D-Accountants was issued. In the revised D-Accountants new Sections have been added and others amended in order to establish implementation procedures and guidance for the identification and verification of persons/clients (natural and legal). In addition, instructions and guidance have been included in order to ensure that the identification and CDD requirements are duly exercised when they are dealing with financial transactions on behalf of their clients.

602. Section 3.03 of the D-Accountants requires all members and practicing firms to have appropriate procedures for identifying clients (Section 4); record-keeping (Section 5); recognizing and reporting suspicions of money laundering or terrorist financing (Section 6); and the education and training of partners and staff (Section 7).

603. The D-Accountants is quite detailed and exhaustive in providing the industry with guidance and procedures on the identification and CDD requirements. The following are some indicative points referred to in the D-Accountants for the application of the identification and verification procedure for both natural and legal persons include:

- Detailed questionnaire completed by customers.
- Satisfactory evidence of identity such as certified copies of Passport or ID.
- Satisfactory evidence for proof of address, such as a recent utility bill.
- Company search, in cases of legal customers, and/or other commercial inquiries such as credit reference agency search or reference from a bank or another professional adviser.
- Obtaining information on the purpose and intended nature of the business relationship.
- Conducting on-going supervision to ensure that the transactions being conducted are consistent with the data and information held by the member or member firm in connection with the client.
- The identification and verification procedures apply also for the beneficial owners as well as the persons who have ultimate control or significant influence over the

established business and the management of the legal entity (composition of Board of Directors).

604. From information through the discussions with IPAC representative the evaluators understand that although through the on-site visits undertaken, most of the firms visited have not had good results and others failed the monitoring assessment mainly due to reasons related to independence, yet none of the firms failed these assessments because of AML/CFT issues.

605. However, the evaluators are informed that, through these assessments, the main identified weaknesses in the identification and CDD requirements relate mainly to the ongoing due diligence procedures; and the lack of evidence for the identification of and contact with the beneficial owner as this is always done through intermediaries. On the other hand, the evaluators have been informed that accountants often seek information from banks on their clients – a claim not necessarily corroborated by the banks.

Applying Recommendation 6

606. The definition of politically exposed person under the AML/CFT Law is close to that in the FATF 40. The deficiencies noted in the previous Section in respect of Recommendation 6 are also applicable in this context. The law however stops short in giving indication which categories of persons could fall within that definition as provided for in the definition in the FATF 40. While such examples are however provided for in the D-Banks, and the D-Securities for the financial sector but not in the rest of the Directives or guidance for the non-financial sector.

607. In the Third Round MER it had been established that with reference to Recommendation 6, there were no provisions about PEPs in the Guidance to Accountants (G-Accountant) or the Guidance to Lawyers (G-Lawyers). The D-Lawyers and the D-Accountants now require these professionals to put in place appropriate risk technological management systems to determine whether a potential client or the beneficial owner is a politically exposed person (PEP). This information can be obtained by publicly available information or having access to commercial electronic database of PEPs. ICPAC stated that it has made available these electronic databases to its members at a discounted group rate. The CBA informed the evaluators that it plans to do the same for its members.

608. There is however no such requirement, or even a reference to PEPs, in the G-Estates and G-Dealers.

Applying Recommendation 8

609. Recommendation 8 was not examined under the Fourth Round Evaluation for the financial sector and hence the findings for the Recommendation in the Third Round MER would apply.

610. For the purposes of the DNFBPs, the Third Round MER had identified that whereas criterion 8.1 requires policies to be in place or measures to be taken to prevent the misuse of technological developments in money laundering or terrorist financing schemes, neither the G-Accountants nor the G-Lawyers covered the misuse of technological developments.

611. Such references are now made in the D-Lawyers and the D-Accountants but not in the G-Estates and G-Dealers.

612. It must be mentioned however that through the amendments to the AML/CFT Law there is no longer any reference to threats arising from new technologies. Instead Section 66(3) of the Law now refers to threats that may arise out of products or transactions that may favour anonymity. Although this is in line with the EU Third AML Directive, the law falls short from the

requirements of Recommendation 8, which requirements however are partially addressed through the relevant Directive as indicated above.

Applying Recommendation 9

613. Recommendation 9 was not examined under the Fourth Round Evaluation for the financial sector and hence the findings for the Recommendation in the Third Round MER would apply.

614. The Third Round MER at the time had identified that the G-Accountants and the G-Lawyers do not contain provisions on the use of intermediaries or other third parties to perform elements of the customer due diligence process. Accordingly, the evaluators understood that the combination of the AML/CFT Law (which contains no provisions on intermediaries) and the Guidance Notes do not allow for delegation of any customer due diligence obligations and, therefore, that Recommendation 9 is not applicable to DNFBP covered by the Notes.

615. Moreover, and as indicated above, paragraph 4.05 of the D-Lawyers indicates an element of third party reliance in the case where a new client is introduced by a partner, a trusted member of staff, a respected client of long standing or another reliable source

616. The AML/CFT Law now makes specific references under Section 67 to the performance by third parties for customer identification procedures and customer due diligence measures and the reliance on such procedures by persons engaged in financial or other business activities. The AML/CFT Law however seems to place reliance for the full identification and CDD measures and not on selected parts, thus indicating possible reliance for ongoing due diligence.

617. In this respect, both the D-Lawyers and the D-Accountants have an indirect reference to third party performance only to the extent that when a client is introduced by an intermediary then it is the client who is the applicant for business.

618. There are no reference as such in the G-Estate and the G-Dealers.

Applying Recommendation 10

619. The AML/CFT Law is rather limited in providing direction for the commencement of the period of five years for the retention of both identification and transaction record keeping. In requiring the retention of records for a five year period Section 68(2) of the AML/CFT Law provides that the five year period is calculated following the carrying out of the transaction or the end of the business relationship.

620. The D-Lawyers and the D-Accountants, in referring to the provisions of the AML/CFT Law under Section 68 seem to go beyond the limited provisions of the Law but at the same time refer to the provisions of Section 68 of the AML/CFT Law. In other words, both Directives under Section 5.0 seem to be still referring to the provisions of the previous law as had been assessed under the Third Round MER.

Effectiveness and efficiency

621. Cyprus has achieved progress in most areas on the issues raised in the Third Round MER, especially in those criteria required to be covered by law, including customer due diligence, politically exposed persons, and record keeping. Certain concerns remain, however, such as the level of awareness on customer due diligence issues and the effective application of the beneficial owner identification process in most sectors of the DNFBPs. Moreover, discussions held with the industry and the application of the G-Estate and G-Dealersraise high concerns on the effective implementation of the AML/CFT requirements in these two sectors.

622. Moreover, the D-Lawyers (Section 4.05) allows lawyers to forego further customer identification verification process if a partner, a trusted member of staff, a respected client of long standing or another reliable source introduces a new client so long as the introducer confirms in writing the identity of the prospective client. In the evaluators' view, such exemption runs counter-productive to the effective implementation of the AML/CFT Law and exposes vulnerabilities in the anti-money laundering system. The on-site visit highlighted a growing concern that the lack of supervision and legal tool regarding intermediaries acting as business introducers could pose risks to the Cyprus anti-money laundering system and thus impact on the effectiveness of the system.

623. There is currently no law governing TCSPs as independent obliged persons and, although as claimed by the Cyprus authorities this activity is currently provided by lawyers and accountants as part of their profession, the evaluators could not measure and assess the effectiveness of compliance with the obligations under the AML/CFT Law. This raises in fact concerns whether lawyers and accountants would be subject to compliance with the AML/CFT law for such activities.

624. The evaluators express concern on the effectiveness of the implementation of the risk based approach within the DNFBPs sector in general.

4.1.2 Recommendations and comments

625. It is recommended that the authorities provide more guidance and implement outreach programs to the whole non-financial sector in general and in particular to certain sectors as indicated above to raise their awareness of customer due diligence measures in the DNFBPs sectors.

626. As in the definition of 'other activities' under Section 2 item (d) dealers in precious stones or metals are given by way of example (… such as…) with the thrust of the definition being on *Trading in goods…*, the Cyprus authorities are encourage to identify which other trading in goods activities should be captured under the definition and monitored accordingly in terms of the AML/CFT Law.

627. There is also a need to clarify the provisions of the AML/CFT Law in the case of the accountancy profession (accountant and auditors) to ensure that the profession is caught under the law when undertaking activities as listed for the legal profession in addition to the main activities of the profession. With regard to the legal profession, clarifications should be provided on the fine line between third party reliance and the use of intermediaries.

628. The authorities should also consider prescribing high risk situations where enhanced due diligence should be applied by DNFBPs.

629. Also, in order to fully comply with Recommendation 6, Cyprus should redefine the definition of a PEP in the AML/CFT law as recommended in Section 3 and also ensure that the directives and guidelines applicable to DNFBPs are adequately harmonised and include further guidance to assist DNFBPs in the implementation of the PEP requirements.

4.1.3 Compliance with Recommendation 12

	Rating	**Summary of factors relevant to s.4.1 underlying overall rating**

R.12	**PC**[30]	• Legal framework covering TCSPs is not adopted; • No identification of other activities that trade in goods where payment can be effected in cash above €15,000; • Uncertainty whether the accountancy profession is caught under the law for the activities indicated in the FATF 40; • Lawyers can forgo the verification process upon declaration of introduction by specified persons; beyond what the law allows. • The deficiencies listed in Section 3 regarding PEPs also apply to DNFBPs (ie. the PEP related requirements in the AML/CFT Law do not apply to foreign PEPs resident in Cyprus; there is no requirement to obtain senior management approval to continue business relationship when a customer/beneficial owner becomes a PEP or is found to be a PEP during the course of an already established business relationship) and in addition, G-Estate and G-Dealers do not include any additional complementing provisions related to PEPs • Lack of adequate requirements to pay special attention to risks arising from new or developing technologies for DNFBPs • Effectiveness issues: - Low level of awareness of the implementation of a risk based approach principles to identify higher risk customers by DNFBPs in general. - Need to enhance awareness on identification requirements and CDD measures in particular on the beneficial owner concept.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

Recommendation 16 (rated PC in the 3rd round report)

Applying Recommendation 13

630. The requirements are substantially the same as the requirements outlined for financial institutions in Chapter 3 of this report. With regard to essential criteria 16.1. (13.1.-13.4.) DNFBPs involved in 'other activities' regulated under Section 2 of the AML/CFT Law such as real estate agents, dealers in precious metals and dealers in precious stones, lawyers and accountants trust and company service providers are under the same reporting obligation as financial businesses.

631. The directives and guidelines covering the reporting obligation for DNFBPs make different references to both Section 27 and 69. Both the D-Jewelers (page 5) and the G-Estate (page 9) state that "According to Section 27, if any professional has knowledge or suspicion that illegal funds are being concealed, he must immediately report it to MOKAS." – with D-Estate making reference to Section 69 as part of the internal procedures and duties of the MLRO and the D-Jewelers with no reference to Section 69. The comments made earlier in respect of the reporting

[30] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 7, 8, 9 and 11.

obligation as set out in the AML/CFT Law and the need of harmonising the provisions under Section 27 and 69 of the law are also relevant in this context.

632. As regards dealers in precious metals and stones, these professionals have the obligation to report not only when they identify or suspect that any other transaction may involve illegal funds but also when they are engaged in any cash transaction equal or above the amount of €15.000. The obligation to report cash transaction is not an obligation that is required by the AML/CFT Law. It is a requirement imposed by the G-Dealers issued by MOKAS. Although the intention of MOKAS is to ensure that all such transactions are reported to it, the evaluators are of the view that this could lead dealers in precious metals or stones not to identify whether a transaction is suspicious and hence the onus for such identification passes on to MOKAS itself. Dealers in precious metals and stones have never submitted a report to MOKAS.

633. Moreover, whereas the AML/CFT Law under Section 2 in defining "other activities" refers to dealers in precious stones or metals by way of example of traders in goods where payment can be effected in cash and in amounts equal to or above €15,000, the Cyprus authorities have not identified any other traders who would be caught under the AML/CFT Law when they trade in goods where payment is effected in cash within the set parameters.

634. With respect to the legal profession it is recalled that in Cyprus the notary profession does not exist.

635. With regard to additional element 16.4 of the Methodology, Section 2 of the AML/CFT Law under the definition "other activities" in relation to accountants, covers all their professional activities. Subparagraph (a) covers all their professional activities, including auditing. Additionally, with regard to additional element 16.5, the DNFBPs do not have to identify any specific criminal activity. They have to report whenever there is suspicion.

636. Although the definition under Section 2 of the AML/CFT Law covers all the professional activities of the accountancy profession, it is limited only to those. According to the AML/CFT Law, this includes transactions for the account of their customers in the context of carrying out financial business. However, the activities for 'accountants' as defined and covered under the Glossary to the FATF 40 do not necessarily fall within the activities of this profession in Cyprus. It follows therefore that the accountancy profession may not be within the scope of coverage as required under the FATF Methodology. That said, however, the Cyprus authorities have assured that the activities as listed under the FATF Glossary and as applied to the legal profession in the AML/CFT Law are traditionally undertaken by the accountancy profession as part of their activities.

Applying Recommendation 14

637. Deficiencies identified in the 3rd round Report and subsequent efforts to address them in the financial institutions also apply to lawyers, auditors and accountants. The requirements are substantially the same as the requirements outlined for financial institutions in Chapter 3 of this report and the same deficiencies apply. It is unclear whether the same requirements extend to real estate agents and dealers in precious stones and precious metals.

638. It is to be noted that the prohibition is waived in cases where auditors, external accountants or legal professionals attempt to prevent a customer from getting involved in illegal activity and also, pursuant to Section 49 (2) for persons acting as auditors, external accountants, independent legal professionals, who can make such disclosures to other persons who perform their professional activities within the same legal person or network and are operating in countries of the EEA or third countries which according to a decision of the Advisory Authority have been designated as having equivalent AML/CFT standards. A "network" means the larger structure to which the

person belongs and which shares common ownership, management or compliance control. This waiver is not in strict compliance with the FATF standard, which prohibits any disclosure to third parties other than the competent authorities, however it is noted that s previous evaluation reports considered such a waiver to be reasonable.

Applying Recommendation 15

639. Screening procedures for hiring or recruiting employees include written and oral exams with face-to-face interviews. Partners, managers, and qualified staff of firms of lawyers and accountants/auditors are members of their respective professional bodies and have to adhere to specific ethical standards.

640. Section 58 (c) of the AML/CFT Law expressly provides for the obligation to provide training to employees of banks and financial institutions, as well as lawyers and accountants, cover among other things terrorist financing, its characteristics and methods used by terrorists.

641. The D-Accountants and D-Lawyers issued to accountants/auditors and lawyers require the education and training of employees and stipulate that the timing, content and methods of training for the various levels/types of staff should be tailored to meet the needs of the particular firm, depending on the size and nature of the organization and the available time and resources.

642. The D-Accountants and the D-Lawyers also require that firms make arrangements to verify, on a regular basis, compliance with policies, procedures and controls relating to money laundering activities. In view of the fact that firms of lawyers and accounts are small with a limited number of staff, the setting up of an independent audit function, understandably may not be feasible.

643. However, it is unclear whether the same requirements extend to real estate agents and dealers in precious stones and precious metals.

Applying Recommendation 21

644. Sections 4.24-4.26 of the D-Lawyers and the D-Accountants provide that special attention should be given to business relationships and transactions with any person or body from a jurisdiction which the FATF has identified as at risk and transactions with any person or body from such countries. However, measures to implement these obligations do not extend to real estate agents and dealers in precious stones and precious metals.

Effectiveness and efficiency

Applying R.13. (R.16.1.)

645. Though the meetings with representatives of DNFBPs which on the whole showed improved awareness of the STR regime, the overall number of STRs sent by the DNFBPs is low. Dealers in precious metals and stones have never reported to MOKAS, trust and company service providers have only started reporting in 2010 and real estate agents and lawyers have filed very few reports. Representatives of the sector and Cyprus authorities explained that the situation has occurred because of the relatively law risk that the DNFBP sector is exploited by ML/TF offenders and also by necessity of more training. Such assumption of low ML and FT low risk in this sector is not however based on any risk assessment. Conversely, the assessors note that the dearth of STRs could be interpreted as insufficient knowledge among DNFBPs of AML/CFT typologies and the risks associated with complex illicit finance.

646. Due to the experience of the supervisory bodies of DNFBPs so far, it can be stated that the awareness within service providers has grown, open conversations and consultations, trainings by

supervisory authorities have been organized, although more are still needed, supervision has become more effective.

647. The evaluators welcome the steps taken by the Cyprus authorities, however, the low number of STRs from the sector raises serious concerns about the effectiveness of the implementation of the reporting obligation by DNFBPs.

Table 27: Overall figures of STRs

Monitoring entities, e.g.	Reports about suspicious transactions									
	ML	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
	2005		2006		2007		2008		2009	
Overall	154	0	257	0	210	4	259	3	428	1
DNFBPs (other activities)*	7	0	13	0	6	0	4	0	9	0

*Note: for details and breakdown per sectors, see table 16

Applying Recommendation 14

648. The evaluation team notes that there is no case law for breaches of the safe harbour or for tipping off prohibitions that they were made aware of. Additionally, a key drawback pertaining to tipping off in the financial institutions also apply to DNFBPs. The evaluators are concerned about the implications of length of period for the suspension of transactions by MOKAS. The absence of a clearly defined timeframe requiring a decision by the FIU on the removal or otherwise of the suspension of a reported transaction(s) could increase the risk of inadvertently tipping off the client. The Cyprus authorities should consider establishing a clear timeline for the suspension period of transactions.

Applying Recommendation 15

649. The screening and hiring of qualified candidates is probably assured by the fact that professional industries--such as legal and accounting- set their respective standards as part of industry standards in addition to the requirements set forth in the Directives. While the assessors understand that accountants and lawyers receive education and training on AML/CFT, such program should be specifically tailored according to varying size and needs of a particular firm.

650. In regards to firms making arrangements to establish an independent audit function, the assessors note that such an effort may prove to be infeasible in practice, given the fact that firms of lawyers and accountants in Cyprus are small with a limited number of staff.

651. The real estate agents and dealers in precious stones and precious metals do appear to be caught in the requirements for screening procedures and providing training to employees. While such efforts might be underway in private, it remains difficult to measure the effectiveness in the absence of clear directives from the authorities.

Applying Recommendation 21

652. In the absence of requirements as set out in Recommendation 21 for real estate agents and dealers in precious stones and precious metals, the effectiveness of the implementation of these recommendations cannot be demonstrated. Absence of such requirements could affect these DNFBPs awareness of the AML/CFT threat and thereby fail to file STRs with appropriate regulator.

4.2.2 Recommendations and comments

653. It is recommended that the authorities implement training and provide more guidance to the whole non-financial sector in general and in particular to certain sectors particularly with regards to the identification and submission of STRs.

654. Cyprus authorities should also review and clarify the provisions of the AML/CFT law to ensure that all relevant activities of dealers in precious stones or metals, TCSPs and the accountancy profession (accountants and auditors) are caught under the reporting obligation.

655. As recommended in Section 3, it would be appropriate for the Cyprus authorities to consider harmonising the text of Section 27 and 69 of the AML/CFT Law and ensure also that the directives and guidelines are adequately harmonised with the provisions of the AML/CFT Law.

656. The Cyprus authorities should extend the tipping off prohibition to cover all cases when an STR or related information is reported to MOKAS, as well as cases when a suspicious transaction has been identified and an STR is in the process of being prepared.

657. The Cyprus authorities should consider establishing a timeframe for the suspension of transactions and take measures, as necessary, to provide guidance to obliged entities on the steps to be taken to avoid tipping off.

658. The Cyprus authorities should ensure that all DNFBPs, on a proportionality basis, are required to maintain internal procedures, policies and controls to prevent ML and TF, an adequately resourced and independent audit function to test compliance, establish ongoing employee training and put in place screening procedures to ensure high standards when hiring employees.

659. The authorities should also apply the requirements of Recommendation 21 to require real estate agents and dealers in precious stones and precious metals. At a minimum, these DNFBPs should be required to give special attention to business relationships and transactions with any person/body from a high risk jurisdiction identified by the FATF.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**[31]	• Deficiencies identified in respect of the scope of coverage of TCSPs and accountancy activities, as well as other activities that trade in goods where payment can be effected in cash above €15,000, are also applicable in this context as far as the coverage of the reporting obligation is concerned; • Need to harmonise Section 27 (failure to report) and Section 69 (obligations for MLCO) for reporting purposes, as well as relevant directives and guidelines issued to DNFBPs • Limited implementation of the STR reporting by DNFBPs • The tipping off prohibition does not cover all cases when an STR or related information is reported to MOKAS, as well as cases when a suspicious transaction has been identified and

[31] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 21.

		an STR is in the process of being prepared. • There are no adequate requirements covering R. 15 and 21 for real estate agents and dealers in precious stones and precious metals.

4.3 Regulation, supervision and monitoring (R. 24)

4.3.1 Description and analysis

Recommendation 24 (rated PC in the 3rd round report)

Designated Authority for Regulation and Supervision of Casinos (c. 24.1, c.24.1.1; applying R.17 to casinos) & Licensing of casinos (c. 24.1.2) & Prevention of Criminals from Controlling Institutions (c. 24.1.3)

660. There are no casinos in Cyprus. Betting establishments appear to be prevalent in the country such as on-line casinos that are licensed and operate in foreign jurisdictions. Draft legislation is under Parliamentary review which aims at improving the existing legal framework applicable to betting establishments.

Monitoring and Enforcement Systems for Other DNFBP-s (c. 24.2 & 24.2.1)

661. As of December 5, 2005, MOKAS has been designated as the Supervisory Authority for the real estate agents and the dealers in precious metals and precious stones.

662. The Supervisory Authority may sanction a person failing to comply with the provisions of the AML/CFT Law or with the Directives issued by the competent Supervisory Authority. The AML/CFT Law, Section 59 (6) empowers any supervisory authority to impose sanctions in case of failure to comply with the Law and Directives. The Law allows an administrative fine up to Euro 200,000, as well as Euro fine 1,000 for each day the failure continues; to amend, suspend, or revoke the license of the supervised person; and publicize the imposition of the administrative fine. Moreover, independent legal professional or auditor or external accountant, who fails to comply with the Law, is referred to the competent Disciplinary Board.

663. For real estate agents, MOKAS has the power to punish those who fail to report money laundering and terrorism offenses, sanctions applicable including imprisonment not exceeding five years or by monetary penalty to exceeding five thousand Euro or both. While dealers in precious metals and precious stones are required to file STRs, the legislation is silent on consequences of failure to report. The CBA in D-Lawyers (2.09) notes that failure to report suspicious activity relating to money laundering and terrorist financing to MOKAS is punishable on conviction by a maximum of five years' imprisonment or a fine not exceeding Euro 5,000 or both of these penalties. D-Accountants is silent on this matter.

664. The evaluators note that no separate registry exists for lawyers who serve as professional intermediaries. The evaluators were told that lawyers in Cyprus practice all types of legal issues, including serving as intermediaries for third party clients. Among 2,000-plus registered CBA members, about half of them are sole practitioners whose level of compliance with AML/CFT requirements is difficult to assess. This potential weakness is compounded by the fact that CBA lacks sufficient resources to adequately monitor association members. It is acknowledged that some action has been taken by the Bar Association, however the evaluation team remained concerned about the methodology applied and consequently its results.

665. Separately, ICPAC has outsourced the quality control function of accountancy firms to the Association of Chartered Certified Accounts of the United Kingdom. The outsourcing agreement includes also examination of anti-money laundering procedures. As the AML/CFT Law does not provide for supervisory authorities to outsource their remit to monitor and supervise those entities that fall within the supervisory powers of the particular supervisory authority, it becomes questionable to what extent ICPAC could outsource this responsibility.

666. It was explained to the evaluators that no provisions under the applicable legislation or in the Council of Minister's decision which approved ICPAC as the Regulatory Authority for the accounting profession in Cyprus prohibit ICPAC from outsourcing any of its competencies. The reasons put forward justifying the audit monitoring function to the Association of Chartered Certified Accountants (ACCA) are twofold: a) to secure the complete independence of the supervision, given the smallness of the Cyprus accountancy profession and to take advantage of the ACCA's know-how in the area of supervision with a high quality staffed department.

667. Regarding company service providers or professional intermediaries, they have been included in the "obliged persons" under the AMC/CFT Law. Additionally, a bill has been drafted regulating these services, which would designate the Securities and Exchange Commission as the Supervisory Authority. However, according to evaluators' understanding, these trust and company service providers' activities might be supervised by three separate supervisory authorities depending on the profession of the service provider. With the legislation unfinished, it is difficult to assess the scope of the power of the Supervisory Authorities (whoever they may be) to effectively monitor this sector.

668. No supervisory action on compliance checking has been taken in respect of the real estate and dealers in precious metals and precious stones' sectors.

Recommendation 30 (Adequacy of Resources – supervisory authorities for DNFBPs)

MOKAS

669. MOKAS as the Supervisory Authority of dealers in precious metals and/or stones and real estate agents plans to start on conducting on-site inspections in the near future, thereupon – as it was explained - the training of the two staff members on supervisory issues is progressing. As it was explained regarding the issue of training of MOKAS members on supervisory issues, this will be offered to them by members of other supervisory authorities, mainly the Central Bank of Cyprus which authority has the most experience on onsite inspections and supervisory subjects to be covered during inspections. At the time of the on-site visit, the training available could not be regarded as sufficient and additional efforts shall be required to ensure that the supervisors are adequately and fully trained to perform their functions.

CBA

670. The Cyprus Bar Association was established by the Advocates Law (Cap 2-1960). All of the CBA's Board members are lawyers in private practice. The CBA is funded by annual fees paid by the members and noted that its technical resources are satisfactory. The CBA's secretariat has six staff members, including two with supervisory roles for monitoring lawyers' anti-money laundering standards. The Directive on Prevention of Money Laundering and Terrorist Financing was first issued in 2007 and has been replaced by the 2009 issue.

671. While the CBA has begun onsite inspections of members in January 2010 on compliance with the new Directive, the evaluation team does not share the view of the CBA and considers that the latter appears to be acutely understaffed to supervise the significant number of registered lawyers, even if the majority of them are covered by the AML/CFT Law and employed in a comparatively

few large firms. The current plan to hire two additional staff is welcomed though their responsibilities are yet to be determined. Regardless, the CBA will require far more staff to appropriately perform its supervisory function. The CBA confirmed that it has begun offering training and seminars on anti-money laundering issues for lawyers.

ICPAC

672. The Institute of Certified Public Accountants employs a total of seven permanent staff, three of which are qualified accountants, one General Manager and two Senior Officers. The audit, monitoring, which covers compliance with the Directive on Prevention of Money Laundering and Terrorist Financing, is subcontracted to the Association of Chartered Certified Accountants (ACCA). All bank examiners employed in BS&RD are in possession of high academic and professional qualifications being holders of University degrees or members of the professional accountancy bodies (FCA, FCCA) or the Chartered Institute of Bankers of the United Kingdom. All persons involved in the examination of banks' compliance with their anti-money laundering obligations, receive in-house training and attend seminars and conferences on the said topic in Cyprus and abroad. ICPAC has offered anti-money laundering training for its members though the most recent was in 2008.

Effectiveness and efficiency

673. Failure to enact legislation regulating company service providers and intermediaries remains a key vulnerability in Cyprus' AML/CFT program. Should this legislation becomes law in the near future, it is difficult to assess its effectiveness should the sector is supervised by three separate supervisory authorities. This multi-pronged supervisory framework could lead to uneven playing fields in monitoring the sector.

674. The CBA notes that, from February 2010 to May 2011, it has conducted on-site inspections of 280 legal firms. While the number of these inspections is considerably high, it is difficult to assess their effectiveness given the fact the CBA has two supervisory officers performing this function and the available information on the methodology of these on-site inspections did not fully convince the evaluation team as to its adequacy.

675. The evaluators share the view of ICPAC that outsourcing its auditing function has been working very satisfactorily, as ICPAC, given its small size, would have had extreme difficulties to employ all the required specialist resources for this task. This arrangement does not appear to adversely affect their supervisory role.

676. It is view of the Cyprus authorities that all the Supervisory Authorities meet the requirements of operational independence and professionalism as well as maintaining all the technical equipment to perform their functions. It was however not demonstrated that the supervisory authorities have adequate resources to undertake their monitoring functions.

4.3.2 Recommendations and comments

677. The Cyprus authorities should continue to work closely with the Parliament with the aim of swiftly adopting the legislation to regulate betting and gambling.

678. Additionally, they should step up efforts to adopt the law regulating the company service providers and professional intermediaries. The evaluators understand that this pending bill has been under review for over three years, and prolonged delay in its passage is counterproductive to the progress Cyprus has achieved in the AML program.

679. The evaluators understand that many banks already maintain a list of trusted intermediaries who bring in clients. The Cyprus authorities should consider creating a central registry for lawyers who have served or serve as professional intermediaries to allow for the CBA to better assess their compliance level.

680. While ICPAC's outsourcing its audit function appears to provide better results, the Cyprus authorities should provide a legal basis for outsourcing.

681. Additionally, the supervisory authorities should conduct a risk assessment of the DNFBPs sectors in order to determine an appropriate supervisory strategy and step up their inspection plans to ensure that all DNFBPs, and in particular the real estate and dealers in precious metals and precious stones' sectors are adequately inspected.

682. The authorities should review the resources and capacities of all DNFBPs supervisors to ensure that these are in a position to adequately carry out their supervisory functions, and as appropriate, implement AML/CFT training for staff conducting AML/CFT inspections.

683. The Cyprus Bar Association will require additional staff to appropriately perform its supervisory role. The current level of staffing, two people, is woefully inadequate to supervise more than 1,000 members of the CBA. Additionally, CBA staff should receive regular training from the FIU in conjunction with offering training and seminars on AML/CFT issues for lawyers.

4.3.3 Compliance with Recommendations 24

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• While DNFBPs are now included within the scope of the AML/CFT law, there has been insufficient evidence that effective supervision is currently taking place across the board: - Trust and company service providers' activities appear to be supervised by three separate supervisory authorities depending on the profession of the service provider, which could lead to uneven playing fields in monitoring this activity. - No supervisory action on compliance checking has been taken in respect of the real estate and dealers in precious metals and precious stones' sectors. • There is no legislation regulating company service providers and intermediaries. • G-Dealers and D-Accountants lack specific language on imposition of penalties in case of failure to report suspicious activity. • Insufficient resources and capacity for all DNFBP supervisors impact on the implementation of their supervisory activities • No indication of sanctions imposed on the DNFBP sectors.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS [32]

5.1 Non-profit organisations (SR.VIII)

5.1.1 Description and analysis

Special Recommendation VIII (rated PC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

684. Cyprus was rated Partially Compliant under the third round evaluation in respect of compliance with SR.VIII. The MER noted that while some action was taken after 11 September 2001 in checking NPOs with significant participation of foreign individuals, no evidence of a special review of the laws in the NPO sector having been undertaken had been provided.

Legal framework

685. There appear to be six main types of non-profit organisations in Cyprus: clubs, associations, foundations, charities, societies and institutions, and non-profit companies. The analysis and conclusions set out below are primarily based on the review by the evaluation team of the regulatory regime of charities and societies and institutions, and information provided during meetings on-site.

686. There were no changes reported to have occurred since the third round evaluation regarding the legal framework in force governing the non-profit sector, namely the 1925 Charities Law – Cap 41, the 1930 Clubs Law – Cap 112, the 1972 Societies and Institutions Law (Law no. 57/1972, 85(I) of 1997), and the Associations and Foundation Law (Law no. 949 of 14 July 1972) nor in respect of the registration procedures available under those acts.

687. The Ministry of Interior is responsible for the implementation of three laws: the Societies and Institutions Law, the Clubs Registration law and the Charities law.

688. The total number of registered societies, institutions, clubs and charities at the time of the on-site visit were of 4854.

Table 28: Number of yearly registered societies, institutions, clubs and charities

NPO / YEAR	2005	2006	2007	2008	2009	6/2010	Totals
Societies	113	112	104	120	152	80	681
Institutions	9	119	14	17	9	9	177
Clubs	11	11	14	16	29	28	109
Charities	1	1	-	1	-	-	3
TOTAL:	134	243	132	154	190	117	970

Table 29: Total number of registered societies, institutions, clubs and charities (as of June 2010)

Societies	3.573
Institutions	324
Clubs	909
Charities	48
Total NPOs	4.854

[32] This Section is yet to be examined during the September pre-meeting with the Cyprus authorities.

Review of adequacy of laws and regulations (c.VIII.1)

689. The authorities indicated that they were conscious of the need to update the legal framework applicable to non-profit organisations. A review of the legislation had been conducted in 2008 within the Ministry of the Interior, involving also a special committee with representatives from the private sector and an expert from another European Union country aimed at preparing new legislation on societies, institutions and clubs. It was also noted that the Ministry of Finance was also in the process of drafting a new law regulating charities. No information was made available regarding the review of the Associations and Foundation Law.

690. The evaluation team was not provided with evidence that domestic reviews of the NPO sector or periodic reassessments of the sector's potential vulnerabilities have been undertaken in order for the competent authorities to form a clear understanding of the features and types of NPOs which could be at risk of being misused for terrorist financing.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

691. There has been no outreach to the NPO sector. The authorities indicated that formal guidance has been issued by the CBC to the financial institutions regarding the vulnerabilities of the NPO sector and that MOKAS has covered this aspect also in the trainings of the financial sector representatives. The information made available does not demonstrate that an effective outreach programme with the NPO sector was implemented.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

692. There appeared to be a limited awareness on the numbers and types of NPOs that account for a significant portion of the financial resources under control of the sector or a substantial share of the sector's international activities, and as such it was not demonstrated that those NPOs were being adequately supervised or monitored.

Information maintained by NPOs and availability to the public thereof (c.VIII.3.1) & Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

693. The authorities state that even though the existing legal framework is relatively old, it nevertheless contains some provisions regarding the registration and licensing as well as the obligation of NPOs to prepare and submit audited financial statements regarding their financial activities. However, in the absence of sufficient information, the registration regimes of non-profit companies associations and foundations and their adequacy cannot be fully established.

694. Societies are required to be registered in order to become a corporate entity. For this purpose, they are required to submit to the Registrar a memorandum of association, the names and addresses of the administration members, the Sections of the association duly signed, the emblem of the society and description of the property in the possession or belonging to the society. (Societies and Institutions Law, Section 6(3)). The registration certificate is published in the Official Gazette of the Republic and the Sections of the association certified b the Registrar are kept in his file. The Sections of association of a society include inter alia information on the purpose, name and seat of the society, the terms of admission, resignation and expulsion of members as well as their rights and obligations, the administrative organs of the society, etc (Section 8). Every modification of the Sections of the association is valid from the entry into the Register, upon application of the administration of the society submitted within 20 days from its approval.

695. As regards institutions, Sections 27 of the Societies and Institutions Law provides that it is established upon registration of the act of incorporation by the Registrar in the **Register of Institutions**. The act of incorporation includes the name and object of the institution, its seat, the property appropriated, the names and addresses of the members of its administration and its form of organisation (Section 28).The accounts of an Institution can at any time be audited upon an order of the Court by the Auditor General of the Republic or another person authorised by the Court (Section 39).

696. As regards clubs, the requirements in place regarding information to be maintained are regulated Sections 4, 6, 13 and 14 of the 1930 Clubs (Registration) Law – Chapter 112. The register of clubs, which is kept within the district, shall contain:

a) the name and objects of the club;
b) the address of the club;
c) the name of the secretary and members of the committee;
d) the number of members;
e) the rules of the club (related to election, admission, terms of subscription and entrance fee, cessation of membership, modification of rules).

697. The Registrar is required by law to keep the register up to date in accordance with applications and returns provided by the secretaries. The Law obliges every secretary to inform the Registrar of any changes or new rules of the club and to furnish to the Registrar with any information as the Registrar may require to keep the register up to date. The register can be made available to a high ranking police officer for inspection, upon authorisation in writing by the Registrar.

698. Charities are required to register with the Ministry of the Interior by providing in writing as mentioned earlier specific information (ie. on the purpose and object of the charity, a statement and description of the property, the rules and regulations, together with the parties of every deed, as well as the identity (names and residence) of the trustees of the charity (Charities Law, Section 4). The certificate of incorporation is published in the Official Gazette of the Republic of Cyprus. Every 5 years or whenever required by the Council of Ministers upon a proposal of the Ministry of interior, charities should submit an updated list of trustees (Charities Law, Section 5). The trustees of any charity are required to keep in the books the full and true accounts of all money received and paid on the account of the charity and to transmit at the end of every year to the administrative secretary the certified accounts of the benefit, of the balances, of all payments and of the money owed to. Pursuant to Sections 10 and 11, charities should also provide annual accounts of income, expenditure, payments and moneys owing to or from the charity to the Administrative Secretary. The accounts of any charity can be audited anytime upon decision by the Council of Ministers.

699. All companies, including non-profit companies, are required to register with the Company Registrar, and the application for registration is publicised. The same requirements apply as regards the accounting and monitoring regime as for other companies, that is annual audited accounts have to be submitted to the Company Registrar which keeps a paper record. The accounting information and documents setting out the registered address, the directors and purposes of the company can be consulted by the public subject to payment of an access fee.

700. No other information was available regarding non-profit companies, associations and foundations.

701. The various laws in place do not set out that the information kept should be publicly available, and in some instances refer to the access of the Police only. The authorities indicated that anyone who has legal interest regarding the above-mentioned information can apply in writing to the proper authority and get such information. In any event, the registration requirements as set out

above do not ensure in all types of NPOs that the identity of persons who own, control or direct the activities is kept and is up to date.

702. As regards the Register maintained by the Ministry of the Interior, the evaluation team was advised that the legislation does not require NPOs to submit updated paper or information on a regular basis or whenever relevant, thus the register is not up to date. The Register is kept in paper form, and the process for computerizing the information available was underway.

703. Considering the above, it is not demonstrated that there are adequate requirements regarding the information which should be maintained by the NPOs as a whole nor its availability to the public.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

9. It remains unclear what measures are set out in the Cypriot legal framework governing the activities of associations and foundations, and non-profit companies to sanction violations of oversight measures by NPOs or persons acting on their behalf.

704. Societies and Institutions cannot be registered if their object or operation undermine the security of the Republic or the public order or the public safety, health of public morals or the fundamental rights and freedoms of an individual, and if they have been registered, they can be dissolved by order of the Court (Societies and Institutions Law, Section 3). Also, as regards societies, Section 24 of the Law provides that it shall be dissolved if because of its long inactivity its object is deemed of having been abandoned or if it pursues a different object than the one prescribed in the Sections of association and the operation of the society is illegal as set out under Section 3. Similar provisions exist for Institutions under Section 43-(1) for cases where the institution has deviated from its object or its function has become illegal.

705. As regards clubs, the Registrar can refuse to register the club which is an unlawful association as defined in the criminal code (Section 9) or strike off the register a club, upon complaint made in writing by a high police officer on the basis of 6 grounds (Section 11) The Registrar or any member of the police authorised by him is entitled to have free access to the club to inspect the premises and books and papers of the club, it can investigate and obtain information relating to the working and management of the club and take the names and addresses of persons found on the club premises (Section 13).

706. All trustees of a Charity, notwithstanding their incorporation, are personally liable for their own acts, receipts, neglects and defaults for the due administration of the charity and its property (Section 6)

707. No information was available regarding non-profit companies, associations and foundations.

708. The supervisory mechanism for all types of NPOs remains unclear and possibly absent as far as some of them are concerned, and the sanctions, where available, do not cover a broad range of measures (e.g. removal of trustees, fines, etc). Also, the legislation does not appear to contain specific provisions distinguishing between the civil or criminal liability of NPOs or persons acting on their behalf. Furthermore, no data was made available which would establish that the measures available have been enforced when relevant.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

709. It remains unclear which records have to be maintained by the various NPOs, for which statutory time period, and whether these are sufficiently detailed to cover domestic and

international transactions in a sufficiently detailed manner so as to enable to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1); Access to information on administration and management of NPO-s during investigations (c.VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

710. In principle, upon existence of a suspicion that an NPO is involved in criminal activities, law enforcement authorities are empowered to gather information and investigate such suspicions. The authorities indicated that the information held by the registration authorities responsible for registration is available and can be accessed by law enforcement authorities. However it should be noted that the information that is to be kept sometimes appears to be limited, and in any event, it is not up to date.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

711. There are no specifically designated points of contact nor procedures to receive and respond to requests from abroad for information regarding NPOs that are suspected of FT. However, in such cases, the authorities indicated that MOKAS would be the competent authority and would reply to the requests by means of the usual communication channels. No such requests have been received nor sent abroad.

Effectiveness and efficiency

712. The progress in implementing the requirements of SR.VIII since the last evaluation visit in 2005 is rather limited. The authorities indicated that this area had not necessarily been of high priority, considering that FT risks in the sector are assumed to be low.

713. While a review of part of the legal framework appears to have been undertaken in order to strengthen the transparency and improve the registration procedures, further efforts appear to be necessary to ensure a high level of transparency of the whole NPO sector. The registration information does not appear to be sufficient nor up to date. From meetings with the relevant authorities, it appeared that there was no evidence of an comprehensive assessment of risks and vulnerabilities of the NPO sector in Cyprus, nor of an adequate level of supervision of NPOs activities and monitoring of compliance by NPOs with the existing rules. The evaluation team has not received any information that would demonstrate that sanctions or measures have been applied in practice. Finally, no outreach efforts were made to raise the awareness of the NPO sector of the risks and vulnerabilities.

5.1.2 Recommendations and comments

714. In order to comply with Special Recommendation VIII, Cyprus should:

- Carry out a risk assessment to adequately identify the TF risks and vulnerabilities within its NPO sector and ensure that this assessment is periodically updated;
- Finalise a comprehensive review of the legal framework covering clubs, associations, foundations, charities, societies and institutions, and non-profit companies and adopt, as appropriate new legislation, which includes provisions covering the requirements of SR.VIII, in particular as regards transparency requirements, the information which should be kept, a broad range of sanctions applicable for violations of oversight measures;

- Undertake an effective outreach programme to the NPO sector with a view to raising awareness in the NPO sector;
- Improve the accuracy of the registration process for NPOs and registries available and ensure that there are clear requirements regarding the verification of information to be kept; the sanctions applicable in cases of failure to communicate promptly any necessary changes or updates; the publicity of information (either from the NPO or through appropriate authorities) on the identity of persons who own, control or direct their activities, including senior officers, board members and trustees;
- Take measures to ensure that the NPO sector is adequately supervised or monitored, on the basis of the risk they present, and that sanctions are effectively applied.

5.1.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• Lack of comprehensive domestic reviews on the whole NPO sector's potential vulnerabilities to terrorist activities; • Outreach is not provided to the NPO sector, particularly with regard to potentially vulnerable NPOs; • NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities. do not appear to be adequately supervised or monitored; • Lack of adequate requirements regarding the information to be maintained by all NPOs and regarding public availability; • The NPO registration system is not comprehensive nor up to date, the sanctioning regime for non compliance with registration requirements appears to be incomplete and the requirements in place do not ensure that the registers are up to date; • There are no appropriate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs and the effectiveness of the implementation of sanctions is not demonstrated.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 & R.32)

6.1.1 Description and analysis

Recommendation 31 (rated C in the 3rd round report)

Effective mechanisms in place to co-operate, and where appropriate, co-ordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing (c.31.1)

Summary of 2006 MER factors underlying the rating

715. Cyprus was rated compliant in the 3rd round MER for national co-operation. As noted in this report Cyprus established various forums where competent authorities meet to cooperate on AML/CFT issues and coordinate their activities. The structure regarding the competent domestic

authorities involved in the national co-operation shows no major changes compared to the framework described in 3rd round report.

Advisory Authority

716. On a policy making level, the co-operation between regulators and supervisors, MOKAS, law enforcement authorities and the private sector has been stepped up. The Advisory Authority established by the Council of Ministers, presided by the Attorney General or the Head of MOKAS representing the Attorney General since 2004 is the forum providing authority for the wide range of representatives from both the public and the private sector .

717. According to Section 56 (1) of the AML/CFT Law the Advisory Authority is composed of the representatives of: (a) MOKAS; (b) CBC; (c) all other Supervisory Authorities; (d) MoF; (e) Department of Customs and Excise; (f) MoJPO; (g) Registrar of Companies; (h) Association of Commercial Banks; (i) Association of International Banks; (j) CBA, ICPAC and other professional bodies which the Council of Ministers may prescribe; (k) any other organisation or service the Council of Ministers may prescribe. Its main responsibility is to discuss AML/CFT issues, including legislation relevant to AML and measures necessary to address international requirements.

718. Section 57 (d) i) provides that the Advisory Authority is responsible for the designation of third countries outside the European Economic Area which impose procedures and take measures for preventing ML and TF equivalent to those laid down by the relevant EU directive. With regard to this task the Cyprus authorities highlighted that the Advisory Authority adopts the list issued by the Committee on the Prevention of ML/TF (CPMLTF) of the European Commission and the said list is sent by all Supervisory Authorities participating in the Advisory Authority to all persons falling under their supervision, it does not make designations on its own authority.

719. The Advisory Authority meets in principle quarterly or whenever there is need (i.e. when the draft Law of 2007 was discussed). In 2005 and 2006 it held four meetings, in 2007 five meetings, between 2008 and 2009 four meetings, and as of May 2010, two meetings. As a clarification it was explained that the Advisory Authority works in subgroups depending on the current issues, whereof every concerned competent domestic authority is invited. (e.g. the representatives of the Cyprus Police were present when law enforcement issues in relation to the codification of the new AML/CFT Law were discussed). The Advisory Authority appears to be an effective forum for policy type of co-operation and exchange of information and coordination on AML/CFT matters.

720. As a result of the last evaluation, the Advisory Authority was recommended to facilitate a more coordinated response by the competent authorities; to systematically review money laundering and terrorist vulnerabilities; to review periodically the performance of the system, as a whole against key strategic performance indicators; and to review the statistical information required by them to carry out these tasks in order to enhance the AML/CFT framework. From meetings held during the visit, it was noted that the Advisory Authority's work resulted in a number of changes being implemented (ie. discussion of new international measures, preparation of the draft consolidated AML/CFT Law, directives of the supervisory authorities, examination of progress made with regard to the Bill on supervision of trust and company service providers, the preparation for the 4th round of evaluations, or the possible application of the investment firms in the Advisory Authority, etc).

721. The authorities pointed to a number of achievements to illustrate the effective coordinating role of the Advisory Authority:

a. More emphasis has been given on cooperative arrangements among Policy makers, the FIU, law enforcement and the private sector, through the Advisory Authority

which discussed all elements with regards to the application of the risk based approach in the AML/CFT system;

b. Discussions were held within the Advisory Authority as regards statistical data and problems identified in relation to certain sectors e.g. the small number of STRs submitted by lawyers and accountants. Possible measures were also discussed in order to increase awareness including additional training;
c. Moreover, the Cyprus FIU discussed with the other members of the Advisory Authority the results of the STR analysis submitted by the financial sector, especially banks, including trends, in order for the Supervisory Authorities to be aware of these trends for the purposes of the onsite inspections and possible training needs;
d. Another important element, is that due to the presence of representatives of law enforcement Authorities in the Advisory Authority, the views of the law enforcement on the results of the application of the AML/CFT Law are presented as well as their opinion as to how the reporting entities should co-operate further and more efficient e.g. when executing formal rogatory letters or in cases of investigation of the predicate offence.

Coordinating Body Against Terrorism

722. MOKAS is a member of the Coordinating Body Against Terrorism which was set up by the decision of the Council of Ministers. This Body was set up after the terrorist attacks in 2001. It is chaired by the Attorney General and the following Departments participate: the Police, Cyprus Intelligence Service, Ministry of Justice, Customs Department, MOKAS and the Ministry of Foreign Affairs. MOKAS participates in this body regarding the issues of Terrorist Financing. It is a Policy making body on general issues regarding terrorism and has an advisory and co-ordinating role in this area. No further information is available on the activities and achievements of this group.

Co-operation among law enforcement authorities

723. In the evaluators' view, the legal framework for the respective LEA authorities (including MOKAS in this respect) addressing national co-operation shows a somewhat unclear picture. The AML/CFT Law regulating the tasks and responsibilities of MOKAS (Section 55 of the AML/CFT Law) only provides about co-operation with corresponding units (Section 55 /1/ e.).

724. The evaluators were not provided with a copy of the Law on Police (nor with its relevant provisions) although the representatives of the Financial Crime Unit of the Police and of MOKAS consider that the obligation to cooperate is not formally regulated, nor this is necessary.

725. The obligation to co-operate is clearly stipulated in the Customs Code Law No. 2004 94(I) of 2004 stating that the Department of Customs and Excise – in charge of investigating financial and economical criminal offences harming or jeopardizing state budgetary revenues (customs duties, taxes) as well as offences connected to the transportation of goods – is cooperating with other authorities of the Republic and outside the Republic in matters of its competence and offers its assistance to them. Moreover according to the provisions of the Section 9 of the Control of Cash Entering or Leaving the Community and the Exercising of Intra-Community Cash Controls law No. 53(I) of 2009, the Department of Customs and Excise has the obligation to refer to MOKAS for further investigation, any cases related to an offence a result of which proceeds have been derived which may constitute the subject of a money laundering offence. The 3rd round MER (paragraph 275) confirmed the insufficient existence of formal co-operation mechanisms:

726. There is no formal procedure set out in writing governing their co-operation, although it can be concluded that MOKAS, playing a pivotal role in implementing the AML/CFT Law enforcement effort clearly cooperates, assists and gives advice to other LEAs on the application of

the law regarding investigations, prosecutions, tracing, freezing and confiscating assets at an operational level.

727. In the third round MER it was also recommended that the appropriate authorities should consider issuing a clear guidance on the distribution of responsibilities with regard to respective investigating competencies. MOKAS having a judicial as well as an investigating nature is in charge of coordinating the actions of all LEAs involved in the investigations of ML and TF offences. Operational co-operation between MOKAS and other LEAs appears to take place at the working level on an ad-hoc basis. All LEAs expressed their appreciation for MOKAS' instructions and assistance in every ML related investigation, particularly as regards financial investigations and application of certain provisional measures. It was explained by the Cyprus authorities, that if there is no STR the Police or the Customs handles the ML, TF case. Also MOKAS stated that the Cyprus FIU never investigates predicates, only ML and TF offences.

728. To facilitate the co-operation of Cyprus LEAs in the fight against ML and TF, MOKAS has drafted and distributed to police investigators and all public prosecutors a guidance note in November 2009 analyzing the relevant provisions of the law and the ways for the better and effective co-operation in order to achieve better final results. These guidance notes were followed by various meetings between the FIU, police and public prosecutors.

729. As it was described under 26.8, based on Section 76 the Cyprus LEAs have to maintain comprehensive statistics on matter related to their competences, including the number of ML/TF cases investigated. It is compulsory for the Cyprus Police to notify MOKAS on their ML/TF investigations every 3 months, while such obligation is not posed on the Department of Customs and Excise. Since each authority maintains its own statistics, consideration should be given to put a formal procedure in place that allows centrally recording and monitoring all ongoing domestic ML/TF investigations.

730. With regard to the co-operation of Cyprus LEAs, other than MOKAS, the Customs Code Law Police and Department of Customs and Excise also makes it obligatory for police officers to provide assistance for the customs end excise department for the implementation of the customs and other legislation. As a positive example the Cyprus authorities pointed out that the Financial Crime Unit of the Police and the Investigation Service of the Department of Customs and Excise is currently conducting a cigarette smuggling investigation within a joint investigation team (JIT).

Co-operation between the FIU and the supervisory authorities

731. Co-operation between MOKAS and the Supervisory Authorities is multi-level: Sub-Section 7 of Section 59 of the AML/CFT Law makes it compulsory for all Supervisory authorities to inform MOKAS if there are of the opinion that any person subject to their supervision is engaged in ML or TF offences. On the other hand according to Section 55(1) f. of the AML/CFT Law, MOKAS shall inform persons engaged in financial or other business activities on the results of the investigation of the reports submitted to the Cyprus FIU. The representatives of the reporting entities- with exception of one – confirmed the existence of proper feedback from MOKAS. The Head of the FIU also had personal meetings with each and every Supervisory Authority of the Financial Sector (i.e. the Governor of the Central Bank, the President of the Cyprus Securities and Exchange Commission etc) in order to discuss current policy issues in December 2009 and January 2010.

Co-operation between supervisory authorities of the financial sector

732. A Memorandum of Understanding has been signed between the Supervisory Authorities of the financial sector (CBC, the Cyprus Securities and Exchange Commission, the Insurance Companies' Control Service and the Service for Supervision and Development of Co-operative

Societies) which came into effect on 1 January, 2003. The Memorandum of Understanding is based on the application of the legislation in force which allows the competent supervisory authorities of the financial sector to co-operate and exchange information between them and/or with other supervisory authorities with a view of discharging their functions and responsibilities in a more effective manner.

733. Positive developments regarding national co-operation of the financial sector include the establishment in October 2009 of the special AML/CFT Technical Committee of Experts of the supervisory authorities of the financial sector on the basis of the above mentioned MOU.

734. The Committee consists of the Governor of the Central Bank, Chairman of the Securities Commission, Superintendent of the Insurance Companies Control Service, and Commissioner of the Authority for the Supervision and Development of Cooperative Societies. The Committee's terms of reference include, inter alia, the formulation of common supervisory practices and methods for the implementation of AML/CFT requirements, the discussion of issues arising from FATF and EU requirements which need to be dealt with in a consistent manner and the coordination of AML/CFT supervisory activities. Moreover, the Committee is required to deal with the provision of appropriate AML/CFT training to both supervisory staff and the staff of supervised entities. The Committee also ensures that relevant information is placed on the website of each supervisory authority and the budget of each supervisory authority includes adequate funding for training and education. Additionally, the Committee seeks to make decisions unanimously and, in cases of disagreement on a particular issue, the Committee submits to the heads of each supervisory authority a note citing all opinions for a final decision.

CBC / ASDCS

735. Under Section 27(1) of the Banking Law, the CBC may co-operate and exchange information with the competent banking and/or insurance and/or securities markets supervisory authorities, in Cyprus or elsewhere in order to assist these supervisory authorities in the discharge of their functions and responsibilities or to enable the effective exercise of its own functions, including consolidated supervision. Similarly, under Section 41D(2) of the Cooperative Societies Law, the Commissioner cooperates and exchanges information with other public authorities within the Republic of Cyprus and with the competent supervisory authorities of a member state or of a third country regarding the business or the financial adequacy or liquidity of the CCIs he supervises, according to the provisions of the Cooperative Societies Law or of the CCIs that exercise their right of establishment or of provision of cross-border services in the Republic and, for this purpose, he enters into co-operation protocols with any such authority.

CYSEC

736. In addition to the AML/CFT Law, Section 28 of the Cyprus Securities and Exchange Commission Law of 2009 allows the CYSEC to apply to the Registrar of Companies and the Official Receiver, the Central Bank of Cyprus, the Stock Exchange, a regulated market and any authority, public or not, or legal persons of public law, which are bound to give to the Commission all the necessary assistance and information, documents and other details necessary for the exercise of its responsibilities. The disclosure to the Commission of confidential information, under the provisions of this Law and of the relevant legislation, does not constitute a violation of the obligation for confidentiality and the observance of the professional secrecy provided by any law.

Additional elements – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBP)

737. Since the 3rd round evaluation, the Advisory Authority has associated more closely the professional associations. Compared with the previous situation, its membership was expanded

and now includes the Association of International Banking Units. The consultation of some categories under the scope of the law in this process (ie. insurance, real estate, jewellers, legal and accountancy profession) is still at its very early stage, although there involvement is in plan, which in the evaluators view would certainly be beneficial for the whole system.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

738. The evaluators of the 3rd round urged the Cyprus Advisory Authority to facilitate a more coordinated AML/CFT response by the competent authorities; to systematically review ML and TF vulnerabilities; to review periodically the performance of the system as a whole against some key strategic performance indicators; and to review the statistical information required by them to carry out these tasks in order to enhance the AML/CFT framework. Also as it was mentioned under R.26 one of the recommendations evaluating the performance of the Cyprus FIU stated that the Advisory Authority under the chairmanship of MOKAS should have a complete overview of the AML/CFT prosecutorial situation. Statistical data should be kept which shows all ML investigations, prosecutions and convictions together with information on the underlying predicate offence.

739. The latter recommendation is clearly met since Section 76 of the AML/CFT Law clearly provides for the Supervisory Authorities, MOKAS and the Cyprus LEAs) to maintain comprehensive statistics related to their competence. According to the relevant provision such statistics shall as a minimum cover STRs made to the Cyprus FIU, the inspections made by the Supervisory Authorities, the administrative penalties and the disciplinary sanctions imposed by the Supervisory Authorities, the number of cases investigated, the number of criminal prosecutions, the number of convictions and the assets frozen, seized or confiscated.

740. This concludes that the relevant institutional and legal framework to comply with the obligation to regularly review the effectiveness of the AML/CFT regime is in place in Cyprus. Despite the new developments (ie. enlargement of the composition of the Advisory Authority, the conclusion of the special AML/CFT Technical Committee of Experts), the evaluation team's perception was that these fora enable to discuss a number of policy and operational matters, while it remained unclear whether the authority considered the necessity of implementing a well defined national strategy, with clear implementation timeframes, based on a regular review of the performance of the overall AML/CFT system, of the ML/TF vulnerabilities and relevant effectiveness factors. No national risk assessment had been initiated, the authorities having partially examined some risks and vulnerabilities and related measures to address those.

Recommendation 30 (Policy makers – Resources, professional standards and training)

741. The Advisory Authority as the forum providing entity for AML/CFT policy issues, composed of the representatives of domestic ministerial bodies, public authorities and the private sector, as well as MOKAS as the primary coordinating authority in LEA matters appear to have adequate human and technical resources.

Effectiveness and efficiency

742. The authorities have a variety of mechanisms in place to facilitate co-operation and policy development. There are also seem to be effective mechanisms in place to facilitate co-operation between the agencies involved in investigating ML and TF. Despite those, efforts should be pursued to ensure a regular coordinated analysis of current trends in ML and FT in Cyprus and initiative undertaken to explore conducting a comprehensive risk assessment.

6.1.2 Recommendations and Comments

Recommendation 31

743. This recommendation is observed.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

744. Cyprus should conduct a review of the effectiveness of the AML/CFT system and conduct a national risk assessment to inform the future strategies on the investigation of financial crimes and feed into the specific guidance to obliged entities on the specific AML/CFT vulnerabilities.

745. It is also recommended that procedures are put in place to centrally record and monitor all ongoing ML and TF investigations.

Recommendation 30 (Policy makers – Resources, professional standards and training)

746. This recommendation is observed.

6.1.3 Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**C**	
R.32.1	**PC**	• It was not fully demonstrated that the Cyprus authorities review the performance of the overall AML/CFT regime on a regular basis, of the ML/TF vulnerabilities and relevant effectiveness factors.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated C in the 3rd round report)& Special Recommendation I (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

747. Under the third round, Cyprus was assessed to be Compliant as regards Recommendation 35, and Largely Compliant as regards Special Recommendation I due to the lack of a comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons, including publicly known procedures for de-listing

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

748. Cyprus has signed and ratified the United Nations Convention against Transnational Organised Crime (the Palermo Convention) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), and the United Nations Convention for the Suppression of the Financing of Terrorism (through Law 29(III)/2001 as amended by Law no. 18(III)2005).

Implementation of Vienna Convention (Sections 3-11, 15, 17 & 19, c. R. 35.1)

749. Cyprus' legislation complies with many provisions of the Vienna Convention, although there is a potential issue with the criminalisation of the money laundering offence, as set out in relation to Recommendation 1, which refers to "a predicate offence" and this is interpreted by law enforcement officials and prosecutors to mean that it is necessary to prove a specific predicate offence committed on a specific date. Section 3 of the Convention refers to "an offence or offences" rather than to single predicate offence and in practice this appears to be an issue in Cyprus. In the absence of any investigations or prosecutions on this basis, it is not clear that there has been a full implementation of the Section 3 offence.

Implementation of Palermo Convention (Sections 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. R 35.1)

750. Cyprus has taken a number of measures which implemented the provisions of the Palermo Convention. Preventive measures and a supervisory regime are in place for financial institutions. However, as indicated in Sections 2 and 3 of this report, there remain shortcomings in respect of certain obligations as well as the effective implementation of those standards, which could be further strengthened (ie. seizure and confiscation, customer due diligence, STR reporting regime, international co-operation).

Implementation of the Terrorist Financing Convention (Sections 2-18, c. R 35.1 & c. SR. I.1)

751. Cyprus has implemented the Terrorist Financing Convention through Law 29(III)/2001 as amended by Law No. 18(III)2005. However, as discussed in Section 2.2 of this report in respect of the analysis for Special Recommendation II, the financing of terrorism constitutes an incomplete predicate offence for money laundering. Deficiencies in criminalisation of the FT may also limit the ability to freeze and confiscate and to provide mutual legal assistance in instances where dual criminality is required.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

752. Cyprus has taken measures to implement the United Nations Security Council Resolutions relating to the prevention and suppression of the financing of terrorism by way of a Decision of the Council of Ministers and reliance upon the direct effect of EU regulations. As outlined in detail in Section 2.3 of this report, several important shortcomings have been identified. A comprehensive and effective system for freezing without delay of the assets of designated persons, including publicly known procedures for de-listing and the unfreezing of accounts in a timely manner upon verification that the person or entity is a non-designated person is not yet in place. Although there is an administrative procedure to freeze accounts pursuant to the UN resolutions and EU regulations, there is no domestic legislation apart from the Decision of the Council of Ministers and this impacts negatively on the ability of Cyprus to deal effectively with the assets of EU internals and with freezing actions initiated by foreign jurisdictions.

Additional element – Ratification or Implementation of other relevant international conventions

753. Cyprus has signed and ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. It has also signed and ratified the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism.

6.2.2 Recommendations and comments

754. Cyprus should take additional measures, as recommended, in order to fully implement the Vienna and Palermo Conventions.

755. Cyprus should address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**[33]	• Cyprus has ratified but not fully implemented the Palermo and Vienna conventions as outlined in the respective Sections of this report
SR.I	**LC**	• Several shortcomings remain in respect of the implementation of UNSCR 1267 and 1373 as set out in SRIII.

6.3 Mutual legal assistance (R. 36, SR.V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

756. Under the third round, Cyprus was assessed to be Largely Compliant as regards both Recommendation 36 and Special Recommendation V, with evaluators noting that the definitional problems with the domestic financing of terrorism offence would severely limit MLA based on dual criminality, though these problems had already been identified by the Cyprus authorities at the time of the on-site visit.

Legal framework

757. Cyprus has ratified the Vienna and Strasbourg Conventions; the Council of Europe Criminal Law Convention on Corruption; the UN Convention against Transnational Organized Crime and the European Convention on Mutual Assistance in Criminal Matters of 1959 and its additional Protocol by Law No. 2(III)/2000. In addition, the Republic of Cyprus has concluded Bilateral Agreements on legal and judicial co-operation in civil and criminal matters with 12 countries.

758. The relevant domestic legislation concerning the provision of mutual legal assistance is Law No. 23(I)/2001 (the MLA Law). By virtue of Section 15(1), the Law applies to all of the countries of the European Union, specified Commonwealth countries, all countries with which the Republic has signed a bilateral Convention or is committed by a multilateral International Convention for co-operation in matters of criminal procedure and all other countries which accept co-operation

[33] The review of R.35 has taken into account the analysis and findings in respect of those Recommendations that are analysed in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 2, 27, 28, 37, 38, 39 and SR.IX.

under the standard terms of mutual co-operation which are specified by the Minister with a notification published in the Official Gazette of the Republic.

759. Section 2 of the MLA Law provides that the competent authority of the Republic of Cyprus is the Minister of Justice and Public Order and a unit has been established within the Ministry of Justice and Public Order to act as the Central Authority for the execution of International Rogatory Letters and to improve and accelerate international co-operation. The Central Authority forwards the requests to the appropriate law enforcement authorities for execution, which are the FIU, the Police and the Customs and Excise Department.

760. Requests concerning money laundering offences and/or the freezing or confiscation of assets are forwarded to MOKAS and are processed in accordance with Part IV of the AML/CFT Law, which provides for the registration of external freezing and confiscation orders. Section 38(3) of the AML/CFT Law provides that the President or Senior District Judge of the District Court of Nicosia shall register an external order if satisfied that at the time of registration the order is in force and enforceable and no appeal is pending against the order; where the external order was made in the absence of the accused, the accused received notice of the proceedings in time to enable him to present the case and state his views; the enforcement of the order would not be contrary to the interests of justice of the Republic; and the grounds for refusal of co-operation mentioned in the International Conventions or Bilateral do not concur. The court may also make a freezing order at the request or on behalf of a foreign country if proceedings have not concluded in the foreign country under Sections 14 and 15 of the AML/CFT Law. Part IV A of the AML/CFT permits co-operation between EU. member states and the registration and enforcement of freezing or confiscation orders on the basis of Framework Decisions 2003/577/JHA and 2006/783/JHA respectively.

761. If the Rogatory Letter mainly contains requests to obtain evidence of the predicate offence and the resulting money laundering offence, it is forwarded to the Police or the Customs for execution and is copied to MOKAS for information and intelligence purposes.

Widest possible range of mutual assistance (c.36.1)

762. As set out in the Third Round MER, Cyprus is able to provide a wide range of mutual legal assistance, including:

(a) the production, search and seizure of information, documents or evidence (including financial records) from financial institutions or other natural or legal persons;

(b) the taking of evidence or statements from persons;

(c) providing originals or copies of relevant documents and records and other evidential items. As a matter of practice, copies of the documents are given to the investigator of the foreign Authorities immediately after the execution of the request and before the foreign investigators depart from Cyprus. The original or certified true copies of the said evidential documents are then sent via the Ministry of Justice and Public Order (Central Authority) to the requesting authority formally;

(d) effecting service of judicial documents;

(e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country;

(f) identification, freezing, confiscation and sharing of assets laundered, proceeds of money laundering or assets used for or intended to be used for financing of terrorism as well as instrumentalities and assets of corresponding value; and

(g) in the course of the execution of requests the Cyprus Authorities always give their consent to foreign investigators or prosecutors to be present in the various actions taken.

763. The incomplete criminalisation of the financing of terrorism offence may impact on the ability of Cyprus to provide mutual legal assistance in circumstances when dual criminality is required, however, this has not be an issue in practice.[34]

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

764. There are no formal timeframes in place for processing MLA requests. The Central Authority indicated that an average uncomplicated case would generally take six to seven months for execution, however, this could rise to one year in the event of receiving supplemental requests. Feedback received prior to the commencement of the evaluation was generally good and indicated that requests were generally granted and were completed well within the average time period suggested by the Central Authority. As regards formal requests submitted to MOKAS, the authorities indicated that their execution takes place within a shorter average period than 6 months.

765. Feedback suggested that Asset Recovery Office requests are always answered, but generally within two months, which is outside of the 14 day target.

Provision of assistance not prohibited or made subject to unreasonable conditions (c. 36.2)

766. The principle of dual criminality is not applied strictly in respect of non-coercive measures and offences are interpreted widely so as to enable the authorities to cooperate. The statistics provided by the authorities show that assistance was never refused for requests in ML cases.

Clear and efficient processes (c. 36.3)

767. The processes are set out above and are clear and generally efficient.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

768. Section 9(3) of the MLA Law provides that the competent authority of the Republic may refuse to provide assistance if it ascertains that the request concerns an offence of a financial nature in relation to which proceedings have not yet begun, unless it is satisfied that the act which constitutes the offence would constitute an offence of a similar nature if committed in the Republic.

769. The Cyprus authorities assert that requests for mutual legal assistance are not refused on the sole ground that the offence is also considered to involve fiscal matters. The provision of assistance appears to be possible regardless of possible involvement of fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

770. The Cyprus authorities confirm that secrecy and confidentiality provisions are not generally a bar to the provision of mutual legal assistance. The Banking Law (No. 66(I)/97) specifically

[34] To note: Law 110(I) 2010 on the Suppression of Terrorism which was adopted and enforced after the visit.

provides for the lifting of secrecy in respect of banking information in the course of an investigation by any authority, including requests by a foreign authority.

771. Section 45 of the AML/CFT Law permits an investigator to apply to the court for a disclosure order in respect of written or oral information during the course of an investigation into the possible commission of prescribed offences or in relation to an inquiry for the determination of proceeds or instrumentalities. Section 46(3) provides that the order for disclosure shall have effect despite any obligation for secrecy or other restriction upon the disclosure of information imposed by law or otherwise and Section 45(2) confirms that the inquiry may be one conducted abroad and that a local investigator may apply on behalf of the foreign investigator in the case.

772. Section 46 provides that the disclosure order may be granted, if the court is satisfied that there is a reasonable ground to suspect that a specified person has committed or has benefited from the commission of a prescribed offence; that the information is likely of itself or together with other information of substantial value to the investigation; the information is not privileged; and it is in the public interest for the information to be disclosed. Privileged information includes information held subject to legal privilege (Section 44(a) of the AML/CFT Law).

Availability of powers of competent authorities (applying R.28, c. 36.6)

773. The powers of competent authorities required under Recommendation 28 are also available for the execution of requests for mutual legal assistance.

Avoiding conflicts of jurisdiction (c. 36.7)

774. The Cyprus authorities confirmed that any necessary communication and arrangements can be made bilaterally in the interests of justice.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

775. Formal requests from foreign judicial or law enforcement for the exercise of the powers set out in Recommendation 28 must be made via the Central Authority and may not be made directly to their domestic counterparts.

Special Recommendation V (rated LC in the 3rd round report)

776. The financing of terrorism is a predicate offence, the criteria set out in Recommendations 36.1 to 36.6, 37.1 to 37.2, 38.1 to 38.3 and 40.1 to 40.9 also apply to the obligations under SR V. However, as noted above, the incomplete criminalisation of the financing of terrorism offence limits mutual legal assistance where dual criminality is required.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

777. Cyprus applies the same principles and approach in respect of SR V, namely that any necessary communication and arrangements can be made bilaterally in the interests of justice and requires that formal requests for mutual legal assistance are made via the Central Authority.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance requests)

778. The human and technical resources of the Central authority's human and technical resources appear to be insufficient. The Central Authority reported that it had experienced difficulties in obtaining adequate resources, however the Unit was increased to three people dealing with

requests for mutual legal assistance in criminal matters in June 2009. The evaluators were told that two lawyer posts were shortly to be created within the Unit.

779. The evaluators were told that training was provided on the job. The Ministry of Justice and Public order offers training to its staff both in Cyprus and abroad, however, such training is limited to the conventions and the role of the Central Authority, on the basis that the Central Authority does not execute requests, but simply acts as the recipient of the requests, which are then forwarded to the competent authorities for execution.

Recommendation 32 (Statistics – c. 32.2)

780. The need for full and complete statistics was highlighted in the Third Round MER and continues to be an issue. The Central Authority reported that it was developing an Excel spreadsheet to provide statistics and that they had begun to keep statistics in mid-2009, however, Cyprus has provided the following statistics concerning mutual legal assistance for the years 2008, 2009 and 2010 set out in the tables below.

Table 30: MLA requests received or sent in 2008

INCOMING REQUESTS	OUTGOING REQUESTS
1. Economic crime – 65 2. Money Laundering- 15 3. Drug related- 4 4. Offences relating to person- 20 5. Other- 33 Total: 137 From European Union countries: 95 Non- European Union Countries: 42	1. Economic crime- 42 2. Drug related- 5 3. Offences relating to persons- 2 4. Offences relating to customs- 3 Total: 52 To European Union countries: 42 Non- European Union Countries: 10

Execution/ Non- Execution of mutual legal assistance requests:
Number of Requests executed: 130
Number of Requests not executed: 7 (civil offence/ additional evidence requested and not submitted)

Time Frame for the execution of mutual legal assistance requests:
Approximately 8 months

Table 31: MLA requests received or sent in 2009

INCOMING REQUESTS	OUTGOING REQUESTS
1. Economic crime – 105 2. Money Laundering- 40 3. Drug related- 20 4. Offences relating to person- 5 5. Offences relating to traffic accidents-4 6. Offences relating to labour incidents-5 7. Offences relating to customs-10 8. Other- 17 Total: 206 From European Union countries: 149 Non- European Union Countries: 57	1. Economic crime- 31 2. Money laundering-2 3. Drug related- 7 4. Stealing of cultural property-2 5. Illegal access to computer system-4 6. Possessing of personal data-3 7. Child Pornography- 2 8. Bigamy- 1 Total: 52 To European Union countries: 40 Non- European Union Countries: 12

Execution/ Non- Execution of mutual legal assistance requests:
Number of Requests executed: 202

Number of Requests not executed: 4 (civil offence/ additional evidence requested and not submitted)

Time Frame for the execution of mutual legal assistance requests:
Approximately 6 months

Table 32: MLA requests received or sent in 2010

INCOMING REQUESTS	OUTGOING REQUESTS
1. Economic crime – 140 2. Money Laundering- 118 3. Drug related- 5 4. Offences relating to person- 5 5. Offences relating to traffic accidents-3 6. Offences relating to labour incidents-2 7. Offences relating to customs-15 8. Other- 49 Total: 337 From European Union countries: 256 Non- European Union Countries: 81 **Top 5 Countries from which requests have been received (2010)** 1. United Kingdom 2. Russia 3. Germany 4. Greece 5. Bulgaria	1. Economic crime - 49 2. Money laundering -4 3. Drug related - 9 4. Stealing of cultural property-1 5. Illegal access to computer system- 19 6. Child Pornography- 1 7. Murder - 4 Total: 87 To European Union countries: 54 Non- European Union Countries: 33 **Top 5 Countries to which requests have been sent (2010)** 1. United Kingdom 2. U.S.A. 3. Greece 4. Switzerland 5. The Netherlands

Execution/ Non- Execution of mutual legal assistance requests:
Number of Requests executed: 236 –Under execution 92
Number of Requests not executed: 9 (civil offence/ additional evidence requested and not submitted)

Time Frame for the execution of mutual legal assistance requests:
Approximately 6 months

Additional Elements

781. No statistics have been provided for the years 2005, 2006 and 2007. The evaluators are grateful to staff of the Ministry of Justice for manually checking files for 2009 and 2010 to provide the above statistics following the ME visit for the years 2008, 2009 and 2010. The statistics provided include the number of MLA requests granted and refused, however, insufficient detail is provided as to the types of request refused, in respect of which offences and from which countries. It is clear that sufficient statistics are not being collated on an ongoing basis.

Effectiveness and efficiency

782. Cyprus has a comprehensive system for the provision of mutual legal assistance and requests for assistance are generally answered in an efficient and effective manner. There is a need, however, for full and complete statistics to be collected to monitor progress and to demonstrate that the system is fully effective and efficient.

783. The incomplete criminalisation of the terrorist financing offence has the potential to impact on effectiveness and efficiency, but has not done so in practice.

6.3.2 Recommendations and comments

Recommendation 36 and Special Recommendation V

784. The incomplete criminalisation of the terrorist financing offence[35] affects the ratings for Recommendation 36 and Special Recommendation V. The authorities should address all shortcomings identified under SR II to ensure that the dual criminality requirements do not limit Cyprus' ability to provide mutual legal assistance.

Recommendation 30

785. Sufficient resources must be made available to the Central Authority.

Recommendation 32

786. As was highlighted in the Third Round MER, complete, detailed and precise statistics should be kept by the competent authority on all mutual legal assistance requests that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond so as to assist in strategic analysis as well as identifying efficiency issues / timing and the fulfilment of requests in whole or part.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• The incomplete criminalisation of the financing of terrorism offence may impact on the ability of Cyprus to provide mutual legal assistance in circumstances when dual criminality is required.
SR.V	**LC**	• The incomplete criminalisation of the financing of terrorism offence may impact on the ability of Cyprus to provide mutual legal assistance in circumstances when dual criminality is required.

6.4 Other Forms of International Co-operation (R. 40 and SR.V) [36]

6.4.1 Description and analysis

Recommendation 40 (rated LC in the 3rd round report)

Summary of 2006 MER factors underlying the rating

787. Under the third round, Cyprus was assessed to be Largely Compliant as regards Recommendation 40. While the MER took note of the broad capacity of MOKAS to exchange information, it also stressed the absence of information on how quickly or how fully requests for information were answered, due to lack of relevant statistical data.

Legal framework

[35] See previous footnote.
[36] This Section is yet to be examined during the September pre-meeting with the Cyprus authorities.

788. The legal basis for co-operation between MOKAS and foreign authorities is set out in Section 55 (1) c) of the AML/CFT Law which provides that the Unit shall "co-operate with corresponding Units abroad, as well as with Asset Recovery Offices, for the purpose of investigation of laundering offences and terrorist financing offences by the exchange of information and by other relevant ways of co-operation".

789. In addition, the EU Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for co-operation between financial intelligence units of the Member States in respect of exchanging information between FIUs in EU Member States is also of relevance. MOKAS has also concluded 24 memoranda of understanding with foreign FIUs.

790. With regard to law enforcement authorities, it is unclear how this type of co-operation is regulated in the national legislation covering the police authorities. It was indicated that competent Cyprus authorities primarily use the information channels provided by Interpol, Europol[37] and the relevant Community legislation. Cyprus has also taken implementing measures in respect of the following EU legal instruments:

- 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (hereinafter referred to as: Swedish Initiative);
- Council Decision 2007/845/JHA of 6 December 2007 concerning co-operation between Asset Recovery Offices of the Member States in the filed of racing and identification of proceeds from, or other property related to, crime (hereinafter referred to as: Council Decision on ARO);
- The Cyprus authorities explained that a Bill was enacted on the 8th of July 2010 implementing the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, which had not been tested in practice at the time of the on-site visit.

791. With regards to customs authorities, the Customs Code Law No. 94 (I) 2004 also makes a reference to the possibilities of international co-operation. In addition, the Department of Customs and Excise applies the provisions of EU Council Regulation No. 515/1997 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and co-operation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (hereinafter referred to as Regulation 515/97/EC), and of Council Act 98/C 24/01 of 18 December 1997 drawing up, on the basis of Section K+ of the Treaty on European Union, the Convention on mutual co-operation between customs administrations (hereinafter referred to as: Naples II Convention) when co-operating with competent foreign authorities.

792. As regards supervisory authorities for the financial sector, the co-operation with foreign competent supervisory authorities and organisations, including the exchange of information, collection of information and carrying out of inspections is allowed to the extent that it is carried out in the exercise of their responsibilities and fulfils the conditions set out in their respective laws or protocols of co-operation. The applicable provisions are as follows:

- CBC: Section 27 of the Banking Laws;
- ASDCS: Section 41D of the Cooperative Societies Law;
- CYSEC: Sections 29-30 of the Law Regulating the structure, responsibilities, powers, organisation of the Securities and Exchange Commission and other related issues;
- ICCS: Section 6 of the Insurance Law.

[37] Cyprus ratified EU Council Decision 2009/371/JHA establishing the European Police Office on 29.7.2011. With this new legislation the previous laws ratifying the Europol Convention and relevant Protocols were abolished (Laws no. 38/2002, 58/2004, 19/2003, 59/2004).

793. However, as noted previously in this report, these provisions seem to be applied exclusively to co-operation and information exchange in relation to prudential supervision, and not to information related to anti-money laundering or the financing of terrorism. The authorities indicated that the scope of information exchange related to prudential supervision would cover AML/CFT aspects and that the existing provisions are drafted in wide enough terms to include these aspects, thus not requiring explicit references to AML/CFT. The concerns regarding the lack of a direct link into the regulatory framework of the supervisory authorities of their ability to exchange information relating to ML and TF expressed previously in the third round evaluation are reiterated and should be remedied.

794. As regards co-operation with foreign supervisory authorities of DNFBPs, the adequacy of the legal framework so as to enable a wide range of international co-operation and clear and effective gateways for the exchange of information is not demonstrated.

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1) & Clear and effective gateways for exchange of information (c.40.2)

MOKAS

795. In application of Section 55 (1)c) of the AML/CFT Law, the FIU co-operates and exchanges information with foreign counterpart FIUs of any type, irrespective of their administrative, law enforcement or financial nature. The exchange of information is made upon request and spontaneously. According to the above mentioned relevant legal provision, MOKAS does not require an MOU for information exchange with foreign FIUs.

796. MOKAS is authorized to conduct inquiries on behalf of foreign counterparts and provide information from its own databases and databases of other authorities. It can order financial institutions to postpone transaction for a certain period, if deemed necessary in the course of inquiries or analysis conducted in co-operation with a foreign FIU. Information requests are not refused because a request is also considered to involve fiscal matters. Exchanged information is subject to the same confidentiality provisions as those applied to similar information exchange from domestic sources.

797. In addition, MOKAS has concluded a number of bilateral agreements with a large number of countries. These bilateral agreements include provisions for the exchange of information, documentary evidence, and execution of warrants. The lack of a bilateral agreement does not preclude the exchange of information with other FIUs. Similarly, MOKAS can also exchange information with FIUs that are not members of the Egmont Group. Since the 3rd round evaluation, MOKAS has concluded additional MOUs with foreign counterparts, including Aruba, Bulgaria, Moldova, Georgia, Netherlands Antilles, Syria, Chile, Romania, and the Republic of Korea

798. The Cyprus FIU uses Egmont Secure Web and the FIU.NET to facilitate safe and effective information exchange with its foreign counterparts. The Unit has been connected to the FIU.NET since 2006.

799. The AML/CFT Law or the bilateral Memoranda of Understanding do not appear to provide procedural deadlines for execution of requests of international co-operation. The authorities indicated that they make efforts to provide rapid, constructive and effective answers for the requests and that priority is always given to foreign requests. From the feedback received from other countries, it was understood that generally the quality of responses by MOKAS had improved over time and that the response time was within the timelines of the Egmont practice (ie. one month).

800. MOKAS, given its hybrid nature, may also exchange information with police authorities of other countries and also police type FIUs using Interpol and Europol channels.

801. Furthermore the Cyprus FIU, as the designated national ARO, is authorised to exchange information with the AROs of the Member States of the European Union for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property which may become the object of a freezing, seizure or confiscation order made by a competent judicial authority in the course of a criminal or, as far as possible under the national law of the Member State concerned, civil proceedings (Section 1 of the Council Decision on ARO). In addition to this objective one of the members of MOKAS is nominated as the national contact point for the Camden Assets Recovery Inter-Agency Network (CARIN), which is an informal network of contacts and a cooperative group (with the participation of third countries as well) in all aspects of tackling the proceeds of crime. Feedback received from other countries with respect to co-operation between AROs indicated that Cyprus always responds to the requests sent, though with certain delays (i.e. average of 2 months, in comparison with the 14 days timescales).The Cyprus authorities should take the necessary steps to meet the prescribed timeframes when co-operating with foreign AROs.

802. MOKAS has voluntarily become a member since 2006 of Europol Analytical Work File (AWF) SUSTRANS intended to deal with ML related criminality within the EU. The majority of cases sent to SUSTRANS relate to victims of e.g. of investment fraud.

Other law enforcement authorities

803. With regard to non-judicial forms of international co-operation, Cyprus law enforcement authorities primarily use the information exchange channels provided by Europol, Interpol, and the relevant Community legislation.

804. The document Crime Prevention Strategy of Cyprus (2009) accessible on the publicly available website of the Cyprus Police makes a reference that the Republic of Cyprus has also ratified numerous International multilateral Conventions and signed a number of bi-lateral Agreements providing for co-operation between the Police or other Government Authorities on matters relating to the prevention and combating of international terrorism, drug trafficking, organized crime and other forms of serious crime. The evaluators were not provided with any additional information in this respect. For direct bilateral co-operation with the police authorities of another country it was explained that the Cyprus Police is using police to police type of informal co-operation and the stationing of liaison officers for information exchange for intelligence purposes which is not based on any formal law or regulation.

805. As it was mentioned Cyprus has ratified the Swedish Initiative. The authorities explained that the Cyprus Police had received 3 requests and sent 1 request to Member States in 2009, and respectively had received 1 in 2010 and has sent 1 request to a Member State. All requests were not urgent and all were answered within 14 working days which is the time allowed for non urgent requests. Cyprus did not reject any request.

806. The Customs Code Law No. 94 (I) 2004 regulates that the Department of Customs and Excise is cooperating with other authorities of the Republic and outside the Republic in matters of its competence and offers its assistance to them. In additions the representatives of the Department of Customs and Excise also explained that Regulation 515/97/EC, as well as the Naples II Convention are effective tools for international co-operation. The Naples II Convention offers the application of the following special forms of co-operation: hot pursuit, cross-border surveillance, controlled deliveries, covert investigations, joint special investigation team. The National Facts Sheet of Cyprus in connection with the so called Naples II Handbook states that it is only controlled deliveries and the setting up of joint special investigation teams are allowed on the

territory of the Republic of Cyprus. It was explained that the Department of Customs & Excise has a very close co-operation with OLAF.

807. According to the statistics provided by the Department of Customs and Excise, these forms of co-operation are rarely being applied:

Table 33: Customs co-operation

Countries	Regulation 515/97/EC			Naples II Convention			Legal Assistance Requests		
	2008	2009	2010	2008	2009	2010	2008	2009	2010
19	3	25	13	1	8	-	4	5	2

Supervisory authorities

808. Cyprus indicated that its supervisory bodies exchange information and maintain wide-ranging co-operation with their foreign counterparts in a timely and effective manner, including providing assistance to foreign supervisory authorities. Such information exchanges can be made upon requests or spontaneously.

CBC

809. Section 27 (1) of the Banking Law allows CBC to co-operate and exchange information with competent supervisory authorities in Cyprus or abroad, including credit institutions, insurance companies, investment firms, financial institutions or regulated markets either in Cyprus or in third country. The Law also provides that any exchange of information will take place only when the CBC is satisfied that the information provided is accorded the same confidentiality rule in the hands of the receiving supervisory authority.

810. The Central Bank noted that it gives special emphasis to the development of its bilateral relations by entering into negotiations for the signing of Memoranda of Understanding (MOUs) with a number of foreign Central Banks and Supervisory/Regulatory Authorities of countries whose banks and/or other financial institutions have an active presence in Cyprus. Since the 3rd evaluation, the CBC has concluded 16 additional MOUs, bringing the total number to 27 MoUs[38]. Moreover, a multilateral MOU on high level of principles of co-operation and coordination among the banking supervisors of South Eastern Europe has been signed with the banking supervisory authorities of Albania, Greece, Bosnia and Herzegovina, Bulgaria, Montenegro, "the former Yugoslav Republic of Macedonia", Romania and Serbia.

ASDCS

811. The Commissioner, under Section 41D(2) of the Cooperative Societies Law, cooperates and exchanges information with other public authorities within Cyprus or other supervisory authorities within the EU or a third country regarding the business or the financial adequacy or liquidity of the CCI he/she supervises. The Societies Law also provides that any exchange of information will take place only when the Commissioner is satisfied that the information provided is subjected to the same confidentiality rules of ASDCS.

[38] National Bank of the Republic of Belarus; National Bank of Slovakia; Bank of Tanzania; Central Bank of Jordan; Bank of Greece; Banque du Liban; Central Bank of the Republic of Armenia; De Nederlandsche Bank N.V.; National Bank of Serbia; Jersey Financial Services Commission; Austrian Financial Market Authority; Estonian Financial Supervision Authority; National Bank of Kyrgyz Republic; Central Bank of the Russian Federation ; Bulgarian National Bank; Malta Financial Services Authority; Qatar Central Bank; National Bank of Ukraine ; Financial and Capital Market Commission of the Republic of Latvia; Guernsey Financial Services Commission; Polish Financial Supervision Authority; National Bank of Romania; Greek Capital Markets Commission; Federal Commission for the Securities Market of Russia; (Now Federal Financial Markets Service of Russia**);** Czech Securities Commission (now integrated into Czech National Bank); Lithuanian Securities Commission.

CYSEC

812. Section 29 of the Cyprus Securities and Exchange Commission Law of 2009 enables CYSEC to request and collect information necessary for the exercise of its statutory functions. The Law allows the Commission to enter into agreements with other supervisory bodies abroad and, protects information exchanged as confidential, and prohibits its disclosure. The Commission may collect information or conduct inspections following a request by a competent supervisory authority or abroad. The Commission may, however, deny a request for information exchange in the event when: the disclosure of information may offend Cyprus' sovereignty, security, or public order; legal measures have been taken before a court for the same actual facts; and a final court decision has been issued for these persons for the same actual facts.

813. Since the 3rd round evaluation, CYSEC became a signatory to the Multilateral Memorandum of Understanding with the regulatory authorities of the European Community Member States through the Committee of the European Securities Regulators (CESR). Additionally, CYSEC has concluded 7 additional MOUs with supervisors in jurisdictions where the Cyprus investment community is active, including Australian Securities & Investments Commission, Bulgarian Financial Supervision Commission, Isle of Man Financial Supervision Commission, Israel Securities Authority, Jersey Financial Services Commission, Polish Securities and Exchange Commission, and Dubai Financial Services Authority.

ICCS

814. The Law on Insurance Services and Other Related Issues of 2002-2005 enables the Superintendent of Insurance to provide information exchange with foreign counterparts. Section 6 of the Law authorizes the Superintendent to cooperate with other foreign competent supervisory bodies, charged with the carrying out analogous functions and to exchange with them necessary information. Section 6 adds that the Superintendent may conclude co-operation agreements, providing for an exchange of information, only if the disclosed information is subject to guarantees of complying with the professional secrecy at least equivalent to those provided for in the Law. To date, no bilateral agreements have been signed. The Superintendent noted that she gives a high priority requests for information from foreign supervisors.

Exchange of information (a) both spontaneously and upon request, and (b) in relation to both money laundering and the underlying predicate offences (c. 40.3)

MOKAS and other law enforcement authorities

815. MOKAS can exchange information spontaneously. The following statistics were made available on the flow of spontaneous information exchanges, which show a slight increase in the number of spontaneous referrals sent abroad by MOKAS as of 2009:

Table 34: MOKAS – spontaneous referrals

	2005	2006	2007	2008	2009	2010 (as of 16/9/2010)
Spontaneous referrals received	-	-	4	12	12	15
Spontaneous referrals sent	-	3	3	7	18	11

Supervisory authorities

816. Cyprus indicated that its supervisory bodies exchange information and maintain wide-ranging co-operation with their foreign counterparts in a timely and effective manner, including providing

assistance to foreign supervisory authorities. Such information exchanges can be made upon requests or spontaneously. No information was provided with respect to the frequency and timeliness of information of these exchanges, apart from the statistics provided by the CBC after the visit. In the absence of additional information, it was not demonstrated that the supervisory authorities make full use of co-operation channels and exchange information.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

MOKAS

817. MOKAS is authorized to make inquiries on behalf of foreign counterparts and can provide information from its own databases or from the databases of other authorities it has direct or indirect access (these basically include criminal records, customs intelligence and investigating database, police intelligence and investigating database, database of stolen vehicles, documents and wanted persons, personal data and home address registry, company register, vehicles register, customs records).

818. Also, as mentioned previously, the Cyprus FIU can issue an administrative order to financial institutions to postpone a transaction for a certain period of time if deemed necessary in the course of inquires or analysis conducted in co-operation with foreign FIUs based on Section 55 (1) e) of the AML/CFT Law. There is no formal deadline for the suspension of transactions, but the Cyprus authorities explained, and this was confirmed by representatives of the financial sector, that this measure is usually applied in cases where they would subsequently have a basis to apply provisional measures, and the time of postponement or non-execution is of a reasonable period (ie. maximum 5 days).

819. However with regard to international co-operation not falling under the scope of MLA, undefined exceptions appear to exist excluding certain sensitive financial or administrative information (i.e. banking, tax and land registry information, information on the beneficial owner), which would limit the scope of international non MLA based assistance Cyprus is able to provide.

Other law enforcement authorities

820. In the absence of information, it is unclear whether law enforcement authorities (including MOKAS in its investigative function) can meet the requirement under c.40.5. outside MLA. As the evaluators understand the provisions on the measures applicable in the course of an investigation are based on the CPC (Chapter 155, Part II investigation of offences and proceedings antecedent to prosecution), the AML/CFT Law and the Customs Code Law.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

821. As regards supervisory authorities, the information exchanged must serve the purpose of filling the duties of the competent authorities and is subject to the same or equivalent confidentiality rules by the foreign requesting authority.

822. The evaluation team received information on certain restrictions in relation to FIU to FIU co-operation, since certain financial or administrative information (i.e. bank statements, account details, tax information, information on beneficial owner, Land Registry information) seem only to be produced through MLA channels. It was stated in the MEQ that the condition for the exchange of information between the FIU of Cyprus and its counterparts is the principle of reciprocity. Nevertheless based on the responses received to MONEYVAL's standard feedback request on international co-operation, several countries have indicated that when requests are sent

for information concerning beneficial owners, a letter rogatory is requested; information received from the Cyprus FIU is often limited to data from the registry of companies and citizens or law enforcement information or public information; and that for requests covering financial information (i.e. bank account information such as account holder, balance of the account, identification of persons with right of disposal of an account), as well as tax information or information from the Land Registry) the requesting foreign FIU is directed to use MLA channels. The evaluation team was informed that part of this caution is that certain countries had infringed the principle of applying similar confidentiality measures. Not questioning the credibility that such a breach of trust may have occurred in the past when cooperating with certain countries, it should be stressed that almost 40% (6 out of a total of 15) of the responding countrieshave raised these issues as a matter of concern.

823. The Cyprus authorities highlighted that tax information could be exchanged when a rogatory letter is submitted, whilst there is no obstacle in exchanging tax information through the ARO. Council Decision on ARO only addresses ARO to ARO co-operation which would conclude that a counterpart FIU not being appointed to undertake national ARO tasks would have to redirect its request (taking the national 'no tipping of" provisions also into consideration) either to its national ARO or to MLA, which could be very time consuming. Not to mention that AROs are only established in EU Member States, while as regards to the scope of the above mentioned EU legislation it is the CARIN Network that facilitates the co-operation with third countries. Only the Cyprus authorities stated that they rarely use the CARIN Network, , although it was mentioned that in 2009 no request through the Network was received nor sent. It was indicated that for the exchange of such information ARO is used instead, however it seems that this was channel was used only for incoming requests (16 requests received in 2009, and 6 in 2010).

824. As a conclusion it can be affirmed that certain types of information which are considered to contain sensitive financial or administrative data could only be provided to other countries by way of MLA. Since MOKAS is also participating in the fulfilment of rogatory letters, this form of co-operation might not pose any problems to MOKAS, however from the point of the requesting foreign authority, this practice might create obstacles when attempting to obtain such information in a prompt and effective manner, leaving aside the unnecessary administrative burden and costs that this would generate. As it was stated above, the average timeframe for Cyprus authorities to respond to MLA requests is approximately 8 months, which is insufficient for an FIU to properly and timely undertake its functions, especially the financial analysis of STRs. The evaluators are of the view that the Cyprus authorities should avert such deficiencies and make the necessary steps which will enable them to provide the widest range of co-operation regardless of the nature/type of data requested when changing information with foreign counterparts. Based on the legal framework of Cyprus, it can be inferred that the same deficiencies apply to the international co-operation between law enforcement authorities.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

825. No restrictions could be found in the relevant legislation provided by the Cyprus authorities regulating the international co-operation of MOKAS and the Cyprus law enforcement authorities. For EU member states, there is a direct communication between Tax authorities for administrative purposes. As for investigative purposes, the Cyprus authorities highlighted that tax information could be exchanged when a rogatory letter is submitted, and also on an FIU to FIU basis when justified. In the latter case, such requests are not refused solely on the ground that they are considered to involve fiscal matters. Considering that these requests can be satisfied based on a procedure involving a court disclosure order, the authorities explained that such requests should be adequately substantiated in order for this procedure to be successful. MOKAS has indicated having exchanged information related to fiscal matters with other FIUs, pointing at 2 recent examples, and stated that such FIU requests are not frequent. Some responding counterpart FIUs

indicated that when certain fiscal matters arise (such information is requested, underlying fiscal offence serves as the reason for a request) counterpart authorities were directed to use MLA.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

826. It was explained by the Cyprus authorities that no secrecy law exists in Cyprus; it is the banking law that contains provisions on professional secrecy and banking secrecy. Section 28A (1) (a) of the Banking Laws of 1997 to 2009 28/A regulates professional secrecy stating that all persons who carry out or have carried out a task on behalf of the bank and the auditors or experts commissioned by the Central Bank, are subject to professional secrecy. None of the confidential information defined in the legislation that a person becomes aware of, while carrying out his professional duties, shall not be disclosed to any person or any authority, except in a concise or collective form, so that the identity of the bank does not emerge, unless the case falls under the criminal law. Chapter IX contains provisions on banking secrecy describing the duty to maintain bank secrecy shall not apply in any case where the information is given to the police under the provisions of any law or to a public officer who is duly authorised under that law to obtain that information or to a court in the investigation or prosecution of a criminal offence under any such law (Section 29 (2) d.).

827. Section 45 of the AML/CFT Law also provides that on the basis of 45 and 46 of the same legislation, Cyprus courts may, upon application by the investigator, make an order for the disclosure of information by any person, including service providers involved in financial businesses or other activities, who appears to the court to be in possession of the information to which the application relates. Such an order applies irrespective.

828. Based on the legislation described above it can be concluded that there are no restrictions which can be an obstacle related to secrecy or confidentiality on financial institutions or DNFBPs when it comes to international co-operation.

Safeguards in use of exchanged information (c.40.9)

MOKAS and Law enforcement authorities

829. Cyprus authorities have controls and safeguards in place to ensure that information received by competent authorities is used only in an authorised manner.

830. The security and legal protection of 'personal data' or 'data' is based on the Processing of Personal Data (Protection of Individuals) Law 138 (I) 2001 (and amending Law 37(I) 2003) as described under R.26 (c. 26.7). Since collection, recording and transmission of personal data falls within the scope of this Law it can be concluded that the provisions of data protection also apply to information exchanged by competent foreign counterpart authorities. If there is a need to use the information by another authority the consent of the foreign counterpart is requested. Furthermore the provision on prohibition of disclosure regulated under Section 48 of the AML/CFT Law for the protection if information in the investigation process apply, violation of which results in criminal liability.

831. The Customs Code states that an authorised officer (person who is authorised by the Director of CED under Section 6 of the Law for the performance of any act which may be carried out on the basis of the customs or the other legislation) shall not disclose or provide to third persons in any way confidential data or information which have come to his knowledge or have been notified to him during the course of the performance of his duties, but with the permission of the Minister (of) Finance.

Additional elements – Exchange of information with non counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

MOKAS

832. MOKAS as matter of practice discloses to the requested authority the purposes of the request giving a summary of suspicion.

833. The Cyprus authorities indicated that that MOKAS can obtain from other competent authorities or other persons relevant information requested by a foreign counterpart FIU.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

834. The provisions described under R.40 apply equally to the fight against terrorism and financing of terrorism. It should be noted, however, that the deficiencies described under SR II and R.40 may have an impact on Cyprus's ability to provide other forms of international co-operation.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

835. MOKAS can exchange information with non counterparts on CFT.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

836. In the 3rd round MER one of the findings of the evaluators was that there no statistics were available showing the level of police international assistance. Also the Cyprus FIU was recommended to keep more detailed information, their response times, and whether the request was fulfilled in whole or in part or was incapable of being fulfilled. With regard to the supervisory authorities it was also recommended that they should also keep statistics which shows whether the requests were able to be fulfilled.

837. The following statistics were received:

Table 35: MOKAS : Co-operation and information exchange

	2005	2006	2007	2008	2009	2010 (As of 16/9/2010)
Requests received by MOKAS (Egmont)	**206**	**205**	**298**	**286**	**340**	**315**
Requests sent by MOKAS (Egmont)	**91**	**122**	**244**	**164**	**171**	**121**
FIU.NET Received	**-**	**-**	**-**	**-**	**-**	**15**
FIU.NET Sent	**-**	**-**	**-**	**-**	**-**	**18**
Spontaneous referrals received	**-**	**-**	**4**	**12**	**12**	**15**
Spontaneous referrals sent	**-**	**3**	**3**	**7**	**18**	**11**
Requests received by	**-**	**-**	**-**	**-**	**16**	**18**

MOKAS from Asset Recovery Offices (AROs)						

Table 36: Top 5 countries to which requests have been sent and from which requests have been received

Year	Requests received	Request sent
2006	Bulgaria, Ukraine, Hungary, UK, Romania	UK, USA, BVI, Greece, Russia
2007	Romania, Russia, UK, Bulgaria, Ukraine	UK, USA, BVI, Russia, Ukraine
2008	Ukraine, UK, Romania, Bulgaria, Belgium	UK, USA, Russia, Greece, BVI
2009	UK, Ukraine, Romania, Bulgaria, Greece	UK, USA, BVI, Spain, Switzerland
2010(16.9.10)	UK, Spain, Greece, Russia, Ukraine	UK, Russia, USA, Germany, UK

838. The evaluators noted with satisfaction that as regards to the international co-operation of MOKAS with counterpart FIUs, the number of requests sent and received between 2005 and the time of the onsite visit have constantly increased. No further information was available on the number of requests granted and refused, as well as information on the number of requests from abroad that resulted in formal criminal investigation.

839. Statistics received regarding co-operation via Interpol/Europol channels on the number of requests sent/received for the years 2005-2010 are shown below:

Table 37: Police co-operation statistics

YEAR	RECEIVED			SENT		
	Interpol	**Europol**	**Police Co-operation Office (Rogatory Letter)**	**Interpol**	**Europol**	**Police Co-operation Office (Rogatory Letter)**
2005	**547**	**179**	**180**	**224**	**85**	**18**
2006	**650**	**216**	**124**	**225**	**141**	**30**
2007	**696**	**298**	**116**	**345**	**223**	**41**
2008	**638**	**278**	**108**	**368**	**201**	**46**
2009	**738**	**322**	**130**	**284**	**141**	**48**
2010 (until 29.9.2010)	**579**	**261**	**150**	**171**	**131**	**50**

Note: this table covers all requests, including those related to ML

840. The authorities also referred in this context to co-operation in response of OLAF requests, and statistics which are available only since 2009 include responses to 2 requests in 209 and 2 in 2010. It was explained that the head of the FIU is the contact between OLAF and the Attorney General and in some cases therefore assistance was given in respect of OLAF requests, which were executed by the Police, but no statistics are being kept by FIU as these are not considered to be cases dealt by the FIU.

841. Each of the law enforcement authorities such as the MoJPO, MOKAS, the Cyprus Police, the Department of Customs and Excise district maintains their own statistics relating to other forms of international co-operation. The statistics of some of the law enforcement authorities could not be verified during the on-site visit in the absence of statistics and the information subsequently provided did not enable to draw firm conclusions on the effectiveness and the efficiency of these aspects of international co-operation.

842. No statistics were received as regards co-operation and information exchange relating to or including AML/CFT with foreign supervisory authorities. After the visit, the CBC has provided statistics on exchanges of information of a supervisory nature for the period 2006-2010 (2006: 2 requests; 2007: 2 requests; 2008: 6 requests and 2 joint on-site AML inspections; 2009: 1 request; 2010: 1 request) which covered primarily information on cross border establishments. The CBC

indicated that requests for other AML/CFT information which is not of a supervisory nature are referred to MOKAS.

Effectiveness and efficiency

843. In the Third Round MER, Cyprus was recommended that more detailed and precise statistics must be kept to track ML/TF cases. The evaluators continue to have reservations as to comprehensiveness of the statistics available.

844. The authorities appear to have the necessary ability and powers to collaborate and exchange information. The relevant legislation, with the exception of the Swedish Initiative, does not provide for clear time limits which would enable to determine whether requests are being dealt with timely, constructively and effectively. Cyprus authorities indicated that requests are normally dealt with quickly, priority is also given to them.

845. Though statistics received do not clarify this matter, the feedback received from responding MONEYVAL and FATF Member regarding the timeliness of responses does not appear to raise major issues of concern and the quality of the responses appears to have improved, with a number of countries reflecting on difficulties when certain financial and administrative sensitive data (bank, tax, land registry information) is requested in the course outside of MLA channels.

846. While the MOUs set out the general framework of mutual co-operation and exchange of information, it remains unclear whether these bilateral agreements are generally prudential in nature or contains specific elements related to AML/CFT issues. Of the sampled MOUs that the CBC has concluded, it appears that application of the provisions on anti-money laundering and counter of terrorism is uneven. While some MOUs (such as with those with Russia, Estonia, and Latvia) explicitly contain reference to the exchange of information regarding money laundering and/or terrorist financing, other MOUs (such as Lithuania and Jordan) are primarily prudential supervision of cross-border establishments.

847. The information received does not enable the evaluation team to draw any conclusions regarding the scope and effectiveness of the supervisory authorities and other law enforcement authorities' co-operation with foreign authorities in this field. During the visit, only the Central Bank confirmed that it has exchanged information, and that this related to supervisory issues. Requests for exchange of information on operational matters that are related to money laundering would be forwarded to MOKAS as the central authority to handle such cases.

6.4.2 Recommendation and comments

848. Cyprus authorities are recommended to:

- consider putting a system in place enabling them to monitor the quality and speed of executing international requests of all relevant authorities for co-operation on matters related to money laundering and the financing of terrorism, such as for example at the level for the Advisory Authority ;
- review current practice and ensure that any undue restrictions related to the international exchange of certain sensitive information such as tax, banking and land registry data be eliminated;
- remedy by introducing a direct link into the regulatory framework of all supervisory authorities clarifications as to their ability to exchange information relating to ML and TF;
- clarify the legal framework and establish channels for co-operation for the exchange of information on AML/CFT issues in the context of co-operation with foreign supervisory authorities in respect of DNFBPs;

- maintain comprehensive annual statistics on requests for assistance and information exchange made or received based on other forms of international co-operation, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond.
- maintain statistics on formal requests for assistance made or received by all supervisors relating to or including AML/CFT, including whether the request was granted or refused are not available.

6.4.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	• Information points to certain restrictions in the practice in relation to FIU to FIU co-operation, when certain type of information is requested by foreign authorities; • The adequacy of the legal framework so as to enable a wide range of international co-operation and clear and effective gateways for the exchange of information on AML issues in the context of co-operation with foreign supervisory authorities in respect of DNFBPs is not demonstrated; • As regards supervisory authorities, there is a lack of a direct link into the regulatory framework of the supervisory authorities of their ability to exchange information relating to ML and TF; • The scope and effectiveness of the supervisory authorities (other than the CBC) and other law enforcement authorities' co-operation with foreign authorities on AML/CFT aspects was not demonstrated.
SR.V	**LC**	• The adequacy of the legal framework so as to enable a wide range of international co-operation and clear and effective gateways for the exchange of information on CFT issues in the context of co-operation with foreign supervisory authorities in respect of DNFBPs is not demonstrated; • As regards supervisory authorities, there is a lack of a direct link into the regulatory framework of the supervisory authorities of their ability to exchange information relating TF; • Effectiveness not demonstrated.

7 OTHER ISSUES

7.1 Resources and Statistics (R.30 and R.32)

849. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant Sections of the report i.e. all of Section 2, parts of Sections 3 and 4, and in Section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several Sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**PC[39] (composite rating)**	• CYSEC and ICCS lack adequate resources to properly perform their supervisory functions; • The resources and capacities of all DNFBPs supervisors do not appear to be adequate to ensure that they are in a position to adequately carry out their supervisory functions; • Regular AML/CFT training for staff conducting AML/CFT inspections needs to be undertaken for all supervisory authorities; • The Central authority does not appear to be provided with sufficient technical and human resources
R.32	**PC[40] (composite rating)**	• It was not fully demonstrated that the Cyprus authorities review the effectiveness of the national AML/CFT regime on a regular basis. • Complete statistics are not available on: - the number of investigations conducted for ML, including on information on how these cases where initiated and the types of crime they relate to, the number of investigations terminated and the reasons for termination, and the number of cases pending - the underlying predicate offence in each case for which a defendant has been acquitted. - formal requests for assistance made or received by all supervisors relating to or including AML/CFT, including whether the request was granted or refused are not available - mutual legal assistance that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond. • Statistics maintained by the FIU do not include information on whether the request was granted or refused; • In the absence of case law in relation to prosecutions and convictions in FT cases, it is not demonstrated that the data system would enable to keep additional information (i.e. on how FT cases were initiated, the types of crimes these cases relate to, the number of investigations

[39] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities and prosecution agencies.

[40] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on statistics kept in respect of SR.IX.

		terminated and the reasons for termination, and the number of cases pending).

7.2 Other Relevant AML/CFT Measures or Issues

Not applicable

7.3 General Framework for AML/CFT System (see also Section 1.1)

Not applicable

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Cyprus. *It includes ratings for FATF Recommendations from the Third Round Evaluation Report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[41]
Legal systems		
1. Money laundering offence	**LC**	• The incrimination of TF does not adequately cover provision/collection of funds for an individual terrorist or terrorist organisation, thus TF is not a fully covered as a predicate offence to ML; Not all designated categories of offences are fully covered as predicates as incrimination of TF does not adequately cover provision/collection of funds for an individual terrorist or terrorist organisation; • Effectiveness issues: - very low number of stand alone ML convictions; - low volume of ML convictions in the context of the number of convictions for predicate offences; - incomplete statistics and lack of information on the predicate offences to which the ML provisions are being applied makes it difficult to determine that the ML provisions are applied in a fully effective manner; - the level of need to clarify the evidence required to establish the underlying predicate criminality in autonomous prosecutions remains unclear and whether the AML/CFT Law requires the prosecution to prove that a specific predicate offence committed on a specific occasion gave rise to the proceeds which , as this impacts on the ability to use the legislation to its full advantage.

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

2. *Money laundering offence Mental element and corporate liability*	*Compliant*	
3. Confiscation and provisional measures	**LC**	• Deficiencies in criminalisation of the FT (noted in SR. II) may limit the ability to freeze and confiscate. • Effectiveness issues: the volume of confiscation orders obtained, appears low in comparison with the number of convictions for predicate offences.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**LC**	• Certain categories of low-risk businesses can be exempted from CDD and/or EDD instead of requiring simplified or reduced diligence measures • Enhanced customer due diligence for correspondent banking applies only to non-EU countries. • The above, together with the lack of awareness on some elements of the CDD concept and process by some sectors of the financial system mainly concerning the beneficial ownership concept and the risk-based approach for the insurance and MTBs sectors raise concern on the overall effectiveness of the system. • The efficiency of the system may be further negatively impacted by the fact that the industry could be facing problems in fully applying its CDD with regards to legal persons, given the large backlog of updating at the Registrar of Companies.
6. Politically exposed persons	**LC**	• The PEP related requirements in the AML/CFT Law do not apply to foreign PEPs resident in Cyprus, while they may be covered under some of the directives, raising a conflicting legal situation; • No provision in the AML/CFT Law to confirm whether the beneficial owner is a PEP, although this may be covered under the Directives, with the exception of D-Insurers, which raises a conflict of obligations in the sector ; • No provision in the AML/CFT Law for senior management approval to continue business relationship where the customer or beneficial owner is subsequently found to be or becomes a PEP, although this is covered for banks and securities market participants, thus raising a conflict of obligations in the sector;

		• The lack of legal provisions and the divergences in the Directives to the industry present vulnerabilities in implementation which could negatively impact on effectiveness.
7. Correspondent banking	*Largely compliant*	*No guidance regarding payable-through accounts.*
8. New technologies and non face-to-face business	*Largely compliant*	*No provisions regarding the misuse of technological developments*
9. Third parties and introducers	*Compliant*	
10. Record keeping	**C**	
11. Unusual transactions	*Largely compliant*	*The recommendation is satisfied in respect of banks . No guidance requiring non-banks to examine as far as possible the purpose of complex, unusual large transactions or unusual patterns of transactions and to set forth their findings in writing; no guidance to keep such findings available for competent authorities for at least five years.*
12. DNFBP – R.5, 6, 8-11[42]	**PC**	• Legal framework covering TCSPs is not adopted; • No identification of other activities that trade in goods where payment can be effected in cash above €15,000; • Uncertainty whether the accountancy profession is caught under the law for the activities indicated in the FATF 40; • Lawyers can forgo the verification process upon declaration of introduction by specified persons; beyond what the law allows. • The deficiencies listed in Section 3 regarding PEPs also apply to DNFBPs (ie. the PEP related requirements in the AML/CFT Law do not apply to foreign PEPs resident in Cyprus; there is no requirement to obtain senior management approval to continue business relationship when a customer/beneficial owner becomes a PEP or is found to be a PEP during the course of an already established business relationship) and in addition, G-Estate and G-Dealers do not include any additional complementing provisions related to PEPs • Lack of adequate requirements to pay special attention to risks arising from new or developing technologies for DNFBPs Effectiveness issues: - Low level of awareness of the implementation of a risk based approach principles to identify higher risk customers

[42] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 7, 8, 9 and 11.

		by DNFBPs in general. - Need to enhance awareness on identification requirements and CDD measures in particular on the beneficial owner concept;
13. Suspicious transaction reporting	**LC**	• Need to harmonise Section 27 (failure to report) and Section 69 (obligations of MLCO) for reporting purposes • Concerns remain on the effective spread of the implementation of the reporting regime
14. Protection and no tipping-off	**LC**	• The tipping off prohibition does not cover all cases when an STR or related information is reported to MOKAS, as well as cases when a suspicious transaction has been identified and an STR is in the process of being prepared.
15. Internal controls, compliance and audit	**LC**	• There is no explicit requirement to establish an independent audit function for all insurance and MTBs • Effectiveness concerns, in particular as regards the testing of compliance with procedures, policies and controls where an audit function is not in place, and whether the requirement for independent audit is applied uniformly throughout the financial sector
16. DNFBP – R.13-15 & 21[43]	**PC**	• Need to enhance more awareness on identification and reporting of STRs in some sectors of DNFBPs; • No identification of other activities that trade in goods where payment can be effected in cash above €15,000; • Uncertainty whether the accountancy profession is caught under the law for the activities indicated in the FATF 40; • No law governing TCSPs • Limited implementation of the STR reporting by DNFBPs • The tipping off prohibition does not cover all cases when an STR or related information is reported to MOKAS, as well as cases when a suspicious transaction has been identified and an STR is in the process of being prepared. • There are no adequate requirements covering R. 15 and 21 for real estate agents and dealers in precious stones and precious metals.
17. Sanctions	**PC**	• There is legal uncertainty on the applicability of the AML/CFT sanctions to the directors and senior management; • Sanctions imposed are not proportionate to the

[43] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 21.

		sector and mainly in the form of warning letters; • No sanctions imposed in the insurance and credit cooperatives sectors.
18. Shell banks	*Largely compliant*	*There are no specific provisions regarding respondent institutions abroad permitting their accounts to be used by shell banks.*
19. Other forms of reporting	*Compliant*	
20. Other DNFBP and secure transaction techniques	*Compliant*	
21. Special attention for higher risk countries	*Largely compliant*	*No requirement in the G-Investment Brokers, the G-Insurers nor the G-International Businesses to give special attention to business relationships and transactions with persons from/in countries insufficiently applying the FATF Recommendations, to examine such relationships / transactions and set out findings in writing.*
22. Foreign branches and subsidiaries	*Largely compliant*	*While few Cyprus financial institutions have foreign branches and subsidiaries, and the CBC monitor Cypriot banks' application of AML standards to branches/subsidiaries, a general requirement is needed for financial institutions to ensure that their foreign branches observe AML/CFT measures consistent with home country requirements.*
23. Regulation, supervision and monitoring	**LC**	• CBC should work with licensed MTBs to devise ways to conduct more onsite inspections, especially sub-agents. • Very low number of CYSEC onsite examinations.
24. DNFBP - Regulation, supervision and monitoring	**PC**	• While DNFBPs are now included within the scope of the AML/CFT law, there has been insufficient evidence that effective supervision is currently taking place across the board: - Trust and company service providers' activities appear to be supervised by three separate supervisory authorities depending on the profession of the service provider, which could lead to uneven playing fields in monitoring this activity. - No supervisory action on compliance checking has been taken in respect of the real estate and dealers in precious metals and precious stones' sectors. • There is no legislation regulating company service providers and intermediaries. • G-Dealers and D-Accountants lack specific language on imposition of penalties in case of failure to report suspicious activity. • Insufficient resources and capacity for all DNFBP supervisors impact on the implementation of their supervisory activities.

		• No indication of sanctions imposed on the DNFBP sectors.
25. Guidelines and Feedback	*Largely compliant*	*Although the record on feedback by MOKAS is particularly strong, Guidance Notes for financial institutions and DNFBP do not cover financing of terrorism. Guidelines not issued to domestic trust and company service providers, and some other DNFBP.*
Institutional and other measures		
26. The FIU	**LC**	• Some of the directives which cover guidance regarding the manner of reporting suffer from minor gaps, such as the CYSEC or ICCS Directives, and require updating; • Effectiveness issues
27. Law enforcement authorities	*Largely compliant*	*There are designated Police authorities with most investigative tools but their competencies could usefully be delineated. More focus needs to be placed on the financial aspects of major proceeds-generating crimes as a routine part of the investigation and some re-orientation of law enforcement resources may be needed to achieve this. More focus on laundering by third parties required.*
28. Powers of competent authorities	*Compliant*	
29. Supervisors	**LC**	• There is legal uncertainty on the applicability of the AML/CFT sanctions to the directors and senior management • Very low number of CYSEC onsite examinations.
30. Resources, integrity and training	**PC[44] (composite rating)**	• CYSEC and ICCS lack adequate resources to properly perform their supervisory functions; • The resources and capacities of all DNFBPs supervisors do not appear to be adequate to ensure that they are in a position to adequately carry out their supervisory functions; • Regular AML/CFT training for staff conducting AML/CFT inspections needs to be undertaken for all supervisory authorities; • The Central authority does not appear to be provided with sufficient technical and human resources.
31. National co-operation	**C**	

[44] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities and prosecution agencies.

32. Statistics[45]	**PC**[46]	• It was not fully demonstrated that the Cyprus authorities review the performance of the overall AML/CFT regime on a regular basis, of the ML/TF vulnerabilities and relevant effectiveness factors. • Complete statistics are not available on: - the number of investigations conducted for ML, including on information on how these cases where initiated and the types of crime they relate to, the number of investigations terminated and the reasons for termination, and the number of cases pending - the underlying predicate offence in each case for which a defendant has been acquitted. - formal requests for assistance made or received by all supervisors relating to or including AML/CFT, including whether the request was granted or refused are not available - mutual legal assistance that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond. • Statistics maintained by the FIU does not include information on whether the request was granted or refused • In the absence of case law in relation to prosecutions and convictions in FT cases, it is not demonstrated that the data system would enable to keep additional information (i.e. on how FT cases were initiated, the types of crimes these cases relate to, the number of investigations terminated and the reasons for termination, and the number of cases pending).
33. Legal persons – beneficial owners	*Largely compliant*	*Mainly lawyers subject to the AML/CFT Law are forming and administering companies, but not all institutions (including company service providers) are required to ascertain beneficial owners and controller information by law and guidance. Not all institutions are monitored for implementation.*
34. Legal arrangements – beneficial owners	*Largely compliant*	*Mainly lawyers are forming and administering trusts. Lawyers are covered by the AML/CFT Law and international trust companies are subject to guidance imposed by the CBC, but other trust service providers are not covered; not all institutions are monitored for implementation*
International Co-operation		

[45] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 38 and 39.

[46] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on statistics kept in respect of SR.IX.

35. Conventions[47]	**LC**	• Cyprus has ratified but not fully implemented the Palermo and Vienna conventions as outlined in the respective Sections of this report
36. Mutual legal assistance (MLA)[48]	**LC**	• The incomplete criminalisation of the financing of terrorism offence may impact on the ability of Cyprus to provide mutual legal assistance in circumstances when dual criminality is required.
37. Dual criminality	*Compliant*	
38. MLA on confiscation and freezing	*Compliant*	
39. Extradition	*Compliant*	
40. Other forms of co-operation	**PC**	• Information points to certain restrictions in the practice in relation to FIU to FIU co-operation, when certain type of information is requested by foreign authorities; • The adequacy of the legal framework so as to enable a wide range of international co-operation and clear and effective gateways for the exchange of information on AML issues in the context of co-operation with foreign supervisory authorities in respect of DNFBPs is not demonstrated; • As regards supervisory authorities, there is a lack of a direct link into the regulatory framework of the supervisory authorities of their ability to exchange information relating to ML and TF; • The scope and effectiveness of the supervisory authorities (other than the CBC) and other law enforcement authorities' co-operation with foreign authorities on AML/CFT aspects was not demonstrated.
Nine Special Recommendations		
SR.I Implement UN instruments	**LC**	• Several shortcomings remain in respect of the implementation of UNSCR 1267 and 1373, as set out in SRIII.
SR.II Criminalise terrorist financing	**LC**	• In the absence of a complete offence consistent with SR II (i.e. adequate coverage of the provision/collection of funds for an individual terrorist or terrorist organisation), the financing of terrorism constitutes an incomplete predicate offence for money laundering;[49] • The effectiveness cannot be tested in the absence of prosecution of terrorist financing.
SR.III Freeze and confiscate	**PC**	Implementation of S/RES/1267

[47] The review of R.35 has taken into account the analysis and findings in respect of those Recommendations that are analysed in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 2, 27, 28,37, 38, 39 and SR.IX.

[48] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 28.

[49] See earlier footnote regarding Law 110(I) 2010 on the Suppression of Terrorism adopted after the visit.

terrorist assets		• The situation envisaged by the UN resolution for the freezing of assets in the event of control or possession of assets by persons acting in the name of or at the direction of designated persons or entities, which is not covered by the EU regulation, does not appear to be covered: • Concerns remain as to whether funds and assets can be frozen without delay as required under the UN resolution outside of the financial sector; <u>Implementation of S/RES/1373</u> • There is no national mechanism for evaluation of requests to freeze the funds of EU internals (citizens or residents). <u>Effective procedures, communication systems, instructions, monitoring of compliance</u> • There is no effective and publicly known procedure for the purpose of considering de-listing. • There is no effective national procedure for unfreezing in a timely manner upon verification that the person or entity is not a designated person. • There is no specific guidance to financial institutions and other persons or entities on the use and measures to be taken in the case of UN or EU lists of designated persons beyond the need to freeze and then notify the authorities. • The incomplete criminalisation of the financing of terrorism offence is potentially an issue when seeking to deal with freezing actions instigated by other countries. • No appropriate measures to monitor and sanction effectively compliance with obligations under SRIII by persons and entities [other than financial institutions]. • In view of uncertainty regarding the receipt by the non-financial sector of the relevant lists and of an effective system for monitoring their compliance, concerns remain regarding effectiveness and efficiency.
SR.IV Suspicious transaction reporting	**LC**	• Need to harmonise Section 27 (failure to report) and Section 69 (obligations of MLCO) for reporting purposes • Concerns remain on the effective spread of the implementation of the reporting regime.
SR.V International co-operation	**LC (composite rating)**	• The incomplete criminalisation of the financing of terrorism offence may impact on the ability of Cyprus to provide mutual legal assistance in circumstances when dual criminality is required.

		• The adequacy of the legal framework so as to enable a wide range of international co-operation and clear and effective gateways for the exchange of information on CFT issues in the context of co-operation with foreign supervisory authorities in respect of DNFBPs is not demonstrated • As regards supervisory authorities, there is a lack of a direct link into the regulatory framework of the supervisory authorities of their ability to exchange information relating TF • Effectiveness not demonstrated
SR.VI AML requirements for money/value transfer services	*Largely compliant*	• *No rules regarding PEPs;* • *No provision determining what kind of information regarding transactions should be recorded as a minimum;* • *Infringement of SR.VII-obligations are not sanctionable;* • *No regulation requiring money transfer companies to examine as far as possible the purpose of complex, unusual large transactions or unusual patterns of transactions and to set forth their findings in writing; no regulation to keep such findings available for competent authorities for at least five years;* • *Value transfer business not licensed/registered;* • *No on-site visits conducted;* • *Low risk due to conditions on the licences.*
SR.VII Wire transfer rules	**C**	
SR.VIII Non-profit organisations	**PC**	• Lack of comprehensive domestic reviews on the whole NPO sector's potential vulnerabilities to terrorist activities • Outreach is not provided to the NPO sector, particularly with regard to potentially vulnerable NPOs • NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities. do not appear to be adequately supervised or monitored • Lack of adequate requirements regarding the information to be maintained by all NPOs and regarding public availability • The NPO registration system is not comprehensive nor up to date, the sanctioning regime for non compliance with registration requirements appears to be incomplete and the requirements in place do not ensure that the registers are up to date. • There are no appropriate measures in place to sanction violations of oversight measures or

		rules by NPOs or persons acting on behalf of NPOs and the effectiveness of the implementation of sanctions is not demonstrated
SR.IX Cross Border declaration and disclosure	*Largely compliant*	*IX.1 not entirely fulfilled as declaration system appears not to cover bearer negotiable instruments.*

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	• There is a clear need for further guidance and consideration should be given to further legislation to enable prosecutors and law enforcement to have a common understanding as to how they may prove underlying predicate criminality by proving inferences drawn from objective facts and circumstances without the need to prove that property originated from a particular predicate offence committed on a particular date. • Cyprus has signed and ratified the Warsaw Convention. Section 9.6 of the Warsaw Convention requires that it should not be necessary to prove a specific predicate offence committed on a specific occasion. This should provide a further legal basis for law enforcement and prosecutors to address this issue. It would further assist if investigations and prosecutions were taken forward to test the law on this point.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Cyprus should introduce a "clear separate criminal offence of financing of terrorism which covers all the essential criteria in SR II and all the characteristics of a financing of terrorism offence as explained in the Interpretative Note of June 2004.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The authorities should eliminate the deficiencies in the criminalisation of the FT offence[50] in conformity with the standard as set forth in SR II, so that instrumentalities used and to be used and proceeds could be frozen and confiscated if such a case were to appear in practice.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Cyprus should establish a comprehensive and effective system for freezing without delay of the assets of designated persons, including publicly known procedures for de-listing and the unfreezing of accounts in a timely

[50] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit. Section 8 of this act (in force on 22.11.2010) is relevant in this context, however these changes were made after the two month period following the on-site evaluation visit.

	manner upon verification that the person or entity is a non-designated person is not yet in place. The five recommendations set out in the Third Round MER have yet to be fully implemented, namely: a. Create and/or publicise procedures for considering de-listing requests and unfreezing assets of de-listed persons. b. Create and/or publicise a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the person is not a designated person. c. Clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian ground in a manner consistent with S/Res/1452 (2002). d. Publicise the procedure for court review of freezing actions. e. Consider and implement the Best Practice Paper.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The directives issued regarding the manner of reporting and procedures to be followed by the reporting entities should be reviewed jointly by the supervisory authorities and MOKAS, in order to ensure that they are sufficiently comprehensive, harmonised and up to date. • MOKAS should keep under constant review the number of pending cases, and take measures as appropriate, so as to ensure that those are processed in an efficient and timely manner.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 , 6)	**Recommendation 5** • It is recommended that paragraph (o) of Section 2 of the AML/CFT Law be revised to clarify which elements of the insurance sector are covered under the law. • The authorities should revisit Section 67 of the AML/CFT Law in order to remove any legal uncertainty as to the application of third party reliance on domestic obliged entities. **Recommendation 6** • redefine the definition of a PEP and requirements to ensure that foreign PEPs who are resident in Cyprus are not excluded from the scope of the AML/CFT law, and as such eliminate the conflict between the law and the directives. • amend the current obligations so that the insurance sector is required to obtain senior management approval to

	continue business relationship when a customer/beneficial owner becomes a PEP or is found to be a PEP during the course of an already established business relationship • clarify that financial institutions should ascertain the source of wealth and funds in all circumstances and not limited to business relations and transactions • extend the obligation for the insurance sector to have risk based procedures to determine whether a customer is a PEP also in the case of the beneficial owner
3.4 Financial institution secrecy or confidentiality (R.4)	This recommendation is fully observed.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	These recommendations are fully observed.
3.7 Suspicious transaction reports and other reporting (R.13-14 & SR.IV)	Cyprus authorities should: • ensure that enhanced monitoring and reporting of suspicious activity from foreign business is not done at the risk of ignoring vulnerabilities in and threats from the domestic business. • consider harmonising the text of Section 27 and Section 69. • STRs are mainly received from the commercial banks. The Cyprus authorities should identify the possible reasons and take appropriate measures accordingly. • further criminalise the FT so as to bring it fully in line with SR II[51] and consequently amend Section 5 of the AML/CFT Law thus removing any legal ambiguity • continue to take the necessary measures in order to introduce a secured user-friendly electronic reporting system at the earliest.
3.8 Internal controls, compliance, audit (R.15)	• There should be an explicit requirement for the insurance and money transfer businesses to maintain an independent audit function that is proportionate to the institution's size and risk of money laundering. • The authorities should review and amend the ICCS Directive. For example, the Insurance Order states that the Internal Audit Unit, where one exists, should review, test and evaluate, on a regular basis, the procedures and controls applied for the prevention of money laundering and terrorist financing and verify the level of compliance with the present Orders and the Law. It is also unclear whether ICCS requires insurance companies' MLCO to maintain sufficient resources, including competent staff and technological equipment, for the effective discharge of his/her duties. These issues should be clarified and exceptions removed.

[51] Cyprus adopted Law 110(I) 2010 on the Suppression of Terrorism after the visit. Section 8 of this act (in force on 22.11.2010) is relevant in this context, however these changes were made after the two month period following the on-site evaluation visit and cannot be considered for the purpose of this assessment.

3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17)	**Recommendation 17** • Cyprus authorities should revise the AML/CFT Law with the intention of re-inserting the previous Section 59 or similar provisions for the imposition of sanctions at various degrees and levels, including their applicability to directors and senior management, thus removing any legal uncertainty in any of the financial laws. • Cyprus authorities should ensure that sanctions imposed are commensurate with the offence or repeated offence, thus the supervisory authorities would be applying a range of sanctions that are not necessarily in the form of warning letters. **Recommendation 23** • The CBC should step up coordination with the licensed MTBs for enhanced onsite monitoring of more than several hundred MTB outlets and ensure that those are adequately monitored for compliance with AML/CFT requirements. • CYSEC should adopt a risk-based approach in its supervision. • Additionally, CYSEC urgently needs to conduct more onsite inspections. **Recommendation 29** • Although applying a risk based approach to supervision is appropriate and welcomed, the coverage through on-site examinations should be clearly increased. • The powers of the supervisory authorities to apply sanctions for breaches of AML/CFT obligations should be clarified as implemented through the AML/CFT Law and the respective financial legislation with respect to applicability to directors and senior management of the institution.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• It is recommended that the authorities provide more guidance and implement outreach programs to the whole non-financial sector in general and in particular to certain sectors as indicated above to raise their awareness of customer due diligence measures in the DNFBPs sectors. • As in the definition of 'other activities' under Section 2 item (d) dealers in precious stones or metals are given by way of example (… such as…) with the thrust of the definition being on *Trading in goods…*, the Cyprus authorities are encourage to identify which other trading in goods activities should be captured under the definition and monitored accordingly in terms of the AML/CFT Law. • There is also a need to clarify the provisions of the AML/CFT Law in the case of the accountancy profession (accountant and auditors) to ensure that the profession is caught under the law when undertaking activities as listed for the legal profession in

	addition to the main activities of the profession. With regard to the legal profession, clarifications should be provided on the fine line between third party reliance and the use of intermediaries. • The authorities should also consider prescribing high risk situations where enhanced due diligence should be applied by DNFBPs. • Also, in order to fully comply with Recommendation 6, Cyprus should redefine the definition of a PEP in the AML/CFT law as recommended in Section 3 and also ensure that the directives and guidelines applicable to DNFBPs are adequately harmonised and include further guidance to assist DNFBPs in the implementation of the PEP requirements.
4.2 Suspicious transaction reporting (R.16)	• It is recommended that the authorities implement training and provide more guidance to the whole non-financial sector in general and in particular to certain sectors particularly with regards to the identification and submission of STRs. • Cyprus authorities should also review and clarify the provisions of the AML/CFT law to ensure that all relevant activities of dealers in precious stones or metals, TCSPs and the accountancy profession (accountants and auditors) are caught under the reporting obligation. • As recommended in Section 3, it would be appropriate for the Cyprus authorities to consider harmonising the text of Section 27 and 69 of the AML/CFT Law and ensure also that the directives and guidelines are adequately harmonised with the provisions of the AML/CFT Law. • The Cyprus authorities should extend the tipping off prohibition to cover all cases when an STR or related information is reported to MOKAS, as well as cases when a suspicious transaction has been identified and an STR is in the process of being prepared. • The Cyprus authorities should consider establishing a timeframe for the suspension of transactions and take measures, as necessary, to provide guidance to obliged entities on the steps to be taken to avoid tipping off. • The Cyprus authorities should ensure that all DNFBPs, on a proportionality basis, are required to maintain internal procedures, policies and controls to prevent ML and TF, an adequately resourced and independent audit function to test compliance , establish ongoing employee training and put in place screening procedures to ensure high standards when hiring employees. • The authorities should also apply the requirements of Recommendation 21 to require real estate agents and dealers in precious stones and precious metals. At a minimum, these DNFBPs should be required to give special attention to business relationships and transactions with any person/body from a high risk jurisdiction identified by the FATF.
4.3 Regulation, supervision and monitoring (R.24)	• The Cyprus authorities should continue to work closely with the Parliament with the aim of swiftly adopting the legislation to regulate betting and gambling. • Additionally, they should step up efforts to pass the law

	that would supervise company service providers and professional intermediaries. The evaluators understand that this pending bill has been under review for over three years, and prolonged delay in its passage is counterproductive to the progress Cyprus has achieved in the AML program. • The evaluators understand that many banks already maintain a list of trusted intermediaries who bring in clients. The Cyprus authorities should consider creating a central registry for lawyers who have served or serve as professional intermediaries to allow for the CBA to better assess their compliance level. • While ICPAC's outsourcing its audit function appears to provide better results, the Cyprus authorities should provide a legal basis for outsourcing. • Additionally, the supervisory authorities should conduct a risk assessment of the DNFBPs sectors in order to determine an appropriate supervisory strategy and step up their inspection plans to ensure that all DNFBPs, and in particular the real estate and dealers in precious metals and precious stones' sectors are inspected.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.3 Non-profit organisations (SR.VIII)	• Carry out a risk assessment to adequately identify the TF risks and vulnerabilities within its NPO sector and ensure that this assessment is periodically updated; • Finalise a comprehensive review of the legal framework covering clubs, associations, foundations, charities, societies and institutions, and non-profit companies and adopt, as appropriate new legislation, which includes provisions covering the requirements of SR.VIII, in particular as regards transparency requirements, the information which should be kept, a broad range of sanctions applicable for violations of oversight measures; • Undertake an effective outreach programme to the NPO sector with a view to raising awareness in the NPO sector; • Improve the accuracy of the registration process for NPOs and registries available and ensure that there are clear requirements regarding the verification of information to be kept; the sanctions applicable in cases of failure to communicate promptly any necessary changes or updates; the publicity of information (either from the NPO or through appropriate authorities) on the identity of persons who own, control or direct their activities, including senior officers, board members and trustees; • Take measures to ensure that the NPO sector is adequately supervised or monitored, on the basis of the risk they present, and that sanctions are effectively applied.

6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Cyprus should take additional measures, as recommended, in order to fully implement the Vienna and Palermo Conventions. • Cyprus should address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373.
6.3 Mutual Legal Assistance (R.36 & SR.V)	***Recommendation 36 and Special Recommendation V*** • The incomplete criminalisation of the terrorist financing offence[52] affects the ratings for Recommendation 36 and Special Recommendation V. The authorities should address all shortcomings identified under SR II to ensure that the dual criminality requirements do not limit Cyprus' ability to provide mutual legal assistance.
6.5 Other Forms of Co-operation (R.40 & SR.V)	Cyprus authorities are recommended to: • consider putting a system in place enabling them to monitor the quality and speed of executing international requests of all relevant authorities for co-operation on matters related to money laundering and the financing of terrorism, such as for example at the level for the Advisory Authority; • review current practice and ensure that any undue restrictions related to the international exchange of certain sensitive information such as tax, banking and land registry data be eliminated; • remedy by introducing a direct link into the regulatory framework of all supervisory authorities clarifications as to their ability to exchange information relating to ML and TF; • clarify the legal framework and establish channels for co-operation for the exchange of information on AML/CFT issues in the context of co-operation with foreign supervisory authorities in respect of DNFBPs;
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Recommendation 30** • CYSEC should augment the Investment Firms Department to a proper staffing level. • Increased staffing level is necessary at the Insurance Commissioner, especially in light of growing number of professional intermediaries and time-intensive nature of proper intermediary supervision. • ICCS should promptly commence training on AML/CFT issues. • The Cyprus Bar Association will require additional staff to appropriately perform its supervisory role.

[52] See previous footnote.

	• Additionally, CBA staff should receive regular training from the FIU in conjunction with offering training and seminars on AML/CFT issues for lawyers. • The authorities should review the resources and capacities of all DNFBPs supervisors to ensure that these are in a position to adequately carry out their supervisory functions, and as appropriate, implement AML/CFT training for staff conducting AML/CFT inspections. • Sufficient resources must be made available to the Central Authority. **Recommendation 32** • Cyprus should conduct a review of the effectiveness of the AML/CFT system and conduct a national risk assessment to inform the future strategies on the investigation of financial crimes and feed into the specific guidance to obliged entities on the specific AML/CFT vulnerabilities. • It is also recommended that procedures are put in place to centrally record and monitor all ongoing ML and TF investigations. • As was highlighted in the Third Round MER, complete, detailed and precise statistics should be kept by the competent authority on all mutual legal assistance requests that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond so as to assist in strategic analysis as well as identifying efficiency issues / timing and the fulfilment of requests in whole or part. • Cyprus maintain comprehensive annual statistics on requests for assistance and information exchange made or received based on other forms of international co-operation, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond. • All supervisors should maintain statistics on formal requests for assistance made or received relating to or including AML/CFT, including whether the request was granted or refused
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

Relevant Sections and Paragraphs	*Country Comments*

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE [53]

Cyprus has been a member country of the European Union since 2004. It has implemented **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following Sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations while identifying the way Cyprus has legislated accordingly.

1.	**Corporate Liability**
Section 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF Recommendation 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Section 59(6) of the AML/CFT Law empowers the identified supervisory authorities to take all or any of the measures mentioned in the Law where a person falling under its supervision fails to comply with the relevant parts of the AML/CFT Law. Although the law does not make references to corporate liability yet, according to the Interpretation Law of Cyprus the term 'person' includes any company, partnership association, society, institution or body of persons, corporate or unincorporated. Section 59(6) however does not cover the instances indicated under Section 39 of the EU Directive where corporate liability applied.
Conclusion	In the absence of a specific reference to the situations contemplated by the Directive for the application of corporate liability, the law does not fully transpose Section 39 of the Directive through Section 59 of the AML/CFT Law..
Recommendations and Comments	The Cypriot authorities may wish to reconsider the transposition of Section 39 of the EU Directive to include the identified instances where a legal person can be held liable where the infringement would have occurred because of the lack of supervision or control by a person responsible to do so

[53] This Section is yet to be examined during the September pre-meeting with the Cyprus authorities.

2.	Anonymous accounts
Section 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF Recommendation. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	The AML/CFT Law requires the identification of the applicant for business and beneficial owner before establishing any business relationship. However it is Section 66(2) that specifically prohibits person engaged in financial and other business activities to open or maintain anonymous or numbered accounts or accounts in names other then those stated in official identify documents. If it were not for Section 66(2) than numbered accounts or accounts in fictitious names could be opened and maintained provided there is identification.
Conclusion	The requirement has been adequately transposed.
Recommendations and Comments	Not applicable

3.	Threshold (CDD)
Section 7(b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to € 15 000 or more.
FATF Recommendation. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of € 15 000 covered?
Description and Analysis	Section 60 of the AML/CFT Law establishes instance when customer due diligence should be applied. Paragraph (b) of Section 60 specifically refers to occasional transactions amounting to €15,000 or more.
Conclusion	The requirement has been adequately transposed.
Recommendations and Comments	Not applicable

4.	Beneficial Owner
Section 3(6) of the Directive *(see Annex)*	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF Recommendation. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.

Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	In its AML/CFT Law Cyprus has fully adopted the definition of beneficial owner as provided in the EU Third AML Directive. Thus the law defines beneficial owner as the natural person or natural persons, who ultimately own or control the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The AML/CFT Law defines that a percentage of 10% plus one share shall be deemed sufficient to meet this criterion as against the 25% limit established by the Directive. Thus the Cyprus AML/CFT Law imposes a stricter criterion for identification of beneficial owners.
Conclusion	The requirement has been adequately transposed
Recommendations and Comments	Not applicable

5.	**Financial activity on occasional or very limited basis**
Section 2(2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Section 3(1) or (2) of the Directive. Section 4 of Commission Directive 2006/70/EC further defines this provision.
FATF Recommendation 5 - Glossary concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology paragraph 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Section 4 of Commission Directive 2006/70/EC?
Description and Analysis	Section 2(2) of EU Third AML Directive is optional and therefore it is at the discretion of the Member States to implement or not. A Member State that opts out of this Section is therefore not further bound by the provisions of Section 4 of the Commission Directive 2006/70/EC which provides measures of implementation. The Cyprus authorities have decided not to adopt Section 2(2) of the Third Directive and hence Section 4 does not apply
Conclusion	Not applicable
Recommendations and Comments	Not applicable

6.	**Simplified Customer Due Diligence (CDD)**
Section 11 of the Directive	By way of derogation from the relevant Section the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.

FATF Recommendation. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Section 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Section 63 of the AML/CFT Law provides for instances where persons engaged in financial or other business activities may not apply the identification and CDD measures – excluding instances where there is suspicion of ML/TF. The Law however requires that persons engaged in financial or other business activities have to gather sufficient information to establish if the customer qualifies for an exemption as mentioned in the relevant paragraphs of the Law.
Conclusion	For the purposes of this part of the report the way that Cyprus has transposed the relevant Sections of the EU AML Third Directive in its laws with relation to simplified customer due diligence is in compliance, irrespective of the fact that these may not be in line with the FATF Methodology.
Recommendations and Comments	Not applicable

7.	**Politically Exposed Persons (PEPs)**
Sections 3(8) and 13(4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Section 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Section 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Section 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Section 2(4)).
FATF Recommendation 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Section 2 of Commission Directive 2006/70/EC, in particular Section 2(4), and does it apply Section 13(4) of the Directive?
Description and Analysis	The AML/CFT Law defines "politically exposed persons" as the natural persons who have their place of residence in another European Union Member State or in third counties and who are or have been entrusted with prominent public functions and their immediate family members or persons known to be close associates of such persons. Section 64(1)(c) of the Law then requires persons engaged in financial or other business activities, to apply enhanced customer due diligence procedures as established by the Law itself in respect of transactions or business relationships with politically exposed persons residing in a country within the European Economic Area or a third country. The AML/CFT Law however does not address Section 2 of the Commission Directive 2006/70/EC. For the Banking Sector, the D-Banks under Section 4.14.2.5 - Accounts for Politically Exposed Persons ("PEPs") – through paragraphs 126 – 130 provides further guidance to the definition and the application of the legal obligation. It also covers the provisions of Section 2(4) of the Commission Directive. Similar provisions are also

	found in the D-Securities. However, the provisions of Section 2(4) of the Commission Directive are not addressed by the D-Insurers, D-Lawyers, D-Accountants and the G-Estates and G-Jewelers. Moreover, the latter documents do not entirely cover the provisions of Section 13 of the Directive to the extent that the D-Banks and the D-Securities do.
Conclusion	The consequence of not providing for certain requirements through the main legislation but through different documents issued by the relevant supervisory authorities leads to inconsistency since these documents are not always harmonized. This assumes even higher importance in this case since the obligations under Section 2(4) of the Commission Directive and those under Section 13(4) of the Third Directive are mandatory.
Recommendations and Comments	It is recommended that the transposition of these Sections into national legislation be reconsidered by the Cyprus authorities in order to avoid inconsistency and thus creating a uneven playing field in the AML framework.

8.	**Correspondent banking**
Section 13(3) of the Directive	For correspondent banking, Section 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF Recommendation 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Section 13(3) of the Directive?
Description and Analysis	Section 64(1) of the AML/CFT Law requires that persons engaged in financial or other business activities apply the enhanced customer due diligence measures, in addition to the measures referred to in Sections 60, 61 and 62, as established by the law itself in particular circumstances. One such instance is in the case of cross-frontier correspondent banking relationships with credit institutions-customers from third countries.
Conclusion	The requirement has been adequately transposed
Recommendations and Comments	Not applicable.

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Section 13(6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF Recommendation 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Section 13(6) of the Directive is broader than that of FATF Recommendation 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	Section 66(3) of the AML/CFT Law requires persons engaged in financial or other business activities to pay special attention to every

	threat or danger for ML/TF that may arise out of products or transactions that may favour anonymity. Moreover, obliged persons and entities are required to take measures accordingly to prevent the misuse of such products or transactions. Threats that may arise our of the use of technology that may favour anonymity are not addressed by the law but through the relevant Directives (except for G-Estates and G-Jewelers), although to different degrees
Conclusion	The requirement has been adequately transposed
Recommendations and Comments	Not applicable.

10.	**Third Party Reliance**
Section 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF Recommendation 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	The requirements for performance by third parties under the EU Third AML Directive provide for a structured manner of reliance by different obliged entities and persons on their counterparts. Under Section 14 the Directive provides for the general rule that countries have an option to provide for third party reliance. If this option is adopted then the Directive provides for a categorised way of reliance. Thus under Section 15(1) the Directive provides that if credit and financial institutions are allowed to be relied upon domestically by all other obliged persons and entities, then that Member State must provide for credit and financial institutions situated in another Member State to likewise be accepted to be relied upon by all other obliged persons and entities – the only exception being currency exchange office and money transmission or remittance offices. However, under Section 15(2) the Directive provides that where a Member State allows currency exchange office and money transmission or remittance offices to be relied upon domestically by other obliged persons and entities, then that Member State must allow such entities to rely on the same category of institution situated in another Member State. Finally, under Section 15(3) the Directive provides that if the legal profession, the accountancy profession and TCSP to be relied upon as third parties, then that Member State must allow such professionals to rely on similar professionals situated in another Member State. Section 67 of the AML/CFT Law provides for persons engaged in financial or other business activities to rely on third parties for the implementation of parts of the customer due diligence and identification requirements. The Law limits the definition of third parties for the purposes of Section 67 to credit institutions or financial

	institutions or auditors or independent legal professionals or person providing to third parties trust and company services but excludes currency exchange offices and money transmission or remittance offices. The Law however does not categorise reliance between the different obliged persons and entities as provided for in the EU Directive nor does it clearly provide that reliance could be established domestically.
Conclusion	Although the AML/CFT Law broadly covers the provisions for performance by third parties under the EU Third AML Directive yet its transposition into domestic law is not in full harmony.
Recommendations and Comments	It is highly recommended that the provisions of Section 67 of the AML/CFT Law be revisited with the objective of further harmonization with the Directive and to remove any legal ambiguity on reliance on domestic third parties.

11.	**Auditors, accountants and tax advisors**
Section 2(1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF Recommendation 12	CDD and record keeping obligations: 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Item (a) of the definition of "other activities" under Section 2 of the AML/CFT Law specifies the exercise of professional activities by auditors, external accountants and tax advisors, including transactions for the account of their customers in the context of carrying out financial business as being an activity subject to the provisions of the Law.
Conclusion	Although the definition may not completely cover the requirements for the FATF 40 in relation to the accountancy professions, yet the provisions of the EU Third AML Directive are adequately transposed.
Recommendations and Comments	Not applicable

12.	High Value Dealers
Section 2(1)(3)(e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of € 15 000 or more.
FATF Recommendation 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Item (d) of the definition of "other activities" under Section 2 of the AML/CFT Law specifies trading in goods such as precious stones or metals, wherever payment is made in cash and in an amount of €15,000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked as being an activity subject to the provisions of the Law. The Law does not limit the definition to trading in precious stones or metals but provides this activity by way of example for trading in goods where payment is effected in cash and in an amount of €15,000 or over. In practice Cyprus has only applied the requirements of the Law to dealers in precious stones or metals.
Conclusion	Although to an extent and in a broader interpretation it could be concluded that Cyprus has correctly transposed Item (e) of Section 2(1)(3) of the EU Third AML Directive, yet the applicability in practice differs from the wording of the Law.
Recommendations and Comments	It is recommended that item (d) of the AML/CFT Law of the definition of "other activities" be reviewed in accordance with item 2(1)(3)(e) of the EU Third AML Directive and its practical application examined.

13.	Casinos
Section 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of € 2,000 or more. This is not required if they are identified at entry.
FATF Recommendation 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above € 3,000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Although in Cyprus there are a number of gaming houses operating, Cyprus claims it has no casinos. Indeed, Cyprus is in the process of enacting new legislation on betting and gaming.
Conclusion	Not applicable
Recommendations and Comments	It is recommended that if the new law will provide for casinos, whether land based or internet based, the due consideration be given for the inclusion of the AML/CFT obligations for such activity under the AML/CFT Law immediately the new betting and gaming law is enacted.

14.	Reporting by accountants, auditors, tax advisors, notaries and other

independent legal professionals via a self-regulatory body to the FIU	
Section 23(1) of the Directive	This Section provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Section 23 (1) of the Directive?
Description and Analysis	Under the AML/CFT Law all persons engaged in financial or other business activities must report suspicious transactions directly to the FIU (MOKAS). Hence Cyprus has not made use of the option provided for under Section 23(1) of the Directive.
Conclusion	Not applicable
Recommendations and Comments	Not applicable.

15.	**Reporting obligations**
Sections 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Section 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Section 24).
FATF Recommendation 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Section 24 of the Directive)?
Description and Analysis	Under Section 27 of the AML/CFT Law, which provides the general reporting obligation to all persons, provides that any person who knows or reasonably suspects that another person is engaged in laundering or financing of terrorism offences, and the information on which that knowledge or reasonable suspicion is based, comes to his attention in the course of his trade, profession, business or employment, shall commit an offence if he does not disclose the said information to the Unit as soon as is reasonably practicable after it comes to his attention. Moreover, Section 69 of the AML/CFT Law further requires persons engaged in financial or other business activities to have in place internal reporting procedures that ensure that any suspicion of money laundering or terrorist financing offence is reported to the FIU (MOKAS). Furthermore Section 70 of the AML/CFT Law provides for persons engaged in financial or other business activities to refrain from carrying out suspicious transactions before informing the Unit. Also, where it is not possible for specified reasons to refrain from undertaking the transaction, that transaction may be undertaken and immediately reported according to the Law.

	Finally, in terms of Section 55(1)(e) the FIU (MOKAS) is empowered to issue instructions to persons engaged in financial and other business activities for the suspension or non-execution of a transaction, whenever there is reasonable suspicion that the transaction is connected with money laundering or terrorist financing.
Conclusion	The requirement has been adequately transposed
Recommendations and Comments	Not applicable.

16.	**Tipping off (1)**
Section 27 of the Directive	Section 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF Recommendation 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Section 26 of the Directive)
Key elements	Is Section 27 of the Directive implemented in your jurisdiction?
Description and Analysis	According to the Cyprus authorities, Section 27 has not been transposed into Cyprus legislation, including the AML/CFT Law due to technical difficulties to incorporate such a provision in the law. Cyprus however claims to have other measures in place in practice that are applied in the course of reporting, investigation and prosecution.
Conclusion	The measures in place should be the way to implement an otherwise legal obligation. Section 27 of the EU Third AML Directive is mandatory and, although referring to the taking of measures, it is addressed at States rather than authorities. Hence a legal obligation is expected.
Recommendations and Comments	It is recommended that the transposition of Section 27 into the AML/CFT Law be revisited with the objective of better harmonizing the law with the Directive.

17.	**Tipping off (2)**
Section 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF Recommendation 14	The obligation under Recommendation 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Section 48 of the AML/CFT Law imposes a general prohibition in the disclosure of information regarding the fact that knowledge or suspicion for money laundering has been submitted to the Unit or in making a disclosure which may impede or prejudice the interrogation and investigation carried out in respect of prescribed offences or the

	ascertainment of proceeds. Section 49, in fully transposing the obligations under Section 28 of the EU Third AML Directive, lifts up this prohibition in specified instances.
Conclusion	The requirement has been adequately transposed
Recommendations and Comments	Not applicable.

18.	**Branches and subsidiaries (1)**
Section 34(2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF Recommendations 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Section 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Section 34 (2) of the Directive?
Description and Analysis	The AML/CFT Law in Section 68 A (2)addresses this issue which is required to be applied by all credit and financial institutions as defined in the Directive. For the banking sector this matter is further covered through paragraph 201 of the D-Banks issued by the CBC. Similar provisions are found in the D-Insurers issues by the ICCS. On the other hand, under the D-Securities the only reference to this requirement is in reference to the role and functions of the compliance officer.
Conclusion	The provisions under Section 68 A (2) of the Law adequately cover the requirements of the Third EU Directive.
Recommendations and Comments	It would be advisable to ensure that the D-Securities is updated to ensure that it covers adequately the requirements set out in the AML/CFT Law.

19.	**Branches and subsidiaries (2)**
Section 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF Recommendations 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	Section 68 A (1) covers this requirement. Again this is not provided for in the AML/CFT Law. For the banking sector this is further covered by the CBC under paragraph 202 of the D-Banks. For the

	insurance sector this is covered under Section 2.10. Both Directives require the relevant institution to immediately inform its supervisory authority and, in addition, to take additional measures to effectively manage the enhanced risk of money laundering and terrorist financing which emanates form the above deficiency. No similar provisions have been identified in the D-Securities.
Conclusion	The provisions under Section 68 A (1) of the Law adequately cover the requirements of the Third EU Directive.
Recommendations and Comments	It would be advisable to ensure that the D-Securities is updated to ensure that it covers adequately the requirements set out in the AML/CFT Law.

Supervisory Bodies	
Section 25(1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF Recommendations	No corresponding obligation.
Key elements	Is Section 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	The main reporting obligation under Section 27 of the AML/CFT Law applies to all persons and not only to those persons engaged in a financial or other business activity. Indeed the reporting obligation applies where a person forms a reasonable suspicion based on the information that comes to his attention in the course of his trade, profession, business or employment. Moreover, Section 59(7) of the AML/CFT Law further requires that where a supervisory authority - as identified under the Law - possesses information, and is of the opinion that any person subject to its supervision is engaged in money laundering or terrorist financing offences, that authority should transmit, as soon as possible, the information to the FIU (MOKAS).
Conclusion	The requirement has been adequately transposed
Recommendations and Comments	Not applicable.

20.	**Systems to respond to competent authorities**
Section 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF Recommendations	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	The AML/CFT Law does not provide for such obligations to be maintained and observed by credit and financial institutions. For the banking sector there are provisions to this effect through paragraph

	170 of the D-Banks as issued by the CBC. Similar provisions can be found for the insurance sector under Section 3.9 of the D-Insurers issued by the ICCS. However there are no provisions to this effect for the securities sector under the D-Securities issued by CYSEC.
Conclusion	Not having an overarching requirement under the main AML/CFT Law renders the possibility of an uneven playing field where different parts of the financial sector have different obligations. This is a case in point where the securities sector does not have an obligation to maintain systems to identify information requested by the supervisory and other authorities.
Recommendations and Comments	It would be advisable to have overarching provisions in the AML/CFT Law which will thus ensure harmonisation within the financial sector.

21.	**Extension to other professions and undertakings**
Section 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF Recommendation 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Section 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The obligation under Section 4 of the Directive is mandatory for Member States. It would therefore be expected that Member States legislate for this obligation and implement it in practice. Cyprus has neither legislated nor considered it necessary to undertake a risk assessment and has thus not extended the obligations to any other activities considered as vulnerable.
Conclusion	The mandatory provision has not been transposed into domestic legislation.
Recommendations and Comments	The Cyprus authorities may wish to revisit Section 4 of the Directive and harmonise the AML/CFT Law accordingly.

22	**Specific provisions concerning equivalent third countries?**
Sections 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF Recommendations.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?

Description and Analysis	There are no specific provisions in the AML/CFT Law that requires Cyprus to act in accordance with the provisions of the mentioned Sections. It must be mentioned however that under Section 57 of the Law, the Advisory Authority for Combating Money Laundering and Terrorist Financing as established under Section 56 of the Law is vested with the power to designate the third countries outside the European Economic Area which impose procedures and take measures for preventing money laundering and terrorist financing equivalent to those laid down by the EU Directive. The Advisory Authority is required by the Law to notify the competent supervisory authorities of its decision with the purpose of further notification of the said decision to the persons falling under their supervision. The Advisory Authority however is not required to inform the EU Commission and other Member States accordingly.
Conclusion	Although this obligation under the Directive remains applicable to Member States irrespective of the way they legislate, Cyprus has not transposed these obligations in its AML/CFT Law
Recommendations and Comments	It would be advisable to provide specific requirements under the AML/CFT Law when and how Cyprus should communicate its decision in this regard to the Commission and other Member States.

Annex

Section 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Section 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Section 2 of Commission Directive 2006/70/EC (Implementation Directive):

Section 2
Politically exposed persons

1. For the purposes of Section 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Section 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Section 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Section for a period of at least one year, institutions and persons referred to in Section 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.