

FATF



11TH FOLLOW-UP REPORT

Mutual Evaluation of Argentina

June 2014





FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

AML/CFT	Anti-money laundering / Countering the financing of terrorism
CDD	Customer due diligence
DNFBP	Designated non-financial business or profession
FIU	Financial intelligence unit
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
MLA	Mutual legal assistance
NC	Non-compliant
PC	Partially compliant
PEP	Politically exposed person
R	Recommendation
SR	Special Recommendation
STR	Suspicious transaction report
TF	Terrorist financing
UN	United Nations
UNSCR	United Nations Security Council Resolutions

MUTUAL EVALUATION OF ARGENTINA: ELEVENTH FOLLOW-UP REPORT

Application to exit the follow-up process

Note by the Secretariat

I. INTRODUCTION

The FATF adopted the third mutual evaluation report (MER) of Argentina on 21 October 2010. Overall, Argentina had 2 C, 1 LC, 27 PC, and 19 NC ratings. Argentina was rated NC or PC on all 16 Core/Key Recommendations. The Plenary agreed to place Argentina in the enhanced follow up procedure, and a high-level mission that took place 13-14 December 2010. Argentina provided follow-up reports to each subsequent Plenary.

This paper is drafted in accordance with the procedure for removal from the regular follow-up, as agreed by the FATF Plenary in October 2008 and subsequently amended¹. It contains a detailed description and analysis of the actions taken by Argentina in respect of the core and key Recommendations rated partially compliant (PC) or non-compliant (NC) in the MER. The procedure requires that a country *“has taken sufficient action to be considered for removal from the process – To have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the core² and key³ Recommendations at a level essentially equivalent to a Compliant (C) or Largely Compliant (LC), taking into consideration that there would be no re-rating”⁴*. Argentina was rated PC or NC on the following Recommendations:

As prescribed by the Mutual Evaluation procedures, Argentina provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for the core and key Recommendations (see ratings above). A draft analysis was provided to Argentina for its review, and responses were received. The final report was drafted taking Argentina’s comments into account. During the process, Argentina provided the Secretariat with all information requested.

¹ Third Round of AML/CFT Evaluations Processes and Procedures, par. 41 www.fatf-gafi.org/media/fatf/documents/process%20and%20procedures.pdf.

² The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

³ The key Recommendations are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

⁴ FATF Processes and Procedures par. 39 (c).

Core Recommendation rated NC or PC:
R.1 (PC) R.5 (NC), R.10 (PC), R.13 (NC), SR.II (PC), SR.IV (NC)
Key Recommendations rated NC or PC
R.3 (PC), R.4 (PC), R.23 (PC), R.26 (PC), R.35 (PC), R.36 (PC), R.40 (NC), SR.I (PC), SR.III (NC), SR.V (PC)
Other Recommendations rated PC
R. 2, R.6, R.8, R.11, R.14, R.15, R.18, R.20, R.21, R.22, R.25, R.27, R.31, R. 38, R.39, SR.VII, SR.IX
Other Recommendations rated NC
R.7, R.9, R.12, R.16, R.17, R.24, R.29, R.30, R.32, R.33, R.34, SR.VI, SR.VIII

As a general note on all applications for removal from regular follow-up: the procedure is described as a *paper-based desk review* and by its nature is less detailed and thorough than a MER. The analysis focuses on the core and key Recommendations that were rated PC/NC, which means that only part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper-based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

Recommendation 1: Argentina addressed or largely addressed 6 of the 8 sub-items through Law 26683 amending Law 24546. Self-laundering and criminal liability for legal persons are now covered, and “disguise” has been added to the ML offence. While concealment, acquisition, and possession are not specifically covered (although acquisition and possession are partly covered through “reception”) preliminary case law shows that “concealment” and “possession” are adequately covered as part of the ML offence. It will take some time to determine the extent to which these elements are considered to be included in the money laundering offence in most or all cases. Argentina has not addressed the issues to fully cover conspiracy. Since the MER Argentina has had three money laundering convictions. The number of cases in progress has also increased significantly.

Recommendation 5: Argentina has fully or largely addressed 15 of 18 deficiencies through Law 26683 and FIU Resolutions (in particular Resolution 121/2011 for the banking and exchange sector, Resolution 229/2011 for capital markets, and Resolution 230/2011 for insurance companies, brokers and agents). The law expanding the scope of reporting parties and created more CDD provisions, and the FIU Resolutions contain detailed CDD provisions, including beneficial ownership.

The remaining issues relate to the need to conduct the full range of CDD measures when there are doubts about the previously obtained CDD data, and the types of enhanced CDD measures to be taken in high-risk situations.

Recommendation 10: Law 26683 and FIU Resolutions now require CDD and all transactional information (which must be sufficient to reconstruct individual transactions) to be kept for 10 years.

Recommendation 13 and SR.IV: Law 26683 broadened the scope of the AML law and reporting obligations to cover all necessary financial institutions. The FIU Resolutions to all reporting parties clarify this by containing a broad definition of suspicious transaction to report in relating to money laundering or terrorist financing and a direct obligation to report such transactions. STR reporting has also improved, with a larger number being reported from a wider scope of reporting parties.

Special Recommendation II: Argentina has largely addressed the deficiencies in the FT offence through Law 26 734 of December 2011. The criminalisation adequately covers the financing of terrorist acts, terrorist organisations, and individual terrorists.

KEY RECOMMENDATIONS

Recommendation 3: Section 23 of the CC has been amended (and a new Section 305 has been added) and case law demonstrates that property of corresponding value and indirect proceeds of crime can be seized and confiscated. Limitations on the TF offence have been addressed, and insider trading and market manipulation are now predicate offences, so related assets to related money laundering can now be seized and confiscated. Argentina is addressing the practical difficulties in identification and tracing of assets, and is demonstrating increased seizures and confiscations.

Recommendation 4: Argentina has made significant progress and has fully or largely addressed the deficiencies related to banking secrecy. Law 26683 lifts secrecy provisions between the CNV and FIU, and between the other regulatory agencies. The FIU can now access all information held by them, and share it with foreign supervisors. The law also addressed the limitation on invoking tax secrecy.

Recommendation 23: Argentina has addressed or largely addressed the deficiencies in R.23. Credit card issuers, traveller checks operators, and money remitters are now regulated and supervised; SSN is supervising life insurance intermediaries. Market Entry requirements and fit and proper tests of the BCRA and CNV have been improved. Argentina has re-organised AML/CFT regulation and supervision since the MER. The FIU supervises DNFBPs directly, and can apply sanctions (and has done so) for its full range of AML/CFT requirements. For financial institutions, the prudential supervisor, supervises their entities then refers the matter to the FIU. The prudential supervisors can use their range of sanctions when AML/CFT failings reach internal control failings, and New FIU Resolution 229/14 further enhances FIU/supervisor coordination and clarifies and enhances the range of proportionate and dissuasive sanctions available.

Recommendation 26: Argentina has addressed impediments to access to information, domestic information exchange, published typologies reports, and provided feedback to reporting parties. Argentina has enhanced its framework and analytical capabilities, and demonstrated that what seemed to be a limitation in the law (which indicates that the FIU will analyse and refer cases to the attorney general's office related to, preferably, ML related to certain predicate offences) is not an

obstacle in practice. The current framework has allowed the FIU to receive, process, and disseminate STRs regarding a wide range of predicate offences.

Recommendation 35: Argentina has addressed or largely addressed the deficiencies related to R.35. See Recommendation 1 and Special Recommendation II above.

Recommendation 36: Property of corresponding value and indirect proceeds of crime can be seized and confiscated. Deficiencies in the ML and TF offences have been largely addressed, and insider trading and market manipulation are now predicate offences for money laundering. So these issues no longer pose an impediment to international co-operation. Argentina is also making progress on effectiveness, although these are ongoing issues.

Recommendation 40: Provisions on secrecy and information exchange with foreign supervisors have been improved through capital markets Law 26831 on capital markets and Law 26683 which address secrecy provisions, and FIU Resolution 30/2013 which created a system of exchange of information between national authorities, similar foreign agencies, financial intelligence units and foreign counterpart agencies. The FIU is now able to access a wider range of information and share it with foreign counterparts. Implementation shows signs of progress, although this is an ongoing issue.

Special Recommendation I: The technical deficiencies in relation to SR.I have all been either addressed or largely addressed—see R.35 and SR.II above, and SR.III below. Argentina's current level of compliance with SR.I can therefore be considered as essentially equivalent to LC.

Special Recommendation III: Decree 918/2012 created a broad framework to comply with terrorist asset-freezing provisions, FIU Resolution 29/2013 provided further detailed guidance, and Law 26 734 broadened the TF offence.

Special Recommendation V: The MER identified a number of technical deficiencies, which were mainly cross-over deficiencies from R.3, R.36, R.40, and SR.II. These issues have all been either addressed or largely addressed. Two technical deficiencies have not been addressed—lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession. There is an absence of simplified and direct procedures for extradition, although this does not appear to be an obstacle in practice.

CONCLUSIONS

Argentina has addressed most of the deficiencies related to all the core and key Recommendations, and has brought the level of technical compliance with these Recommendations to essentially equivalent of LC. Argentina has therefore taken sufficient steps to be removed from the (enhanced and regular) follow-up process.

III. OVERVIEW ARGENTINA'S PROGRESS: MAIN CHANGES SINCE THE MER

Since the adoption of the MER in 2010, Argentina has completed key AML/CFT legislative and regulatory steps. Most importantly:

- Law 26683 of June 2011 reformed and strengthened the ML offence, enhanced the scope of reporting parties covered, and transferred AML/CFT supervision to the FIU.
- Law 26734 of December 2011 enhanced the TF offence, in particular by criminalising the financing of terrorist acts, and terrorist organisations and individual terrorists for any purpose.

Capital Markets Law 26683 of December 2012 addressed previous secrecy provisions, enhanced authorisation requirements for securities entities, and enhanced CNV's supervisory powers and sanctions.

The FIU has issued a series of Resolutions (considered as regulation) to reporting parties detailing CDD, record-keeping and other AML/CFT measures, in particular Resolution 121/2011 for the banking and exchange sector, Resolution 229/2011 for capital markets, and Resolution 230/2011 for insurance companies, brokers and agents.

Decree 918 of June 2012 created a broad framework to comply with UNSCRs 1267 and 1373.

FIU Resolution 229 of 26 May 2014 further enhances FIU/supervisor coordination and clarifies and enhances the range of proportionate and dissuasive sanctions available for AML/CFT failings.

IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

RECOMMENDATION 1 – RATED PC

Argentina amended its AML law 25245 in June 2011 through Law 26683. This law abrogated the previous Section 278 of the Criminal Code and created a new, separate money laundering offence, in Section 303.

R.1 (deficiency 1): The lack of any conviction since the money laundering legislation has been in force in (approximately 10 years) evidences the variety of reasons that the Argentina AML provisions are deficient and not being effectively applied.

In addition to the conviction for money laundering in the case *"Altamira, Jorge Guillermo y otros"* in 2009, since the adoption of the MER there have been two new convictions for money laundering: *"Luz Maria Acosta Aguilera y otro"* and *"Pedro Norberto Sánchez y otros"*, in 2011 and 2013, respectively. Also, the number of cases in progress has increased significantly, with currently more than 250 court cases in which the offense of money laundering is being investigated. For several of these cases, some of which are for section 303 of the Criminal Code incorporated as per Law 26683, only the last (oral) stage of the trial remains.

In terms of implementation, the resolution by the Attorney General's Office, Resolution PGN 914 of 21 December, reorganised the investigation of financial crimes and prosecution of AML/CFT, and raised a number of questions regarding implementation. The resolution dissolved UFILAVDIN, the independent AML/CFT prosecution and financial investigation unit within the Attorney General's office) and created an umbrella unit specialised in money laundering and economic crimes with more resources (Office of Economic Crime and Money Laundering—PROCELAC), under which the Unit for Investigation of Money Laundering and Terrorist Financing (UFILAVDINTER) is one of six operational units. Argentina indicates that the restructuring is aimed at further strengthening the system for prosecuting ML.

There are still some concerns that arise from the fact that normally, federal prosecutors are first appointed by the President, confirmed by the Senate, and may hold their positions for life (unless impeached) and can only receive general instructions on the direction of cases (this is to ensure prosecutorial discretion). Under the new system, the operational units are headed by "ad hoc" prosecutors, who can receive specific instructions from the head of PROCELAC, who can also intervene directly in the cases of other prosecutors throughout their cases. The Argentine authorities have explained that this "intervention" is equivalent to "assist", meaning this that the prosecutor participates in the case by providing technical support and assistance to the other prosecutors. It is unclear if the new system guarantees the same levels of independence and prosecutorial discretion. Implementation issues are particularly relevant since the Plenary had previously requested Argentina to provide an action plan on measures and milestones to assess Argentina's effective implementation of its money laundering offence. As of October 2012, the FATF had concluded that Argentina had demonstrated important progress, which the FATF expected Argentina to continue. As Argentina implements this system, Argentina needs to ensure that the new PROCELAC, and its operational area UFILAVDINTER, maintain adequate prosecutorial discretion and have the necessary AML/CFT expertise in order to ensure that ML and FT crimes are properly prosecuted.

R.1 (deficiency 2): Jurisdictional difficulties and a close link with the predicate offence impede effective money laundering investigation/prosecution.

This deficiency has been addressed. The new offence in Section 303 separated the ML offences from those of concealment, to which the offence was more closely linked in section 277-278. Argentina has not achieved several money laundering convictions, demonstrating that the offence is more effectively implemented.

R.1 (deficiency 3): Exemption for criminal responsibility to relatives or friends for some money laundering offences (e.g. acquisition, concealing and disguising under section 277).

Argentina has made substantial progress on this item, and this item has been largely addressed. The new ML offence in Section 303 is no longer linked to the exceptions for criminal liability in Section 277. Argentina's prosecutions and convictions also show that the family and friends are, and have been found, liable for money laundering.

While preliminary case law shows that “concealment” and “acquisition” are adequately covered, it will take some time to determine the extent to which these elements are considered to be included in the money laundering offence in most or all cases. In particular:

Disguise: This specific element has now been added to the main ML offence in new Section 303 of the CC.

Concealment: Section 303 of the CC does not include the word “concealment” (*ocultación* or *encubrimiento* in Spanish), which is a separate requirement in the Vienna and Palermo Conventions. The concept of “concealment” in practice may be partly covered by “disguise”. Argentina has provided two cases law where the judges, when issuing an order for a prosecution, have interpreted Section 303 of the Criminal Code to include concealment. The first case (“Hormachea”) involves family members, and the exemptions in section 277 of the criminal code are not being applied. While the cases are not yet final, the charges in the cases are. Argentina’s judges can (and do) cite previous cases in issuing charges and convictions, so there is the potential that future judges will apply the same reasoning and this could build up case law and legal precedent over time. While it seems that concealment will be considered as part of the money laundering offence in some cases, it will take some time to establish the extent to which concealment is considered part of the money laundering offence in most or all cases.

Acquisition: Acquisition of proceeds of crime is not specifically covered in the new ML offence in Section 303 of the CC. (The specific reference to “acquisition” still appears in Section 277). The issue is generally covered through the element of “reception” of proceeds of crime now incorporated in Section 303(3) of the CC; however, this section requires the additional element that the receipt of proceeds of crime is with the purpose of using them in any ML-related transactions.

Argentina has provided case law, where a judge has confirmed in the prosecuting charges that “recepción” is covered as part of the charge and the subjective element of purpose can be inferred from the circumstances and do not require further evidence or investigation. While the case is not yet final, the charges in the case are. In a new ML case in May 2014, the judge concluded that “acquisition” and “use” are included within the ML offence. The conclusion above for concealment also applies here.

R.1 (deficiency 4) Self-laundering is not criminalised.

This deficiency has been addressed. New Section 303 covers self-laundering.

R.1 (deficiency 5) The ancillary offence of conspiracy is not covered.

This issue has not been addressed. Conspiracy for money laundering is covered when it involves a criminal organisation of 3 or more people (Section 210 of the Criminal Code).

R.1 (deficiency 6): Insider trading and manipulation market are not predicate offences and the range of offences within the terrorism and terrorist financing definitions are not sufficient.

This deficiency has been addressed. Law 26 733 was approved by Congress on 22 December 2011 and entered into force on 26 December 2011, criminalising insider trading and market manipulation,

which now makes them predicate offences for money laundering. Terrorist financing has now been adequately criminalised (see SR.II below).

R.1 (deficiency 7): Possession of proceeds of crime is not specifically covered.

Argentina has partly addressed this issue; however, it is not yet clear the extent to which: 1) “possession” is considered to be included in the element of “reception”; and 2) the additional purpose element in the reception component will not be necessary in most or all cases. Possession of proceeds of crime is still not included as a specific offence. This is partly and indirectly covered by “receipt” of proceeds of crime in Section 303(3); however, this section contains an additional requirement that the receipt of proceeds of crime is with the purpose of using them in any ML-related transactions.

Argentina has provided one case (“Figueroa Barboza”) where the judge when issuing the prosecuting charges that “recepción” is covered as part of the charge and the subjective element of purpose can be inferred from the circumstances and do not require further evidence or investigation. This is a positive step, although it will take some time for case law to establish the extent to which this additional purpose element is not required to be part of the money laundering offence in most or all cases. Argentina has provided a second case (“Minshyu Guo”) where the judge has formalized charges. In this case, the defendant’s possession of the proceeds of crime allowed the prosecution to prove “reception.”

R.1 (deficiency 8): The acquisition, concealment, and disguising elements of the money laundering offence do not cover property that is indirectly the proceeds of crime.

Recent case law confirms that indirect proceeds of crime are adequately covered in practice. A conviction was issued on 10 May 2013, in the Province of Corrientes, under the case “Pedro Norberto Sánchez y otros s/ encubrimiento de lavado de activos de origen delictivo art. 278 del inc. 1” ap. a) y b) C.P”, in which 7 persons were convicted and sentenced to 6 and 7 years’ imprisonment for money laundering, indicating that confiscation is fully applicable to the indirect product of the crime. In this sense, the judgment confiscated several movable and real estate properties, such as an educational institution (instituto “Crisol Universal”), which was built with the money obtained by the “rent” of the rooms of a motel built with the product of the crime (Complejo Santo Tomé).

RECOMMENDATION 1, OVERALL CONCLUSION

Argentina addressed or largely addressed 6 of the 8 sub-items. Self-laundering and criminal liability for legal persons are now covered, and “disguise” has been added to the ML offence. However, while concealment, acquisition, and possession are not specifically covered (although acquisition and possession are partly covered through “reception”) preliminary case law shows that “concealment” and “possession” are adequately covered as part of the ML offence. It will take some time to determine the extent to which these elements are considered to be included in the money laundering offence in most or all cases. Argentina has not addressed the issues to fully cover conspiracy. Argentina’s current level of compliance with R.1 can therefore be considered as essentially equivalent to LC.

RECOMMENDATION 5 – RATED NC

R.5 (deficiency 1): Cooperatives, mutual associations, stock exchange market, and stock exchange without market are not subject to the AML Law 25 246, and therefore to any AML/CFT requirements. The coverage of the remittance companies by the AML law is unclear. Companies issuing travellers' checks and credit and purchase card operators are not subject to any AML/CFT measures other than the very basic ones provided by the law.

This deficiency has been largely addressed. Law 26683, amending Law 25246, specifically incorporated cooperatives and mutual associations as reporting parties. Remittance companies are now covered as financial institutions by the BCRA, through Law 26739 of March 2012. As financial institutions, they now have the range of AML/CFT measures that apply to all other financial institutions. Section 15 of Law 26683 amends section 20 of Law 25246, incorporating new reporting parties, such as, companies issuing traveler's cheques and credit or purchase card operators (subsection 9). The FIU has now issued detailed regulations to travellers' check companies and credit and purchase card operators, FIU Resolution 2/2012 of 9 January 2012.

R.5 (deficiency 2): CDD requirements in AML Law 25 246 are very general and do not include some basic obligations. The banking and foreign exchange institutions are the only financial institutions for which further detailed AML/CFT measures are defined in OEM (the BCRA Compilation of AML measures). The AML/CFT measures for the securities and insurance sectors are set out by FIU's resolutions and Supervisors' rules, which are not OEM. Requirements concerning money remitters (where they are covered), postal services that perform activities of transfers of funds, and capitalisation and saving companies are only established by the FIU's resolutions, which are not other enforceable means.

This deficiency has been addressed. Law 26683, amending law 25246, included more specific CDD requirements for all reporting parties. The law also included obligations to comply with FIU instructions, elevating the FIU resolutions to enforceable means. The FIU has issued resolutions numerous, resolutions to the various reporting parties with detailed CDD obligations—i.e. Resolution 121/2011 for the banking and exchange sector, Resolution 229/2011 for capital markets, and Resolution 230/2011 for insurance companies, brokers and agents. The FIU has also issued sanctions to reporting parties for failure to comply with those obligations.

R.5 (deficiency 3): There is no requirement in law or regulation for financial institutions to conduct CDD measures when there is suspicion of ML/TF regardless of any exemption or threshold (which did not exist at the time of the onsite visit), and when financial institutions have doubt about the veracity or adequacy of previously obtained customer identification data.

The MER (paragraphs 427 and 429) noted that the previous AML law contained a provision for exemption from CDD below a (to be determined) threshold. ("However, such obligation may be omitted when the amounts are lower than the minimum established in the relevant regulation.") Although such a threshold was never established, the MER noted that, in the event a threshold was established, Argentina should provide that no exemption would apply in the case of suspicion of

ML/FT. A similar provision is made in the new AML Law 26 683. A similar provision is made in the new AML Law 26 683. However, as Argentina's current system does not implement a threshold for CDD, this deficiency is not currently relevant.

Argentina has not fully addressed the requirement to conduct CDD when there are doubts about the veracity or adequacy of previously obtained CDD data.

R.5 (deficiency 4): For the securities and insurance sector, there is no requirement in law, regulation or OEM to verify the identity of the person acting on behalf of another. For all financial sectors, there is no requirement to verify that the person is so authorised.

This deficiency has been largely addressed. Law 26683, amending Law 25246, requires in Section 21 bis (c), then when there are doubts as to whether a customer is acting on his or her own behalf, reporting parties must implement additional reasonable measures to obtain information on the true identity of the person on behalf of whom customers are acting.

These measures are further detailed in the sectoral Resolutions issued by the FIU. Section 16 of FIU Resolutions 121/11, 229/11 and 230/11, which regulate the AML/CFT obligations of the banking and foreign exchange, securities and insurance sectors respectively, set forth the information requirement for representatives, indicate that information to be requested from attorneys-in-fact, guardians, curators or legal representatives shall be the same as the information requested from customers who are natural persons. In addition, a certified copy of the relevant minute and/or power-of-attorney indicating this capacity must be presented.

R.5 (deficiencies 5, 7, and 8): There is no requirement in law or regulation applicable to all financial institutions to identify and verify the identity of beneficial owners. The BCRA Compilation of AML measures only requires to identify beneficial owner(s) of the higher risks legal persons called "vehicle companies". This definition of beneficial owner is not in line with the FATF definition and there is no explicit requirement to verify the identity of beneficial owners. The BCRA Compilation of AML measures does not require the identification and verification of the identity of the ultimate beneficial owner(s).

Law 26683, amending Law 25246, section 21 *bis* now has some measures going beyond the customer aimed at ownership and control. "Where there were doubts as to whether customers are acting on their own behalf or where there is certainty that they are not, Reporting Parties shall implement additional reasonable measures in order to obtain information on the true identity of the person on behalf of whom customers are acting. Reporting Parties shall pay special attention to prevent natural persons from using legal persons as shell companies to carry out their transactions. Reporting Parties shall establish procedures for ascertaining the company's structure, the origin of its funds, and for identifying owners, beneficiaries, and those who actually control the legal person.

These measures are further detailed in the sectoral Resolutions issued by the FIU. For the banking and foreign exchange sector, Resolution 121/2011, section contains a general requirement to identify and verify the identity of beneficial owners. Section 21 indicates: "Legally bound reporting parties shall: a) In every case, additional reasonable measures shall be adopted for the purposes of identifying beneficial owners and verifying their identity; b) When there are elements that suggest

that customers do not act on their behalf, additional information shall be obtained on the true identity of the person (owner/final or true customer) on behalf of whom the customer is acting and reasonable measures to verify his/her identity shall be adopted.” Similar measures are included in Resolution 229/2011 for the securities sector (Section 18) and Resolution 230/2011 for the insurance sector (Section 19).

“Beneficial owner” is defined in these resolutions as the natural person that has at least 20 percent of the capital or the right to vote of a legal person or that by other means exercises the final, direct or indirect control over a legal person or other similar entity.

R.5 (deficiency 6): There is no requirement for banking and foreign exchange institutions to understand the ownership and control structure of all customers that are legal persons.

This issue has been largely addressed. Section 17 of Law 26683 incorporates section 21 bis to Law 25246, establishing, among other obligations, that “legally bound reporting parties shall establish procedures for ascertaining the company structure, the source of its funds, and for identifying the owners, beneficiaries, and those who really control the legal person”. There are further requirements in Furthermore, FIU Resolution 121/11.

R.5 (deficiency 9): The BCRA Compilation of AML measures only requires to identify the settlors, trustees and beneficiaries of trusts or other legal arrangements when they are used to avoid the process of identifying clients.

FIU Resolution 121 has a more general requirement in this area. Section 17 provides that the same requirements for legal persons shall also be met for customers that are trusts. Section 21 (e) requires banking and foreign exchange entities to identify settlors, trustees and beneficiaries in the same way as above for legal persons.

R.5 (deficiency 10): There is no provision in law or regulation (except for the banking and foreign exchange sector) to conduct ongoing due diligence on the business relationship.

This has been addressed. FIU Resolution 121/2011 for the banking and foreign exchange sectors contain the same provisions for on-going monitoring as the previous BCRA rules (Compilation of AML measures). There are identical provisions in Resolution 229/2011, Section 18 (securities sector), Resolution 230/2011, Section 19 (insurance sector).

R.5 (deficiency 11): Except for the banking and foreign exchange sectors, there is no requirement in law, regulation or OEM to apply enhanced CDD measures for higher ML/TF risks categories of customers, business relationships or transactions.

This has been partly addressed. Law 26 683 requires enhanced CDD for all financial institutions covered in the law in certain circumstances (such as non-face to face customers, as well as requirements for high risk customers, and similar measures are included in the new FIU resolutions for the insurance and securities sectors. However, they do not require the types of measures to be taken as described in R.6. While FIU Resolution 52/2012 contains more detailed requirements on

the types of measures to be taken in relation to PEPs, it does not apply more broadly to high-risk customers and business relationships. FIU Resolution 230/2011 to the insurance sector contains some special CDD measures in a few specific cases. However, it does not contain a general requirement to apply enhanced CDD in all high risk cases.

R.5 (deficiencies 12 and 13): The BCRA Compilation of AML measures, as well as the FIU resolutions, exempt financial institutions to conduct CDD measures for customers who are public or financial institutions or their representatives. There is no requirement to apply CDD measures for those customers concerned by the above exemption when there is ML/TF suspicion

There are no longer exceptions in the application of CDD measures to customers who are that are public or financial institutions or their representatives. Section 15 of Resolution 121/2011 indicates that reporting parties shall identify public institutions they have as clients, in compliance with the CDD measures. In such cases, reporting parties shall gather in a reliable manner, at least: certified copy of the administrative act appointing the official who is acting on behalf of the public agency; number and type of the official's identity document that must be shown in original; C.U.I.T. (Taxpayer Identification Number), legal address (street, number, city, province and postal code) and telephone number of the agency where the official serves; official address (street, number, city, province and postal code).

R.5 (deficiency 14): There is no explicit requirement to verify the identity of customers and beneficial owners before or during the course of establishing a business relationship or conducting transaction for occasional customers.

Reporting Parties must now verify the identity of customers and beneficiaries both before establishing and during the course of a business relationship or when conducting transaction for occasional customers. FIU Resolution 121/2011 provides that the KYC policy will be a necessary condition to start or continue the business or contractual relationship with the clients. In addition, reporting parties must identify their clients before starting the business or contractual relationship, verify that they are not included in the list of terrorists and check if they meet the condition of PEP. Also, during the course of the contractual relationship, reporting parties must verify that customers are not included in the terrorist lists check if they meet the condition of PEP (the frequency of such verification is in the procedures manual), and consult the information provided by the Central Bank through the current reporting requirements regime, as additional element to conducting verifications and monitoring transactions.

R.5 (deficiency 15 and 16): There is no provision in law, regulation or OEM to prohibit reporting parties from opening an account, commencing a business relationship or performing transactions when they are unable to carry out CDD requirements. There is no requirement to terminate the business relationship and to consider making an STR if CDD measures cannot be adequately conducted on existing customers or if financial institution has doubt about the veracity or adequacy of previously obtained information.

This has been largely addressed. FIU resolutions to the various sectors require adequate CDD measures to be in place in order to *establish* or *continue* a business relationship (Section 12 of Resolutions 121/2011, 229/2011, and 230/2011) This reference to “continue” a relationship seems to indirectly cover the requirement to terminate a business relationship when they fail to satisfactorily complete CDD measures. Central Bank regulations provide further authority to close accounts if adequate CDD is not conducted. Section 29, subsection e) and f) of FIU Resolution 121/2011 provides that reporting parties shall report to the FIU when customers refuse to provide information or documents requested by the institutions or where it is detected that the information provided by them has been altered, and if a customer fails to comply with this Resolution or other relevant regulations in force.

R.5 (deficiency 17): There is no requirement in law, regulation or OEM for the securities and insurance sectors to apply CDD measures to existing customers in the basis of materiality and risk.

This item has been addressed. There are now measures in the banking, securities, and insurance sectors for identifying existing customers. Resolution 121/2011 obliges financial institutions to complete or update a “client’s file” (which must contain the documents that prove compliance with CDD measures, among others). Section 38 indicates that for existing customers, before March 2012 the files shall be updated for existing customers who have conducted transactions during 2011 for an annual amount exceeding ARS 3 million (approximately USD 700 000). FIU Resolution 229/2011 (securities sector) and 230/2011 (insurance sector), require CDD measures and updating of the client’s file in sections 35 and 42, respectively, without any threshold.

R.5 (deficiency 18): The effective implementation of the requirements that exist is undermined by factors such as:

- **The lack of a common understood definition of who the beneficial owners of legal persons are (all shareowners or only those exerting a real control over the legal persons)**
- **The lack of effective supervision of financial institutions of the securities and insurance sectors and the lack of supervision for other sectors like the remittance companies or postal services with perform activities of transfers of funds.**
- **The very frequent modifications of the rules issued by the BCRA.**

The issues relating to the framework have been addressed. The FIU worked with the BCRA, CNV, and SSN to issue its resolutions to these sectors. These now contain very similar provisions, including the definition and requirements for beneficial owners. The FIU resolutions are updated much less frequently than the previous BCRA rules (which no longer apply). Supervision of the securities and insurance sectors has also increased (see Recommendation 23).

RECOMMENDATION 5, OVERALL CONCLUSION

Argentina has fully or largely addressed its CDD deficiencies. The remaining issues relate to the need to conduct the full range of CDD measures when there are doubts about the previously obtained CDD data, and the types of enhanced CDD measures to be taken in high-risk situations. Argentina's current level of compliance with R.5 can be considered as essentially equivalent to LC.

RECOMMENDATION 10 – RATED PC

R.10 (deficiencies 1 and 3): The AML Law does not require keeping records of transactions, though other laws contain some related provisions. Except for banking and foreign exchange institutions, there is no requirement in law, regulation or OEM to maintain records in a sufficient way to allow for the reconstruction of transactions.

These deficiencies have been addressed. Section 17 of Law 26683 incorporates section 21 bis to Law 25246, requiring that reporting parties maintain information gathered in compliance with their AML/CFT obligations for at least five (5) years, and must be sufficiently recorded to permit reconstruction. The FIU Resolutions (which are considered regulations) contain more detailed requirements. Section 27, subsection b) of FIU Resolution 121/11, for the banking and foreign exchange sector; section 24, subsection b) of FIU Resolution 229/11, for the securities sector; and section 30, subsection b) of FIU Resolution 230/11, for the insurance sector, all establish, "as regards transactions, original documents or copies certified by the institution shall be kept for ten (10) years as from transactions are completed." Subsection d) of the aforementioned sections establishes that "transaction-related electronic files shall be kept for ten (10) years in order to enable the reconstruction of the transaction. Legally bound reporting parties shall ensure that the digital information can be read and processed

R.10 (deficiency 2): The 5 year period for keeping customer identification information and documents is not set out in law or regulation, but in lower status rules, which except for the banking sector, are not OEM.

This deficiency has been addressed. In addition to Section 17 of Law 26683 described above, the FIU Resolutions (which are considered regulations) contain more detailed requirements for customer identification requirements. In this regard, section 27, subsection a) of FIU Resolution 121/11, for the banking and foreign exchange sector; section 24, subsection a) of FIU Resolution 229/11, for the securities sector; and section 30, subsection a) of FIU Resolution 230/11, for the insurance sector, all establish, "as regards customer identification and know your customer requirements, the file and any supplementary information requested shall be kept for ten (10) years as from the end of the relationship with a customer."

R.10 (deficiency 4): There is no requirement to keep record of business correspondence for 5 years.

This deficiency is partly addressed. The FIU Resolutions require that the reporting party maintain the CDD file and “any supplementary information requested”. While this may include business correspondence, it is not an explicit requirement.

RECOMMENDATION 10 – OVERALL CONCLUSION

Argentina has addressed three technical deficiencies and largely addressed the fourth. Argentina’s current level of compliance with R.10 can be considered as essentially equivalent to LC.

RECOMMENDATION 13 – RATED NC**R.13 (deficiency 1): Mutual associations and cooperatives, stock exchange market and stock exchange without market are not subject to reporting obligations.**

This deficiency has been largely addressed. Law 26683, amending law 25246, specifically incorporated cooperatives and mutual associations as reporting parties.

R.13 (deficiencies 2 and 3): The definition of suspicious transactions (unusual or complex) is not in line with the FATF. Since suspicious transactions are defined as unusual transactions (and unusual transactions are not explicitly linked to any type of crime, including ML) and since the FIU has a limited competency to investigate predicate offences, it appears that the current requirements cover 6 categories of the predicate offences.

This item is largely addressed. The revised AML law of June 2011 improved the STR provisions by adding a section 20 *bis*, which contains a definition of suspicious transactions that should be reported pursuant to suspicions of ML or FT. This is strengthened by FIU resolutions to reporting parties, which contain a broad definition of suspicious transaction (including TF) and a direct obligation to report such transactions. For example, section 29 of Resolution 121/2011 to financial entities indicates: “Legally bound reporting parties shall report to the FIU those unusual transactions that are regarded as suspicious of Money Laundering and Terrorist Financing as a result of the requirable expertise developed in virtue of their activity, and of the analysis carried out, pursuant to Sections 20 *bis*, 21 subsection (b) and 21 *bis* of Law 25246, as amended.” Identical provisions are laid in the FIU’s resolutions to other reporting parties.

The item relating to the FIU’s capacity to receive and analyse STRs related to only certain predicate offences will be discussed under Recommendation 26 below.

R.13 (deficiency 4): There is no explicit requirement in law or regulation to report transaction where there are reasonable grounds to suspect or where reporting entities suspect them to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. The provisions of the FIU Resolutions 125/2009 and the BCRA Communication A 4273 are inconsistent and negatively impact effective reporting.

As indicated above, the revised AML law of June 2011 and FIU resolutions strengthen the reporting requirements, including relating to TF. “Suspicious transaction” is defined as “those attempted or completed transactions that have been previously identified as unusual as a result of the analysis and assessment carried out by the reporting party, and are unrelated to the licit activities stated by the customer, or when authenticity, veracity or coherence of the documents provided by a customer is doubted, given rise to the suspicion of Money Laundering or even when the transactions are linked to licit activities, there is suspicion that they are related to or are intended to be used to finance terrorism.”

R.13 (deficiency 5): Effectiveness:

- **The lack or insufficient supervision by financial supervisors of the implementation of reporting obligations and the lack of application of the sanction regime by the FIU for 10 years undermine the financial institutions’ perception of the enforceability of the reporting obligations.**
- **The 6-month period given to financial institutions to analyse if a transaction should be reported impacts on the traceability of transactions and on the effectiveness of the reporting regime.**
- **There is a low number of STRs, which are mostly sent by a very small number of banks and foreign exchange institutions.**
- **There are concerns on the quality of the STRs received by the FIU: the available statistics (until 2006) do not demonstrate satisfactory results and the percentage of cases disclosed to the Public Ministry is low.**
- **The FIU has not issued any resolution for issuers of traveller’s cheques and credit and purchase card operators.**
- **The high proportion of suspicious transactions done by the 3 financial supervisors in place of the financial institutions indicates the lack of effectiveness of the reporting system.**

AML/CFT supervisions conducted both by the FIU as well as by the regulators have multiplied. Since 2010 up to April 2014, 517 on-site supervisions were performed to reporting parties, 339 of those were performed to the financial sector (banks and foreign exchange, securities and insurance), in order to verify compliance of AML/CFT obligations. More than 8,668 off-site supervisions were performed. From 2010 to this date, 156 administrative summaries were conducted and 44 fines were applied for a total of ARS 255,808,418, in contrast to 4 administrative summaries initiated during the period 2000-2009, where no sanction was applied.

On 10 January 2014 FIU Resolution 3/2014 was published in the Official Gazette, amending a set of resolutions to various reporting parties. Section 1 modified the reporting period contained in previous resolutions, indicating that notwithstanding the maximum period of 150 consecutive days to report money laundering STRs, reporting parties must file an STR with the FIU within 30 days of deeming them as suspicious, thus specifying and limiting the time to report.

During 2013, the FIU received a total of 36,079 Suspicious Transaction Reports (STRs), which for a total of 88,250 STRs received for 2010-2013. This number represents more than 14 times of the STRs received by the FIU from its creation until 2009.

The following table shows the diversification of the source of STRs:

Type of Reporting Party	Total 2013	Share %
Financial Entities	18 143	50.3%
Entities included in Section 9 of Law 22 315 – Capitalization and Savings Entities	13 585	37.7%
Insurance Sector - Insurance Companies and Insurance Brokers -	1 760	4.9%
Others	772	2.1%
Registries of Real Estate Property	480	1.3%
Capital Markets - Stockbroker, Stockbroker Company, and Mutual Investment Funds -	268	0.7%
Companies that issue traveler's cheques or operate credit or purchase cards	219	0.6%
AFIP	165	0.5%
Exchange Offices	137	0.4%
Works of arts, antiques, and others	127	0.4%
BCRA	107	0.3%
Registries of Motor Vehicles	93	0.3%
Games of Chance - Bingos, Lotteries, Casinos, Racetracks, etc.-	77	0.2%
Notaries Public	57	0.2%
Money Remitters	25	0.1%
Licensed professionals whose activities are regulated by Professional Councils of Economic Sciences	15	0.0%
Armored Transportation Services Companies	13	0.0%
SSN	13	0.0%
CNV	12	0.0%
Agencies for the Surveillance and Control of Corporations	6	0.0%
Customs Officers	5	0.0%
Total	36 079	100.0%

FIU Resolution 2/2012 of 9 January 2012 regulates AML/CFT obligations for companies issuing travellers' cheques and credit or purchase card operators.

RECOMMENDATION 13, OVERALL CONCLUSION

Argentina has addressed or largely addressed the technical deficiencies in R.13. Argentina has broadened the scope of the AML law and reporting obligations to cover all necessary financial institutions. The FIU Resolutions (considered to be regulations) to all reporting parties clarify this by containing a broad definition of suspicious transaction to report in relating to money laundering or terrorist financing and a direct obligation to report such transactions. STR reporting has also improved, with a larger number being reported, from a wider scope of reporting parties. Argentina's current level of compliance with R.13 can therefore be considered as essentially equivalent to LC.

SPECIAL RECOMMENDATION II – RATED PC

SR.II (deficiency 1): The criminalisation of FT is limited and therefore insufficient. It does not cover collection or provision of funds to be used (for any purpose) by an individual terrorist or a terrorist act outside the context of the terrorist organisation as defined in Argentina.

With the enactment of Law 26734 on 27 December 2011, Argentina has criminalized the financing of an individual terrorist or terrorist organisation for any purpose. The broad scope of the terrorist financing provisions in new Section 306 apply to anyone who directly or indirectly collects or provides property or money, with the intention of using them or in the knowledge that they are to be used, in full or in part, to finance the perpetration of a crime with the aim laid down under section 41 *quinquies*; (b) by an organization that commits or attempts to commit crimes with the aim laid down under section 41 *quinquies*; (c) by an individual who commits, attempts to commit, or participates in any way in the commission of crimes with the aim laid down under section 41 *quinquies*. This is further described in the section below.

SR.II (deficiency 2): The definition of terrorist organisation is very limited (it must, inter alia, have international connections); it would not cover terrorist organisations that exist solely within Argentina, and it would not include the acts included in Article 2(1)(a) and (b) of the UN Convention on the Suppression of the Financing of Terrorism (“CFT Convention”) when committed outside of this type of terrorist organisation.

The previous, narrow definition of terrorist organisation has been replaced by a definition that applies directly to any organization (which is not defined) that commits or attempts to commit crimes with terrorist purposes as laid down in the new Section 41 *quinquies*, and indirectly to any other criminal association of three or more people.

SR.II (deficiency 3): They do not fully cover all the provisions of Article 2(1)(b), nor the acts in all the treaties listed in the Annex of the CFT Convention as required by Article 2(1)(a).

Law 26734, created a new definition of terrorist act. It created a new Section 41 *quinquies*, which indicates: “Where any of the crimes criminalized under this Code has been perpetrated with the purpose of terrorizing the population or compelling national public authorities, or foreign governments or officials from an international organization to do or abstain from doing an act, the minimum and maximum terms of punishment shall be doubled. The aggravating circumstances

provided in this section shall not be applied when such act(s) constitute the exercise of a human and/or social rights or any other constitutional right.”

In one sense, Argentina’s coverage of terrorist acts is broader than the FT Convention and SR.II since it applies to any criminal act in Argentina committed with a terrorist purpose. On the other hand, it is slightly more restrictive with respect to Article 2(1)(a) of the FT Convention since it requires the intent of terrorising the population or compelling national public authorities, or foreign governments or officials from an international organisation to do or abstain from doing an act. Article 2(1)(a) of the Convention requires that the mentioned acts be considered as terrorist acts *per se*, *i.e.* without the need to demonstrate any additional purpose element.

In addition, there is a provision indicating that “The aggravating circumstances provided in this section shall not be applied when such act(s) constitute the exercise of a human and/or social rights or any other constitutional right.” While it is understood that the Argentinean authorities included this provision in order to preserve certain rights of assembly, this is not an exception envisioned in the FT Convention or SR.II and therefore could be somewhat limiting. Nevertheless, since this appears to place the onus of proof on the person seeking to avail themselves of the protection of this exception rather than making it the duty of the prosecutor to show that the exception does not apply, this is not a substantial concern.

SR.II (deficiency 4): No criminal liability for legal persons, and there is no fundamental principle of domestic law that prohibits this.

This deficiency has been addressed. Section 6 of the new Law 26734 indicates that the provision of Sections 304 and 305 of the Criminal Code (which are the provisions for criminal liability for legal persons, incorporated by the recent AML law 25 246) shall also be applied in relation to the TF provisions (described above).

SR.II (deficiency 5): The effectiveness of the provisions has not yet been demonstrated.

Argentina indicated that as of June 2014, there were no terrorist financing investigations or prosecutions underway.

SPECIAL RECOMMENDATION II – OVERALL CONCLUSION

Argentina has largely addressed the deficiencies in the FT offence through Law 26 734 of December 2011. The criminalisation adequately covers the financing of terrorist acts, terrorist organisations, and individual terrorists. Argentina’s current level of compliance with SR.II can therefore be considered as essentially equivalent to LC.

RECOMMENDATION 1 – RATING PC

SR.IV (deficiencies 1 and 5): There is no explicit requirement in law or regulation to report transaction where there are reasonable grounds to suspect or where reporting entities suspect them to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. The provisions of the FIU Resolutions 125/2009 and the BCRA Communication A 4273 are inconsistent and negatively impact effective reporting.

As indicated above, the revised AML law of June 2011 and FIU resolutions strengthen the reporting requirements, including relating to TF. “Suspicious transaction” is defined as “those attempted or completed transactions that have been previously identified as unusual as a result of the analysis and assessment carried out by the reporting party, and are unrelated to the licit activities stated by the customer, or when authenticity, veracity or coherence of the documents provided by a customer is doubted, given rise to the suspicion of Money Laundering or even when the transactions are linked to licit activities, there is suspicion that they are related to or are intended to be used to finance terrorism.”

SR.IV (deficiency 2): The characteristics of suspicious transactions (unusual, complex, no economic justification) are not broad enough to satisfactorily capture TF cases.

This item is largely addressed. The revised AML law of June 2011 improved the STR provisions by adding a section 20 *bis*, which contains a definition of suspicious transactions that should be reported pursuant to suspicions of ML or FT. This is strengthened by FIU resolutions to reporting parties, which contain a broad definition of suspicious transaction (including TF) and a direct obligation to report such transactions. For example, section 29 of Resolution 121/2011 to financial entities indicates: “Legally bound reporting parties shall report to the FIU those unusual transactions that are regarded as suspicious of Money Laundering and Terrorist Financing as a result of the requirable expertise developed in virtue of their activity, and of the analysis carried out, pursuant to Sections 20 *bis*, 21 subsection (b) and 21 *bis* of Law 25246, as amended.” Identical provisions are laid in the FIU’s resolutions to other reporting parties.

SR.IV (deficiency 3): The scope issues of R.13 also apply to SR.IV.

This deficiency has been largely addressed. Law 26683, amending law 25246, specifically incorporated cooperatives and mutual associations as reporting parties.

SR.IV (deficiency 4): Lack or insufficient supervision and of imposed sanctions and lack of awareness of TF threats negatively affect the effectiveness of the system.

Argentina indicated that the supervisory process always includes verifying that reporting parties fulfill their duty to report FT-related STRs, as well full compliance with the obligations relating to CDD for FT, such as verification of clients in the list of terrorist or terrorists organisations, and updating the FT rules in the procedures manuals, among others. With respect to sanctions, although there are no administrative summaries carried out for non-compliance of such STR reporting,

administrative summaries were started to various reporting parties (banks, notaries, casinos, brokerage firms and companies issuing travellers' cheques and credit and purchase card operators) due to breaches detected in supervisions carried out by the FIU and specific controlling agencies. Some of the charges in these administrative summaries are non-compliance of due diligence obligations related to terrorist financing, either by failing to update ML/TF Prevention Manuals with the regulatory changes set out in FIU Resolution 125/09 and Decree 918/12, or the lack of documentation proving the consultation of the terrorist lists. Some of these administrative summaries are currently in process.

SR.IV (deficiency 6): The FIU has never received any STR related to terrorist financing, which demonstrates the lack of effectiveness of the regime.

Since the approval of the MER, there have been 22 terrorist financing suspicious reports (RFT): 9 in 2011, 5 in 2012 and 8 in 2013. Ten of these reports have been forwarded to the Office of the Public Prosecutor.

SPECIAL RECOMMENDATION IV – OVERALL CONCLUSION

Argentina has addressed or largely addressed the technical deficiencies in SR.IV. Argentina has broadened the scope of the AML law and reporting obligations to cover all necessary financial institutions. The FIU Resolutions (considered to be regulations) to all reporting parties clarify this by containing a broad definition of suspicious transaction to report in relating to money laundering or terrorist financing and a direct obligation to report such transactions. A number of FT-related STRs have also been reported since the MER. Argentina's current level of compliance with SR.IV can therefore be considered as essentially equivalent to LC.

V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

RECOMMENDATION 3 – RATED PC

R.3 (deficiency 1): The confiscation regime is not effectively applied. Neither statistics for ML/FT nor for predicate offences (such as drug trafficking, corruption, etc.), were provided.

In the three convictions for money laundering, confiscation was applied, as follows:

In the Altamira case, confiscation was ordered on scales, brand Elvar and Tissot, the sum of ARS 5 580, 3 automobiles, pool table, goodwill of a restaurant, and merchandise seized in the business premises, and a real estate property.

In the Acosta Aguilera case, confiscation was ordered on the seized funds (USD 647 400).

In the recent case "Pedro Norberto Sánchez y otros s/ encubrimiento de lavado de activos de origen delictivo art. 278 del inc. l" ap. a) y b) C.P" all the assets and instruments of the crime registered in the case were confiscated, among others more than 80 motor vehicles, 17 real estate properties, 1 rural property, 1 bar, 1 motel, 1 educational institution, bearer instruments and weapons.

The amount of injunctions for seizure obtained by the FIU in criminal cases related to money laundering has also increased. As of 31 December 2013 injunctions for ARS 751,707,217 have been obtained.

Decree 826/2011 also created the National Registry of Seized and Confiscated Assets which aims to identify, record, evaluate and locate all of the property seized, confiscated or involved an injunction in the context of criminal proceedings. The database maintains information and statistical reports designed to quantify the property subject to seizure, forfeiture or protective measures.

R.3 (deficiency 2): There is no specific provision allowing for seizure/confiscation of property of corresponding value; nor does the law specifically cover indirect proceeds of crime, including income, profits or other benefits from the proceeds of crime.

This item has been addressed. Section 23 of the CC has been amended (and a new Section 305 has been added) to incorporate confiscation of assets. Case law demonstrates that property of corresponding value and indirect proceeds of crime can be seized and confiscated. A conviction was issued on 10 May 2013, in the Province of Corrientes, under the case “Pedro Norberto Sánchez y otros s/ encubrimiento de lavado de activos de origen delictivo art. 278 del inc. 1° ap. a) y b) C.P”, in which 7 persons were convicted and sentenced to 6 and 7 years’ imprisonment for money laundering, indicating that confiscation is fully applicable to the indirect product of the crime. The judgment confiscated several movable and real estate properties, such as an educational institution (instituto “Crisol Universal”), which was built with the money obtained by the “rent” of the rooms of a motel built with the product of the crime (Complejo Santo Tomé).

R.3 (deficiency 3): Ability to freeze/confiscate property relating to FT is limited due to the limitations of the FT offence.

The limitations of the FT offence have been addressed. See SR.II above.

R.3 (deficiency 4): Insider trading/market manipulations are not criminalised, so it is possible to freeze/confiscate in such cases.

This deficiency has been addressed. Law 26 733 was approved by Congress on 22 December 2011 and entered into force on 26 December 2011, criminalising and market manipulation, which now makes them predicate offences for money laundering. Freezing and confiscation relating to these offences now apply.

R.3 (deficiency 5): There are practical difficulties in identification and tracing of assets, especially because there are no unified databases under federal system.

This deficiency is being addressed. Eighteen of the 24 jurisdictions have been incorporated into the national register of real estate assets (SINAREPI). Argentina has also shown important progress in developing a national registry of seized and confiscated assets, and the National Registry of Companies. Finally, Argentina has substantially increased the human and financial resources in the various agencies working in the identification and tracing of criminal assets.

R.3 (deficiency 6): No clear powers for judges to void illicit acts and contracts.

It is still not clear whether such clear powers exist for criminal judges. Argentina indicates that judges have a duty to annul illegal acts and contracts. Section 953 of the Civil Code states that the object of legal acts should be things that are not illegal, contrary to morality or prohibited by law. Legal acts that do not comply with this provision are invalid as if they had purpose. Section 1047 states that “absolute annulment may and must be ordered by the judge, even without request of a party, when it appears clear in the act. All who are interested may dispute this, except for the perpetrator of the act, knowing or should having known the invalidating vice. The Office of the Public Prosecutor may also request it, upon moral or legal interest. Absolute annulment is not subject to confirmation.”

RECOMMENDATION 3 – OVERALL CONCLUSION

Argentina has addressed or largely addressed five of the six deficiencies. Section 23 of the CC has been amended (and a new Section 305 has been added) to incorporate confiscation of assets, and case law demonstrates that property of corresponding value and indirect proceeds of crime can be seized and confiscated. Limitations on the TF offence have been addressed, and insider trading and market manipulation are now predicate offences, so related assets to related money laundering can now be seized and confiscated. Argentina is addressing the practical difficulties in identification and tracing of assets, and is demonstrating increased seizures and confiscations. It is still not clear whether criminal judges have clear powers to void illicit acts and contracts. Argentina’s current level of compliance with R.3 can be considered as essentially equivalent to LC.

RECOMMENDATION 4 – RATED PC

R.4 (deficiencies 1 and 2): Securities secrecy seriously limits the FIU investigative powers. Caja de Valores, the depository and registry institution can invoke secrecy against the FIU’s request for information. The CNV cannot disclose information gathered from third parties at the FIU’s request without a judicial approval. This further limits, or at least delays, access by the FIU to necessary information to analyse the STRs.

This deficiency has been addressed. Law 26683 (section 14 (1)) established that tax secrecy cannot be invoked by reporting parties where an STR is under analysis. Capital Markets Law 26831 of December 2012 also lifts secrecy provisions between the CNV and FIU, and between the other regulatory agencies. For example, Section 20 allows the CNV to gather any information from any securities-related entity. Section 25 establishes that all information gathered during this process is subject to secrecy, with the exception of the circumstances indicated in Section 26 (situations where the CNV has cooperation agreements with foreign counterparts) and Section 27 (lifting secrecy between regulators, and providing information the FIU).

While the Caja de Valores has not been incorporated among the reporting entities, the changes to the various secrecy provisions appear to address this deficiency.

R.4 (deficiency 3): Financial or professional secrecy can only be lifted when requests are made in the framework of an STR originated in Argentina. This limits the capacity of the FIU, BCRA and CNV to effectively co-operate with foreign counterparts, since a judicial authorisation is needed to provide the requested information.

In addition to Law 26831, effectively repeals the secrecy provisions of the other financial sector supervisors, since the FIU can now access all information held by them, and share it with foreign counterparts and supervisors. Amendments to the Central Bank Charter also now empower the Central Bank, through Law 26739 of 28 March 2012, broadens the legal basis for international cooperation of this agency.

R.4 (deficiency 4): Judicial authorisation is needed to lift tax secrecy when the STR has not been submitted by the AFIP or it affects people indirectly related with the reported subject, which also causes delays for the FIU's access to valuable information to analyse STRs.

This aspect was addressed by Law 26683 amending Law 25246, which removed the previous provision and established that, as in the cases of financial, stock exchange, and professional secrecy, tax secrecy shall not be invoked to the FIU.

RECOMMENDATION 4 – OVERALL CONCLUSION

Argentina has made significant progress and has fully or largely addressed the deficiencies related to banking secrecy. Law 26683 lifts secrecy provisions between the CNV and FIU, and between the other regulatory agencies. The FIU can now access all information held by them, and share it with foreign supervisors. The law also addressed the limitation on invoking tax secrecy. Argentina's current level of compliance with R.4 can therefore be considered as essentially equivalent to LC.

RECOMMENDATION 23 – RATED PC

R.23 (deficiency 1): Financial institutions such as credit card issuers, traveller checks operators, or remitters are neither regulated nor supervised and in practice SSN does not supervise life insurance intermediaries.

This deficiency has been addressed. Remittance companies are now covered as financial institutions by the BCRA, through Law 26739 of March 2012. As financial institutions, they now have the range of AML/CFT measures that apply to all other financial institutions. Section 15 of Law 26683 amends section 20 of Law 25246, incorporating new reporting parties, including companies issuing traveler's cheques and credit or purchase card operators (subsection 9). The FIU has now issued detailed regulations to travellers' check companies and credit and purchase card operators, FIU Resolution 2/2012 of 9 January 2012.

SSN has inspected life insurance companies and intermediaries since the MER. As of March 2014, the SSN has carried out 57 inspections (3 in 2011, 17 in 2012, 31 in 2013, and 6 in 2014 (up to March). These included 16 intermediaries (11 companies and 5 natural persons) and 2 reinsurers.

R.23 (deficiency 2): The FIU, which can sanction the non-compliance of financial institutions with their suspicious transaction reporting obligations, has no supervisory powers.

Law 26683, amending law 25246 and subsequent FIU resolutions have enhanced the FIU's supervisory powers. Section 14, subsection 7 of Law 25246 empowers de FIU to establish supervision, oversee and onsite inspection procedures to control compliance with the obligations established for reporting parties. New FIU Resolution 229/14, section 12, sets forth the legal power for competent supervisory authorities have to enter the premises and request documents, taking into account that denial, hindering or obstruction results in an administrative but also criminal sanction.

The FIU has already exerted this authority in practice. Up to March 2014, the FIU has carried out the following inspections:

The FIU is currently implementing a risk matrix to assess the risk of non-compliance with FIU regulations of each reporting party, which represents a useful tool to be used by the Committee with the purpose of developing and implementing a supervision strategy. As of March 2014, the following inspections as regards AML/CTF have been carried out:

Inspections initiated by the FIU

<i>Reporting Party:</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>total</i>
Money Remitters	2	2	2	2	1	9
Armoured transportation services companies	2	3	0	0	-	5
Games of Chance	2	5	2	6	1	16
Art Galleries	1	2	0	0	-	3
Jewellery Stores	2	5	1	1	-	9
Accountants	0	0	2	0	-	2
Notaries Public	3	0	10	3	1	17
Societies under capitalization and savings	0	4	0	2	-	6
Antique Store	0	2	0	0	-	2
Foundations	0	3	0	0	-	3
Credit cards issuers	0	3	3	4	1	11
Legal persons performing organizational and regulatory functions of professional sports:	0	0	4	5	1	10
Real Estate Sector	0	0	3	2	2	7
Trusts	0	0	0	5	-	5
SUB TOTAL	12	29	27	30	7	-
TOTAL	105					

R.23 (deficiency 3): Market Entry requirements of the BCRA for banking institutions:

- **No verification of the validity of information and data provided by the applicants.**
- **No power to refuse to grant a license on the sole ground that directors, senior management or beneficial owners would be criminals or associated with criminals.**
- **The number of persons upon which BCRA shall conduct fit and proper test is too high and not effective.**

Argentina indicates that the BCRA verifies all the information provided by those requesting a license to operate. Information related to criminal records must be certified both by the Ministry of Justice and Human Rights and the Ministry of Foreign Affairs and Worship, as appropriate. Likewise, the data of the applicants is checked against the lists on terrorists or terrorist associations issued by the United Nations Security Council and compared to other independent databases (World Check and OFAC, among others). For this purpose, Argentina's system called "Terrorist Unified List (LUT, as per its acronym in Spanish) is used, which gathers the information from all these databases.

Argentina has improved fit and proper tests for banking and other financial entities; Communication A 5248 of November 2011 provides sufficient authority for the BCRA to refuse to grant a license if considers that directors, senior managers, or shareholders of a financial institution are criminals. The Communication further indicates that to grant a license, the BCRA shall assess if directors, managers or shareholder have criminal records and or they are included in the lists of terrorists and terrorist associations issued by the United Nations Security Council.

Fit and proper tests are applicable only to directors, trustees, general managers or similar positions. For the lower levels of the organizations, there is a simplified and automated reporting system.

R.23 (deficiencies 4 and 5): There are no legal or regulatory measures available in Argentina to prevent criminals and their associates from holding, being the beneficial owner of a significant or controlling interest or holding a management function in entities of the securities sector. There are no legal or regulatory measures to check the expertise and integrity of directors and senior management of the entities of the securities sector.

Law 26831 on Capital Markets of 28 December 2012, grants the National Securities and Exchange Commission (CNV) with the capacity to grant and revoke authorization for the participants of the Capital Market to negotiate securities. Likewise, it authorizes the CNV to regulate fit and proper Tests of all the brokers which, according to the CNV, are necessary to register for the development of the Capital Market (sections 47 and 2).

For agents/brokers, Section 47 now requires them to be authorised directly by CNV (Previously, they were registered by the markets and only informed of these registrations to the CNV). Section 48 establishes prohibitions on who could be authorized as an agent (e.g. convicted of certain crimes, bankruptcy, previously cancelled registrations, prohibition on holding public functions). The new law applies equally to securities companies as well as intermediaries/ brokers. Provisions in Decree 1023/2013, issued pursuant to this law, have further improved requirements for integrity and

suitability and preventing criminals or their associates from being a beneficial owner or holding a management function of a securities entity. For example, Section 1 of the Rules indicates that the CNV must establish the “suitability, moral integrity, probity and solvency requirements that shall be complied with” for those who wish to be licensed.

R.23 (deficiency 6): SSN: there are no measures to prevent criminals and their associates from holding, being the beneficial owner of a significant or controlling interest or holding a management function in an insurance company.

Suitability requirements and measures to prevent criminals and associates from being a beneficial owner or holding a management function of an insurance entity have been improved with SSN Resolution 37449 of 20 March 2013. This resolution modified the General Regulation of Insurance Commerce. With respect to shareholders, members of the board and control, management, and representatives, section 7.1.2 (a)(3) indicates that: “A certification of criminal records shall be submitted, issued by the National Directorate of Recidivism and Criminal Statistics for each one as well as a sworn affidavit stating that they were not convicted for money laundering and/or terrorist financing crimes and/or do not appear in the lists on terrorists or terrorist associations issued by the United Nations Security Council.” Section 7.1.3 (2) further indicates that members of the board and controllers, management, and representatives must prove suitability and previous experience in such activity. Moreover shareholders, members of the board, management, trustee or supervisory board must complete sworn affidavits on the source and legality of funds, which must be notarised.

R.23 (deficiency 7): There is not sufficient information available regarding the funding of the various financial supervisors.

As follows, please find information on the budget of the AML/CFT supervision areas of the Central Bank of the Argentine Republic (BCRA), the National Securities and Exchange Commission (CNV) and the Superintendence of Insurance of the Nation (SSN):

Agency	Area	Budget in ARS (2014)
BCRA	Senior Management of Compliance before the FIU	USD 220 000
	Special Supervision Senior Manager	USD 1 121 134
CNV	Management Office of Money Laundering Prevention	USD 2 544 919
SSN	Management Office of Prevention and Control of Money Laundering and Terrorist Financing	USD 5 215 000

Regarding the BCRA, its 2014 budget is 20% higher than previous years. With respect to CNV and SSN, as those specific areas are newly created, it is not possible to compare these figures to previous years. However, these budget allocations seem positive.

R.23 (deficiency 8): The AML/CFT Units of the SSN and CNV face resource constraints and their staff is not adequately trained.

AML/CTF supervision areas of the National Securities and Exchange Commission (CNV) and the Superintendence of Insurance of the Nation (SSN) have been further elaborated since the MER.

For the insurance sector, Decree 2627/12 approved the new organisational structure of the SSN's first operational level. The Decree establishes the Management Office (*Gerencia*) of Prevention and Control of Money Laundering and Terrorist Financing. SSN Resolution 37357/13 appointed the Compliance Officer of the Agency as Manager of the Area of Prevention and Control of Money Laundering and Terrorist Financing.

Within the scope of that Management Office, Resolution SSN 37465/13 of 3 April 2013 created the Under Management Office (*Subgerencia*) of Supervision in charge of developing and executing the Annual Inspection Plan. This Office currently has 24 agents and a budget of ARS 5,215,000. During 2014, four training programmes were organised for its staff, in addition to the 12 training programmes organised in 2012 and the 21 organised in 2013.

Decree 924/13 of 15 July 2013 strengthened supervision for the securities sector. The Decree established the new organizational structure of the CNV, which includes a Management Office (*Gerencia*) of Money Laundering Prevention. CNV Resolution 17210 of 31 October 2013 created the lower departments of this office, creating the Suspicious Transaction Verification Unit and the Analysis and Suspicious Transactions Analysis and Reports Unit, and assigned the respective staff. Currently, the Management Office has 14 agents and a budget of ARS 2,544,919. During 2014, four training programmes were organized for its staff, in addition to the 14 training programmes organized in 2012 and the 16 organized in 2013.

Re-organisation of financial supervision

Argentina has re-organised AML/CFT regulation and supervision since the MER. These issues have been closely monitored within the context of the ICRG process. Law 26683 of June 2011 clarifies that the FIU organises the on-site supervision, oversight, and inspection procedures for all reporting parties for compliance with the AML law and FIU resolutions, in cooperation with the financial sector supervisors. The FIU is also now the primary agency to sanction for AML/CFT violations. Resolution 165/2011 further clarifies these procedures and on-site rules. It consists of a two-fold system: (i) the procedure to supervise those financial institutions which already have a prudential supervisor: BCRA, CNV, and SSN, which are referred to as "cooperating agencies". These agencies must file inspection plans to the FIU for approval, then carry out the actual supervision (although the FIU can participate in the inspections) and file reports to the FIU for analysis and possible follow up and sanctions; (ii) the procedure whereby the FIU supervises directly other financial institutions and DNFBPs.

The FIU supervises DNFBPs directly, and can apply sanctions (and has done so) for its full range of AML/CFT requirements. The FIU can also apply sanctions directly to financial institutions for AML/CFT failings; however, in practice it has only done so for STR violations; for financial

institutions, the financial sector supervisor (the BCRA, CNV, or SSN), in coordination with the FIU, supervises their entities then refers the matter to the FIU.

The sanctions the FIU, the only supervisory designated to apply sanctions for AML/CFT—can apply are low—a fine of up to 10 times the amount of the goods involved, or up to ARS 200 000 (approximately USD 25 000) when a transaction cannot be determined, and a letter recommending further changes. After it issues a sanction, the FIU may refer the matter back to the supervisor for additional action.

Discussions with Argentina have therefore centred on the available sanctions of the BCRA, CNV, and SSN, during their own inspection processes (and prior to a referral to the FIU), and those after receiving a referral back from the FIU following an FIU sanction, to determine whether overall the system contains an adequate range of proportionate and dissuasive sanctions for AML/CFT requirements.

Argentina has made important progress in this area, by: 1) strengthening the links between AML/CFT measures and existing BCRA and CNV powers prior to a referral to the FIU; 2) strengthening the links between an FIU sanction and suitability/eligibility requirements after an FIU sanction for the entities supervised by BCRA, CNV, and SSN; and 3) new Resolution 229/14, which further clarifies the coordination of financial supervision and provides a broader range of sanctions that the supervisors can apply for AML/CFT.

The BCRA can apply sanctions for AML/CFT failings, through cross-references to BCRA Communication 5485, Section 41 of the Financial Entities Law, and other BCRA rules (e.g. Communication 5042 on supervisory procedures for internal controls). The case is similar for CNV, where Law 26831 provided CNV a broad range of measures for non-compliance with the law at its regulations, and the implementing regulation General Resolution 622 cross-references AML/CFT measures and FIU resolutions. The SSN's sanctions for AML/CFT prior to an FIU referral remain more limited.

After an FIU sanction, the FIU would refer the matter to the regulator after it has decided to impose a sanction following its own administrative proceeding. All three supervisors (BCRA, CNV, and SSN) must take an FIU sanction into account when evaluating their entities' suitability/eligibility to maintain their licenses.

New FIU Resolution 229/14 further enhances FIU/supervisor coordination and clarifies and enhances the range of proportionate and dissuasive sanctions available, although the resolution does not address the level of fines available to the FIU or the BCRA. Through the change in the supervisory process, the level of fines the BCRA can apply is also now larger – up to ARS 600 000 (approximately USD 75 000).

Argentina still needs to demonstrate that effective, proportionate, and dissuasive sanctions are applied in practice. There have been a number of sanctions imposed as of 17 March 2014 (37, including 18 already in 2014) totalling ARS 251 410 602; however, the final sanctions have been very low: eight (8) final (paid) sanctions have taken place: 1) to one dealer in works of art, one jeweller, and 5 gambling operators after the FIU's direct supervisory process of DNFBPs; 2) to an insurance company following a referral by the SSN. A number of fines (23), in some cases very high

ones, have been levied against financial institutions; up to March 2014 these were the result of the FIU's direct follow-up to STR violations rather than the regulator – FIU – regulator process, and all of these fines are under appeal (or had just been notified so they are not yet final). However, on 4 June 2014 Argentina reported that for the first time the FIU issued a fine that resulted from the BCRA's supervision, arising from non-compliance of CDD provisions. The BCRA detected shortcomings in complying with the FIU resolutions, including: identifying persons who have made cash deposits and inadequate customer profiles. A penalty of ARS 100 000 was imposed on the bank, the board of directors and the compliance officer. This sanction was communicated back to the BCRA for possible further follow-up.

As of June 2014 the FIU conducted 161 administrative proceedings. Ninety-three cases are being analysed. The FIU was conducting 10 administrative proceedings resulting from referrals from the BCRA, and 1 as a result of joint BCRA/FIU supervision. The FIU had also instituted several administrative proceedings resulting from reports from the INAES (1), CNV (6, and 1 as a result of joint CNV/FIU supervision), and SSN (10, and 1 as a result of joint SSN/FIU supervision).

RECOMMENDATION 23 – OVERALL CONCLUSION

Recommendation 23: Argentina has addressed or largely addressed the deficiencies in R.23. Credit card issuers, traveller checks operators, and money remitters are now regulated and supervised; SSN is supervising life insurance intermediaries. Market Entry requirements of the BCRA for banking institutions: BCRA Communication A 5248 of November 2011 improved market entry requirements for financial entities; Law 2683 on Capital markets and its Decree 1023/2013 have further improved licensing requirements and fit and proper requirements. Argentina has re-organised AML/CFT regulation and supervision since the MER. The FIU supervises DNFBPs directly, and can apply sanctions (and has done so) for its full range of AML/CFT requirements. For financial institutions, the prudential supervisor, supervises their entities then refers the matter to the FIU. The prudential supervisors can use their range of sanctions when AML/CFT failings reach internal control failings, and New FIU Resolution 229/14 further enhances FIU/supervisor coordination and clarifies and enhances the range of proportionate and dissuasive sanctions available.

RECOMMENDATION 26 – RATED PC

R.26 (deficiency 1): The FIU only has the authority to receive, analyse, and disseminate (to the Attorney General or other parties) information relating to six out of the 20 designated categories of offences.

This deficiency has been largely addressed. At the time of the MER (2010), Section 6 of Law 25246 provided for that the FIU had the power to analyse, process and transmit information in order to prevent and deter ML arising from six categories of crime. This represented a limitation, as the categories of predicate offenses not included in the abovementioned Section 6 were left out of the competence of the FIU (paragraphs 208 and 209 of the MER). Law 26683 amended that section, stating that the FIU is responsible for analysing, processing and transmitting information for the purposes of preventing and deterring money laundering “preferably” arising from the commission of the categories of offenses set forth under subsections a) – k). While the legislation seems to therefore

prioritise the types of ML crimes that the FIU analyses, this is not a requirement and therefore may not be a significant problem in practice. Argentina has shown that in practice the FIU receives, analyses, and disseminates STRs relating to predicate offences not listed in Section 6 of the law.

R.26 (deficiency 2): The FIU does not have adequate access to additional information to assist in its analysis functions. This is partly due to secrecy provisions.

This deficiency has been addressed. Law 26683 removed the previous impediment to accessing held by AFIP that was subject to tax secrecy. Capital markets law (described under Recommendation 4 above) lifted secrecy provisions between the CNV and FIU, and between the other regulatory agencies. The FIU can now access any information held by reporting parties. Progress is also being made to unify company, real estate, and motor vehicle databases of the 24 jurisdictions (the City of Buenos Aires and the 23 provinces).

R.26 (deficiency 3): The FIU has not published reports on ML/FT trends or typologies in Argentina.

This item has been addressed. Argentina has published reports on ML/TF typologies, including typologies in Argentina. A group of FIU experts developed and sanitized typologies with the aim of providing tools to the private sector to prevent Money Laundering. These typologies were published in the FIU website.

R.26 (deficiency 4): Effectiveness: At the time of the on-site visit, the FIU was not effective. The quality of the cases produced by the FIU to the Attorney General's office for prosecution (a key structural function of the FIU) has not been sufficient; few cases (only 10% of the 738 cases sent by FIU) have been converted into a criminal complaint by the Attorney General's Office. This is also impacted by:

- The number of staff dedicated to the analysis of potential ML/FT cases is low especially in comparison with:
- The very heavy delay of STR analysis (2 003 STR are still pending) and increase in STRs pending.
- the low number of cases with determination (1 064 of 5 272 STRs received).
- Lack of feedback to reporting parties on the poor quality of STRs has a negative impact on the FIU's ability to improve the reporting process and thus its analysis.
- Inadequate training for FIU staff.
- An increase in technical capabilities is needed.

FIU Resolution 51/2011 implemented the On Line System (ORS) report, from which point the reporting parties sent their STRs electronically. Under this new system, the FIU initially processes these STRs electronically, submitting the received data to a risk matrix and setting priorities for

analysis. During 2013, 285 STRs have been referred for investigation, which is almost double compared to 2012.

Feedback between the FIU and reporting parties has improved, which has resulted in modifying the online filing form, thus improving the quality of the reports. The amount of training given by the FIU to reporting parties has also increased substantially. The FIU has conducted more than 40 training events since 2010 to date.

Since the adoption of the MER, the FIU has increased its staff and increased training activities. From 2012 to date, there have been more than 44 events organized by the FIU or other entities, both public and private, in which the participated FIU staff. Human and budgetary resources of the FIU have also increased. The projected budget of the FIU in 2014 amounted to ARS 61,365,000, nearly five times from that of 2010. The FIU has currently 188 employees, more than double from 2010.

RECOMMENDATION 26 – OVERALL CONCLUSION

Argentina has addressed or largely addressed the deficiencies in relation to R.26. It has addressed impediments to access to information, domestic information exchange, published typologies reports, and provided feedback to reporting parties. Argentina has enhanced its framework and analytical capabilities, and demonstrated that what seemed to be a limitation in the law (which indicates that the FIU will analyse and refer cases to the attorney general's office related to, preferably, ML related to certain predicate offences) is not an obstacle in practice. The current framework has allowed the FIU to receive, process, and disseminate STRs regarding a wide range of predicate offences. Argentina's current level of compliance with R.26 can therefore be considered as essentially equivalent to LC.

RECOMMENDATION 35 – RATED PC

R.35 (Deficiency 1): Vienna and Palermo Conventions: Deficiencies in the ML offence relating to possession of proceeds of crime and exemptions from criminal liability for acquiring, concealing, and disguising proceeds of crime.

The deficiencies in the ML offence relating to possession, and acquiring, concealing and disguising proceeds of crime have been largely addressed. See Recommendation 1 above.

R.35 (Deficiency 2): Palermo Convention: Lack of ML criminal liability for person who committed the predicate offence ("self-laundering") and lack of adequate special investigative techniques.

This deficiency has been addressed, as new Section 303 of the Criminal Code covers self-laundering. See Recommendation 1 above.

R.35 (Deficiency 3): CFT Convention: Limited scope of the terrorist financing offence: limited definition of terrorist organisation; the law does not cover:

- **Terrorist organisations that exist solely within Argentina.**

- **Collection or provision of funds to be used for a terrorist act outside of the context of the terrorist organisation as defined in Argentina.**
- **All the provisions of Article 2(1)(b) of the Convention, nor all the acts in all the treaties listed in the Annex of the CFT Convention as required by Article 2(1)(a).**

These deficiencies in the TF offence have all been either addressed or largely addressed. See Special Recommendation II above.

RECOMMENDATION 35 – OVERALL CONCLUSION

Argentina has addressed or largely addressed the deficiencies related to R.35. See Recommendation 1 and Special Recommendation II above. Argentina's current level of compliance with R.35 can therefore be considered as essentially equivalent to LC.

RECOMMENDATION 36 – RATED PC

R.36 (deficiencies 1 and 2): The effectiveness of the system for responding to MLA requests in a timely and constructive manner has not been demonstrated. Many steps and authorities in the assistance procedures imply delays in the process, especially when there is no treaty.

The statistical system of the Ministry of Foreign Affairs and Worship became operational in August 2012, in order to keep constant track and follow-up of requests for mutual legal assistance. From this monitoring, Argentina indicates that a marked improvement in the timeliness and effectiveness of responses to requests has been demonstrated, with 1025 requests received, 608 of which have already been answered, and an average total time for completion of less than 106 days.

R.36 (deficiency 3): The inability to respond to requests involving assets or property of corresponding value.

See Recommendation 3 above. Case law demonstrates that property of corresponding value and indirect proceeds of crime can be seized and confiscated. Section 23 of the CC has been amended (and a new Section 305 has been added). This should enable Argentina to respond to legal assistance requests involving property of corresponding value.

R.36 (deficiency 4): Dual criminality and the limitations on the ML offence and especially the scope of the FT offence limit the scope of mutual legal assistance that could be provided.

The deficiencies in the ML and TF offences have all been either addressed or largely addressed. See Recommendation 1 and SR.II above.

R.36 (deficiency 5): MLA cannot be provided in relation to insider trading/market manipulation since these offences are not criminalised.

This deficiency has been addressed. Law 26 733 was approved by Congress on 22 December 2011 and entered into force on 26 December 2011, criminalising insider trading and market manipulation,

which now makes them predicate offences for money laundering and allows Argentina to provide mutual legal assistance for money laundering related to these predicates.

R.36 (deficiency 6): Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession.

This issue has not been addressed.

RECOMMENDATION 36 – OVERALL CONCLUSION

Argentina has addressed or largely addressed the technical deficiencies in R.36. Property of corresponding value and indirect proceeds of crime can be seized and confiscated. Deficiencies in the ML and TF offences have been largely addressed, and insider trading and market manipulation are now predicate offences for money laundering. Argentina is also making progress on effectiveness, although these are ongoing issues. There are still issues relating to professional secrecy. Argentina's current level of compliance with R.36 can therefore be considered as essentially equivalent to LC.

RECOMMENDATION 40 – RATED NC

Recommendation 40 (deficiency 1): Law enforcement:

- **The lack of statistics or of any other related data or information means that effectiveness of exchange of information between law enforcement authorities cannot be assessed.**
- **The deficiencies identified in relation to R.27 also impact effective implementation of mechanisms to exchange information between law enforcement agencies.**

Since the MER, Argentina has greatly increased the number of money laundering investigations and prosecutions, and has obtained several convictions (see Recommendation 1 above). The technical deficiency noted at the time of the MER was that the lack of specific authority to waive or postpone arrest or seizure of criminal proceeds for evidence gathering purposes, so this could negatively impact international co-operation. This has been addressed through Law 26683, amending law 25246 in June 2011. New section 30 indicates that for ML crimes, the judge may, inter alia, suspend the arrest warrant of one or more persons, or postpone the seizure or interception of money, instruments, or cargo, if the carrying out of these activities might jeopardise the success of the investigation.

In terms of implementation, FIU Resolution 30/2013 created a system of exchange of information between national authorities, similar foreign agencies, financial intelligence units and foreign counterpart agencies was implemented. This system allows the keeping of detailed monitoring and centralized information on AML/CFT requests, both internally and externally. Since its implementation up to June 2014, there have been a total of 174 requests for information, including 6 from national control agencies (i.e. supervisors to foreign ones).

Recommendation 40 (deficiency 2): FIU:

- **Secrecy provisions inhibit information exchange with foreign FIUs.**
- **The FIU can spontaneously provide information to its foreign counterparts**
- **The FIU has a legal limitation on its ability to disseminate information on some ML activities and many predicate offences.**
- **Due to the lack of important statistics (quality; timeline; typologies), the evaluation team was not able to determine that the mechanisms for international cooperation are fully effective.**

The secrecy provisions have been addressed (see Recommendation 4 above). Law 26683 (section 14 (1)) established that tax secrecy cannot be invoked by reporting parties where an STR is under analysis. Capital Markets Law 26831 of December 2012 lifted secrecy provisions between the CNV and FIU, and between the other regulatory agencies. That law effectively repealed the secrecy provisions of the other financial sector supervisors, since the FIU can now access all information held by them, and share it with foreign counterparts.

The deficiency related to the FIU's legal limitations has been largely addressed (see Recommendation 26 above). At the time of the MER (2010), Section 6 of Law 25246 provided for that the FIU had the power to analyse, process and transmit information in order to prevent and deter ML arising from six categories of crime. This represented a limitation, as the categories of predicate offenses not included in the abovementioned Section 6 were left out of the competence of the FIU (paragraphs 208 and 209 of the MER). Law 26683 amended that section, stating that the FIU is responsible for analysing, processing and transmitting information for the purposes of preventing and deterring money laundering "preferably" arising from the commission of the categories of offenses set forth under subsections a) – k). While the legislation seems to therefore prioritise the types of ML crimes that the FIU analyses, this is not a requirement and therefore may not be a significant problem in practice. Argentina has shown that in practice the FIU receives, analyses, and disseminates STRs relating to predicate offences not listed in Section 6 of the law.

In terms of implementation, during 2013 the FIU received 84 "Received Information Requests" (SIR) from foreign FIUs and responded to 77 of these. There were 120 information requests to other countries.

Also, in the last four years the FIU has increased the number of MOUs signed with foreign counterparts. To date, the FIU has signed a total of 35 MOUs.

Year	Information requests to the FIU	Responded
2011	84	69
2012	60	39
2013	84	79
January – June 2014	36	20

Recommendation 40 (deficiency 3): Financial supervisors:

- **The confidentiality legal provision, which the 3 supervisors are subject to, has not been lifted, or has been lifted by a lower legal instrument (resolution). Some of the deficiencies identified in R.23 impact the possibility to exchange information (e.g.: the SSN does not supervise life insurance brokers).**
- **There are not clear and effective gateways, mechanisms or channels to facilitate exchange of information with foreign counterparts. Some MOUs agreed by the BCRA do not provide for information exchange related to ML or FT, bank secrecy limits information that can be provided, and cooperation is limited to where a foreign supervisor requests information relating to Argentinean branch or subsidiary of an institution from the requesting country.**
- **In the absence of information provided by Argentina, the assessment team was unable to assess the other criteria of R.40 vis-à-vis the 3 financial supervisors.**

These issues have been largely addressed. FIU Resolution 30/2013 is creates a structure for supervisory cooperation, both domestically and with foreign counterparts. According to article 10, the foreign supervisor will send information requests on AML/CFT to the FIU. The FIU will then forward these requests to the domestic supervisor (BCRA, CNV, and SSN), who must respond within 10 days. The FIU then forward this information to the foreign requester.

Law 26683 abrogated the administrative imposition of invoking tax secrecy to the FIU. Capital markets Law 26831 of December 2012, improved channels for supervisory cooperation with regard to the securities sector. The law provides for information exchange between regulatory agencies without secrecy and the access of the FIU to that information. This information may then be shared through the mechanism created by FIU Resolution 30/2013.

Amendment of the Central Bank Charter, introduced by Law 26739 (Official Gazette 28/03/2012), broaden the legal basis for international cooperation of this agency.

Argentina is already using the system created by Resolution 30/2013 for information exchange. Up to June 2014 there have been 168 exchanges between domestic authorities, 6 requests from domestic supervisors to foreign authorities (2 BCRA requests to foreign FIUs, 2 BCRA requests to foreign supervisors, and 2 requests from the FIU to foreign (non-Egmont) FIUs). Argentina has not yet received a request from a foreign supervisor under this system.

RECOMMENDATION 40 – OVERALL CONCLUSION

Argentina has largely addressed the technical deficiencies in this Recommendation. Provisions on secrecy and information exchange with foreign supervisors have been improved. The FIU is now able to access a wider range of information and share it with foreign counterparts. Implementation shows signs of progress, although this is an ongoing issue. Argentina's current level of compliance with R.40 can therefore be considered as essentially equivalent to LC.

SPECIAL RECOMMENDATION I – RATED PC

SR.I (deficiency 1): CFT Convention: limited scope of the terrorist financing offence (see R.35).

The deficiencies related to the TF offence have all been either addressed or largely addressed. See SR.II and R.35 above.

SR.I (deficiency 2): UN Security Council Resolutions: existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) are ineffective (see SR.III).

The deficiencies related to the S/RES/1267(1999) and S/RES/1373(2001) have all been either addressed or largely addressed. See SR.III below.

SPECIAL RECOMMENDATION I – OVERALL CONCLUSION

The technical deficiencies in relation to SR.I have all been either addressed or largely addressed—see R.35 and SR.II above, and SR.III below. Argentina's current level of compliance with SR.I can therefore be considered as essentially equivalent to LC.

SPECIAL RECOMMENDATION III – RATED NC

SR.III (deficiency 1): Laws and procedures for implementing S/RES/1267(1999) rely on a reporting mechanism (which is not based on regulation or “other enforceable means”) and ordinary criminal procedures which do not allow for effective freezing action to be taken without delay, and are inconsistent with the obligation to freeze property of persons designated by the UN Security Council, regardless of the outcome of domestic proceedings.

This deficiency has been largely addressed, as Decree 918/2012 creates a generally comprehensive framework for freezing in relation to UNSCR 1267.

Financial Institutions: The freezing mechanism for funds related to the UN list for financial institutions appears generally comprehensive. Section 9 requires all financial institutions to monitor the UN list, and in case of a match, promptly freeze the transaction and file a terrorist financing suspicious transaction report to the FIU. The FIU, within 24 hours, will then issue a freezing order and report this to the Ministry of Foreign Affairs, as well as to a competent court. There are still some doubts as to whether an actual “transaction”, as indicated in the law, is required to trigger a freezing, or whether funds already held by the FI would be subject to a freeze. It should be noted that “property or money involved in the transaction” is expressed in the original Spanish as “bienes o dinero involucrados en las operaciones.” “Operaciones” (“operations”) is probably broader than “transactions.” In addition, FIU Resolution 29/2013 (Guidelines on implementing Decree 918) further clarify that financial institutions must “also freeze...any property, money or credit that may be detected, come into, received, etc., after the notification of the freezing measure and during the period such Resolution is in force” (section 4).

Section 11 of the Decree specifies that a judge will review and confirm the legality of the freeze. The freezing measure shall be in force as long as the person or entity remains designated by the UN or the measure has been revoked by a judge. Argentina has clarified that “reviewing its legality” would be limited to the judge verifying a name match with the UN list, as is described in paragraph 26 of the preamble of the Decree. Nevertheless, the system has not been tested in practice, as Argentinian financial institutions have not found any name matches related to the 1267 list.

SR.III (deficiencies 3 and 4): Laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal procedures which do not ensure that an effective freezing action can be taken without delay. There is no specific mechanism to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions pursuant to S/RES/1373(2001), and no mechanism that would allow Argentina to designate persons at the national level.

These deficiencies have been largely addressed, as Decree 918/2012 creates a framework for complying with S/RES/1373.

Domestic designations: There is not a domestic *listing* process *per se*. However, Section 15 creates a mechanism for national authorities to indicate to the FIU possible terrorist-related assets, and upon “founded reasons” the FIU would follow up with a specific resolution to freeze the funds. Argentina has demonstrated that these freezes can take place outside of a formal investigation, take place within a matter of hours, and apply to a wide range of assets and property.

Requests from other countries: According to section 16, a third country would make the request to Argentina, and the FIU will “analyse the reasonability” of the request and, if considered appropriate, issue a freezing order related to these assets.

For both of these types of situations (domestic designations and third-country requests), the freezing order lasts for 6 months, which can be renewed for another 6 months. After this time, the freeze must be converted into a judicial “injunction”, or the freezing will be lifted. This does not fully comply with SR.III, since it is not clear whether and to what extent the freezing of assets can be maintained indefinitely while the conditions of “reasonable grounds or reasonable basis to believe or suspect” that the funds are related to terrorism are met.

Discussions with Argentina' have focused on the procedure to extend the freeze beyond one year in the case of foreign requests. This would be achieved through mutual legal assistance procedures, which are governed by either a mutual legal assistance treaty (MLAT) or if there is no treaty, mutual legal assistance Law 24767.

Argentina has provided extracts from several MLATs which refer to providing assistance with "investigations", and "procedures"; Argentina therefore maintains that a formal criminal investigation is not required; Argentina has also provided examples where assistance was provided during the investigation/preliminary investigation stage (*i.e.* before a formal prosecution or judicial procedure). While Argentina therefore might be able to extend freezes pursuant to third country requests with whom it has an MLAT on the basis of "reasonable grounds/reasonable basis". Outside of an MLAT, the procedure is too restrictive to ensure that freeze can be converted into a judicial injunction based on the same evidence of "reasonableness" of the original request. Law 24767 requires among other things from the requesting country a "clear description of the criminal act that originates the request, accurately indicating the date, place, and circumstances of its commission, and the personal data of the author and victim". Therefore, for foreign requests from countries with which Argentina has an MLAT, maintaining the freeze based on reasonable grounds/reasonable basis may be possible in some cases; however, it does not seem possible outside the scope of an MLAT.

The procedures for obtaining a judicial injunction do remain *ex-parte*, *i.e.* without the prior knowledge of the persons affected.

SR.III (deficiency 5): No measures for monitoring or sanctioning for non-compliance with the obligations of SR.III.

Section 21 of the Decree cross-references the existing supervisory system and the sanction powers of the FIU pursuant to law 25 246 as amended (the AML law). Therefore, the existing supervisory and sanctioning system applies to monitoring the Decree's obligations.

SR.III (deficiency 6): The definition of funds does not extend to all of the funds or other assets that are owned or controlled by designated persons and terrorists.

This deficiency has been addressed. Financial institutions must freeze the transaction and report an FT-STR to the FIU, when any one of several conditions are met (Section 3 of the Decree). These include any money or property owned or controlled directly or indirectly by a legal or natural person included in the UN 1267 list, transactions believed to be conducted by such persons, or when such person(s) is the addressee or beneficiary of the transaction. Money or property is broadly defined as includes funds or assets, whatever their nature, interests, dividends, or other value or income accrued or generated by such property or that may be related to Section 306 (*i.e.* the terrorist financing offence) of the Criminal Code.

SR.III (deficiency 7): Lack of adequate guidance to the financial and DNFBP sectors.

This item has been addressed. FIU Resolution 29/2013 provides further detailed guidance and instructions on freezing funds pursuant to Decree 918 and freezing orders issued by the FIU pursuant to that Decree.

SR.III (deficiency 8): No procedures for considering de-listing requests and unfreezing the funds/assets of de-listed persons/entities in cases other than S/RES/1267(1999).

Decree 918/2012 explicitly establishes a procedure of listing and delisting of designated persons (section 19) as well as unfreezing asset procedure (Sections 13 and 20) and access to funds for basic expenses pursuant to UNSCR 1452 (Sections 12 and 17).

SR.III (deficiency 10): No specific provisions for authorising access to funds/assets in accordance with S/RES/1452(2002).

This deficiency has been addressed. Section 12 and 17 of the Decree detail the procedures to funds for basic expenses pursuant to UNSCR 1452 (Sections 12 and 17).

SR.III (deficiency 11): Lack of power to freeze property of corresponding value.

This deficiency has been addressed (See Recommendation 3 above). The sections in the Criminal Code on seizing and confiscation have been adjusted, and case law has demonstrated that provisional measures can include property of corresponding value.

SR.III (deficiency 12): Limited role of the FIU in freezing due to its dealing with the limited definition of terrorist financing.

This issue has been addressed, as there is no longer a limited definition of terrorist financing.

SR.III (deficiencies 2 and 9): The effectiveness of Argentina's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) has not been demonstrated. The effectiveness of Argentina's measures for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism cannot be assessed.

Argentina has provided two case examples (August 2012 and March 2013) using this system of administrative freezing of assets related to Decree 918/2012 and domestic designations of terrorists. These involved 13 administrative freezes, involving the assets of 73 natural person and 10 legal persons. The cases demonstrate that such freezing measures pursuant to UNSCR 1373 take place "without delay." The administrative freezing of 56 natural persons and 3 legal persons were subject to extensions issued at the administrative level.

Judges have converted some, but not all of these freezes into judicial injunctions. When they were not, the judge has indicated that some of the freezes do not relate to terrorism, but rather crimes against humanity (*lesa humanidad*). The judges have not questioned the FIU's ability to issue the initial freezing orders.

Argentina has indicated that no name matches (or false positives) have been found related to UNSCR 1267, so the framework has not yet been fully tested.

SPECIAL RECOMMENDATION III – OVERALL CONCLUSION

The MER identified 10 technical deficiencies, which have been addressed or largely addressed through Decree 918/2012, FIU Resolution 29/2013 which provides further detailed guidance, and Law 26 734 which broadened the TF offence. The MER identified two effectiveness issues, and Argentina has made progress although work is ongoing. Argentina's current level of compliance with SR.III can therefore be considered as essentially equivalent to LC.

SPECIAL RECOMMENDATION V – RATED PC

SR.V (deficiency 1): Applying R.36-39:

- **The effectiveness of the system for responding to MLA and extradition requests in a timely and constructive manner has not been demonstrated.**
- **Many steps and authorities in the assistance procedures imply delays in the process, especially when there is no treaty.**
- **Inability to respond to requests involving assets or property of corresponding value.**
- **Dual criminality and the limitations on the scope of the FT offence limit the scope of mutual legal assistance that could be provided.**
- **Dual criminality and the limitations on the scope of the FT offence limit the possibilities to extradite for FT.**
- **Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession.**
- **The absence of simplified and direct procedures for extradition.**

Most of these deficiencies have been addressed – see R.3, SR.II, and R.36 above. With regard to extradition procedures, Argentina indicated that Section 28 of Law 24767 (the MLA law) provides for a simplified extradition procedure for special cases, when the person sought consents to be extradited. However, this is not a change in the legal framework since the MER, which indicated that there were only limited procedures for simplified extradition. Extradition shall be granted if the requesting country ensures that, if the requested subject is found to be exempted from liability in relation to the matter of the request, the requesting country shall pay the expenses to return the person to Argentina. The person sought may waive this compensation, in which case the extradition shall be granted without delay. From November 2010 up to May 2014, 261 extradition requests were received, 144 of which were responded, 82 by the simplified procedure above, which on average takes 45 days. Therefore the limited nature of simplified extradition procedures does not seem to be an obstacle in practice.

APPLYING R.40

Law enforcement:

- The lack of statistics or of any other related data or information means that effectiveness of exchange of information between law enforcement authorities cannot be assessed.
- The deficiencies identified in relation to R.27 also impact effective implementation of mechanisms to exchange information between law enforcement agencies.

FIU:

- Secrecy provisions inhibit information exchange with foreign FIUs.
- The FIU cannot spontaneously provide information to its foreign counterparts.
- Due to the lack of important statistics (quality; timeline; typologies), the evaluation team was not able to determine that the mechanisms for international cooperation are fully effective.

Financial supervisors:

- The confidentiality legal provision, which the 3 supervisors are subject to, has not been lifted, or has been lifted by a lower legal instrument (resolution). Some of the deficiencies identified in R.23 impact the possibility to exchange information (e.g.: the SSN do not supervise life insurance brokers).
- There are not clear and effective gateways, mechanisms or channels to facilitate exchange of information with foreign counterparts. Some MOUs agreed by the BCRA do not provide for information exchange related to FT, bank secrecy limits information that can be provided, and cooperation is limited to where a foreign supervisor requests information relating to Argentinean branch or subsidiary of an institution from the requesting country.
- In absence of information provided by Argentina, the assessment team was unable to assess the other criteria of R.40 vis-à-vis the 3 financial supervisors.

See R.40 above in relation to these issues, which have been largely addressed.

SPECIAL RECOMMENDATION V – OVERALL CONCLUSION

The MER identified a number of technical deficiencies, which were mainly cross-over deficiencies from R.3, R.36, R.40, and SR.II. These issues have all been either addressed or largely addressed. Two technical deficiencies have not been addressed—lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession and there is an absence of simplified and direct procedures for extradition, although this does not appear to be an obstacle in practice. Argentina's compliance with SR.V can be considered as essentially equivalent to LC.