FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING IN SOUTH AMERICA

FINANCIAL ACTION TASK FORCE

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

Argentina

22 October 2010

Argentina is a member of the Financial Action Task Force (FATF) and the Financial Task Force on Money Laundering in South America (GAFISUD). The joint GAFISUD-FATF evaluation of Argentina was adopted by the FATF Plenary on 22 October 2010.

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PREFACE

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF ARGENTINA

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Argentina was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Argentina, and information obtained by the evaluation team during its on-site visit to Argentina from 16—27 November 2009, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Argentinean government agencies and the private sector. A list of the bodies met is set out in Annex 2 to this mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the FATF and GAFISUD Secretariats and FATF and GAFISUD experts in criminal law, law enforcement and regulatory issues: Ms. Mar Arias, Treasury and Financial Policy General Directorate, Ministry of Economy and Finance, Spain (financial expert); Gen. B. Fabio Contini, Guardia di Finanza, Italy (law enforcement expert); Ms. Juliette van Doorn, Central Bank of the Netherlands (financial expert); Mr. Mauricio Fernandez, Chief Money Laundering Unit, Public Prosecution Office, Chile (legal expert); Ms Maria Rosa Longone, Legal Advisor of the National Secretariat Anti-Money Laundering of the Uruguayan Presidency's Office (financial expert); Mr. Kevin Vandergrift and Ms. Stephanie Talbot, FATF Secretariat; Mr. Alejandro Montesdeoca, GAFISUD Executive Secretary; and Mr. Tomás Koch, GAFISUD Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examining the capacity, the implementation, and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Argentina as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Argentina's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

[1] As updated in February 2009.

MUTUAL EVALUATION REPORT

EXECUTIVE SUMMARY

4. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in Argentina as of the time of the on-site visit (16—27 November 2009), and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Argentina's levels of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

1. Key Findings

5. This is the FATF's third mutual evaluation of Argentina (and second joint FATF/GAFISUD evaluation of Argentina). Since the last evaluation, finalised in June 2004, Argentina has not made adequate progress in addressing a number of deficiencies identified at that time, and the legal and preventive AML/CFT measures that are in place lack effectiveness. This is complicated by a lack of adequate coordination, overlapping jurisdictions of a number of domestic agencies, and varied and inconsistent requirements vertically through the levels of applicable regulatory texts for each financial sector and horizontally across the various financial sectors.

6. Argentinean authorities identify tax evasion as generating the largest amount of criminal proceeds. Drug trafficking also generates significant proceeds. It is believed that the major part of money laundering operations taking place in Argentina is carried out through financial transactions involving specific offshore centres. The most common money laundering operations in the non-financial sector involve transactions made through attorneys, accountants, and corporate structures. The widespread use of cash may also leave Argentina vulnerable to money laundering. There is also a risk of terrorist financing; Argentina was subject to two terrorist attacks in the early 1990's. Despite these ML/FT risks, there were only four ongoing prosecutions and no convictions for ML.

7. The basis of Argentina's AML/CFT system is Law 25 246 which amended the Criminal Code in the year 2000 to criminalise money laundering. There are a number of technical deficiencies, however, that have persisted since the last FATF mutual evaluation of Argentina in 2004. The ML offence is not being effectively implemented—there has still been no conviction under the provisions of this law, and proceeds of crime are not pursued. The Financial Information Unit (FIU) is also still legally limited to processing cases involving a limited number of predicate offences, and in relation to only certain money laundering activities.

8. Amendments to the Criminal Code in 2007 criminalise the financing of certain terrorist organisations; however, these provisions are not fully in line with Special Recommendation II, and there has not yet been a formal investigation or prosecution. Measures to freeze terrorist-related funds rely mainly on ordinary criminal procedures, which are not effective in freezing without delay such funds, and should therefore be enhanced.

9. The legal financial preventive measures in Argentina are basic and limited to general provisions relating to customer identification, record keeping and unusual transaction reporting requirements. They

are complemented by measures issued by the three financial supervisors and the FIU. The measures for these sectors vary; the BCRA measures, which apply to banks and foreign exchange institutions, are more detailed and cover more aspects of the FATF Recommendations. Nevertheless, there are still a number of important deficiencies that apply to all sectors, such as the lack of adequate requirements for beneficial ownership, PEPs, correspondent banking, and reliance on third parties. Secrecy provisions also inhibit the effective compliance with FATF standards.

10. The financial supervisory regime in Argentina poses concerns, in particular in relation to the securities and insurance sectors. Neither the supervisors nor the FIU have specific power to supervise the compliance of financial institutions with their reporting obligations. The legal powers of these supervisors have not recently been updated and are limited for the CNV and SSN to prudential controls; their supervisory and sanction powers are unclear, or missing in the case of securities brokers, and/or not effective. Moreover, securities and insurance supervisors lack resources to effectively conduct their tasks.

11. Argentina's reporting regime, based on unusual transaction reporting, presents concerns both in terms of the legal provisions and lack of effectiveness: the reporting obligations only cover a small range of predicate offences, the TF-related transaction reporting obligation is only implicit, and the low quality of STRs does not allow the FIU to conduct adequate analyses to generate successful prosecutions.

12. Casinos, public notaries, and accountants are reporting parties under AML Law 25 246, and therefore required to conduct the limited CDD measures contained in the law. However, the lack of supervision and sanction for failure to comply with these obligations renders these measures ineffective.

13. Argentina has adequate authority to provide most types of mutual legal assistance; however, dual criminality provisions may inhibit assistance related to certain types of ML and FT activities, and the mechanisms to process such requests imply delays. The financial sector supervisors also face limitations in their ability to cooperate internationally with regard to AML/CFT.

14. Key recommendations made to Argentina include: address the technical shortcomings in the ML and FT offences and more proactively target ML and proceeds of crime investigations; enhance the framework for freezing FT-related assets; enhance the FIU's authority to process cases regarding all predicate offences and all money laundering activities; update financial sector laws to specifically provide for AML/CFT supervision and sanction and enhance the ability to cooperate internationally; more effectively supervise financial institutions; harmonise and update CDD requirements for financial institutions; extend AML/CFT requirements to financial institutions and DNFBPs that are not covered and create an effective monitoring framework for the latter; provide adequate resources for the all relevant AML/CFT agencies, and provide more authority to Argentina's National Coordination Representation office to more effectively coordinate AML/CFT policies.

2. Legal systems and Related Institutional Measures

15. Anti Money Laundering (AML) system of Argentina was established in the year 2000 by Law 25 246 that modified the Criminal Code (CC) to add sections 277 and 278 to cover various money laundering offences and most elements of the *1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (the Vienna Convention) and the *2000 UN Convention against Transnational Organised Crime* (the Palermo Convention). Section 277 criminalises acts of acquiring, concealing and disguising proceeds of crime. However, the scope of these provisions is limited by exemptions of criminal liability for apply to family and friends of the perpetrator of the predicate offence when committing these acts. Section 278 criminalises conversion, transfer, and use of proceeds of crime. Possession of criminal proceeds is not specifically covered. The definition of "property" is broad, money laundering applies to predicate offences committed abroad, and all "designated categories of offences" as required by FATF are

covered except for insider trading and market manipulation. These provisions do not yet cover money laundering acts committed by the perpetrator of the predicate offence (*i.e.*,"self-laundering), nor is conspiracy to commit these acts adequately covered. Criminal liability for ML does not extend to legal persons.

16. The money laundering offences are not effectively implemented. Jurisdictional issues hamper effective prosecutions, as prosecution by either the federal or provincial authorities is determined by the type of predicate offence and subject to change if the predicate offence is determined to be different during the course of the investigation. Prosecution of acquiring, concealing, and disguising criminal proceeds is further inhibited by lower available criminal penalties (6 months to three years imprisonment), and the lack of specific authority for the FIU to develop and disseminate cases concerning these offences to the prosecution authorities. There are a low number of prosecutions (four—all at the federal level) and so far no conviction for money laundering.

17. Law 26 268 of July 2007 created a section 213 *quarter* of the Criminal Code which criminalises collecting or providing property or money, in the knowledge that they are to be used, in full or in a part, to finance a terrorist criminal organisation as described under the new section 213 *ter*. The definitions of "property or money" adequately cover all types of funds as required by the Terrorist Financing Convention. The law does not require that funds are actually used to carry out a terrorist act or that they be linked to a specific terrorist act. Ancillary offences except for conspiracy are adequately covered, and terrorist financing is a predicate offence for money laundering. Sanctions for FT are adequately proportionate, with imprisonment of 5 to 15 years. However, there are a number of limitations: a terrorist organisation is narrowly defined and must have an action plan aimed at spreading ethnic, religious or political hatred, be organised in international operative networks, and have the availability of war weapons; the provisions do not cover collection or provision of funds to be used (for any purpose) by an individual terrorist or a terrorist act (outside of the context of the terrorist organisation as defined); or collection or provisions of funds for terrorist organisations that exist solely within Argentina. The effectiveness of the terrorist financing offences in Argentina has not yet demonstrated; there have been no investigations or prosecutions. As with money laundering, there is no criminal liability for legal persons.

18. In general, criminal judges have enough powers to take provisional measures to freeze and definitive measures to confiscate assets arising from money laundering and predicate offences. The ability to freeze/confiscate property relating to FT is limited due to the limitations of the FT. The Argentinean authorities are not effectively implementing the confiscation regime, as the provisions are rarely used and there were no statistics for freezing or confiscation available. The laws should be amended to allow for seizing and confiscation for property of corresponding value as well as the indirect proceeds of crime, including income, profits or other benefits from the proceeds of crime. Also, authorities should be provided increased resources to identify and trace assets.

19. Argentina relies mainly on reporting measures and ordinary criminal and mutual legal assistance procedures to implement S/RES/1267(1999) and S/RES/1373(2001). This system does 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. 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 there are no measures for monitoring or sanctioning for non-compliance with the obligations of SR.III.

20. The Argentinean FIU was established in 2000 with the AML Law 25 246, which was amended by Law 26 268 of 5 July 2007. The FIU is charged with analysing, handling and disclosing information with the purpose of preventing and deterring terrorist financing (as defined in Argentina) as well as certain predicate offences relating to Section 278 of the Criminal Code (conversion or transfer of criminal

proceeds). The FIU is not specifically authorised to deal with suspected acquisition, concealing or disguising offences (Section 277 of the Criminal Code), or 14 of the 20 designated categories of offences. The Argentinean FIU has been member of the Egmont Group since year 2003. It is operationally independent within the Ministry of Justice and Human Rights and can obtain a large amount of additional information from reporting parties relating to an STR. However, as of the time of the on-site visit, the FIU was not operating effectively. There was insufficient analysis of STRs received, there are still limitations on the access to additional information required to conduct analysis, and the quality of the cases forwarded to the prosecution office has not been sufficient to allow for effective prosecution of money laundering. It should be noted that a large turnover of staff occurred in mid-January 2010; however, the effectiveness of the resulting changes could not yet be assessed.

21. Although all the crimes in Argentina's Criminal Code apply throughout the country, the jurisdiction (*i.e.*,Federal or Provincial) for investigating and prosecuting crimes will depend on the specific offence. All terrorism and terrorist financing offences, as well as all offences committed involving the City of Buenos Aires fall under Federal jurisdiction. The jurisdiction of predicate offences for money laundering depends on the seriousness of the offence—serious crimes fall under Federal jurisdiction whereas common crimes would be pursued by the Provincial authorities. The main prosecution entity for money laundering crimes at the federal level is the Fiscal Unit for the Investigation of the crimes of Money Laundering (*Unidad Fiscal de Lucha contra el Lavado de Dinero*—***UFILAVDIN)*** within the Attorney General's Office. UFILAVDIN receives case files from the FIU on possible money laundering (although specifically this is limited to conversion, transfer, and use of criminal proceeds) and conducts a preliminary investigation to determine, as according to the procedure described above, if a public criminal action should be filed with a judge and criminal proceedings commenced. As this is the key body within the Attorney General's office focusing in ML, human resources for this unit should be increased. The various police forces do not independently investigate money laundering or terrorist financing, as preliminary investigations must be led and coordinated by the Attorney General's office, and criminal proceedings are led and coordinated by the Attorney General's office and the investigating judge.

22. There are no specific legislative or other measures in place that permit the competent authorities to postpone or waive the arrest of suspected persons, nor the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering, in the money laundering investigations. To carry out the investigation and prosecution, the Federal and 23 Provincial authorities each use their own Code of Criminal Procedure, which contain the relevant powers to compel production of, search persons and premises for, and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. While these authorities are comprehensive overall, they are not effectively used, and there is a concern that competent authorities cannot obtain information from lawyers, even when they are not acting in defence of a client.

23. The low number of money laundering investigations, prosecutions, and lack of a conviction in Argentina is a serious concern. Overall, there is very limited data on investigations involving money laundering conducted by the various law enforcement authorities. At the time of the on-site visit, UFILAVDIN was conducting 79 investigations and 2 prosecutions based on referrals from the FIU (both were in the oral phase) and 2 other prosecutions for ML which did not originate from FIU referrals. No criminal proceedings had yet been initiated in any of the 23 jurisdictions outside of the Federal jurisdiction. Nor had UFILAVDIN or any Provincial authority initiated any preliminary investigation for the specific terrorist financing provisions. Argentinean authorities should more proactively pursue ML offences and the proceeds of crime in addition to predicate offences. Police do not have independent powers to begin investigations without a special court order, and judges cannot initiate independent investigations without initiating criminal proceedings.

24. The Federal Administration of Public Revenue (*Administración Federal de Ingresos Públicos*—AFIP) also deals with customs controls and has issued several instruments creating a declaration system for incoming and outgoing cash and negotiable instruments. These instruments were updated and enhanced with General Resolutions AFIP No. 2704/2009 and 2705/2009, addressing incoming and outgoing currency and negotiable instruments, respectively. However, there are a number of technical deficiencies. For outgoing currency/BNI, the requirements do not include foreign negotiable instruments (other than travellers' checks), or Argentinean negotiable instruments, bearer or otherwise. There is no authority to seize or restrain currency/BNI when there is a suspicion of ML/FT, that the amount of currency/negotiable instruments or the identification of the bearer be recorded when there is a suspicion of ML/FT, or ability to apply sanctions if a person makes a truthful declaration but the authorities suspect that the currency could be related to terrorist financing or money laundering. Finally, with regard to mail and containerised cargo, there are no provisions relating to incoming cash or BNI and no provisions relating to the export of Argentinean currency and BNI.

3. Preventative measures – Financial institutions

25. The AML Law 25 246, which contains certain preventive measures, applies to a broad range of financial institutions (FIs), except to: *mutuales* (mutual associations) and *cooperativas* (cooperatives) that perform banking activities and represent an important part of the financial sector in Argentina; and the stock exchange market and stock exchange without market; Though covered by AML Law, companies issuing traveler's cheques and credit, and purchase card operators are not subject to other complementary AML/CFT requirements nor supervised. Postal services carrying out foreign currency transfers are also not supervised and, in addition, the coverage of money remitters is unclear. Preventive measures in this law are basic and limited to general provisions relating to customers' identification, record keeping and unusual transaction reporting requirements. These provisions are complemented by a series of secondary texts for each sector. The Communications issued by the BCRA for the banking and foreign exchange sectors are other enforceable means. On the other hand, the FIU's Resolutions, which regulate reporting entities including those regulated by the three financial supervisors, the CNV Communications for the securities sector, and the SSN Communications for the insurance sector do not meet the FATF criteria of "other enforceable means". Moreover, many of the FATF basic obligations which should be set out by law or regulation are contained in these other lower-level texts.

26. Banking institutions regulated by the BCRA (*i.e.*,banking and foreign exchange institutions) are not allowed to keep anonymous accounts. The AML Law provides that financial institutions shall obtain from both regular and occasional customers documents evidencing their identity when carrying out any type of activity. The requirements applicable to financial institutions in relation to beneficial ownership are not sufficient: the law addresses the case where a customer is acting on someone else's behalf, but does not require identifying and verifying the natural persons who owns or controls a customer that is a legal person or arrangement. Other CDD measures are contained in lower-level texts that, except for the banking and foreign exchange sectors, do not meet the status of other enforceable means. The BCRA measures for banks and foreign exchange institutions require for additional measures to identify the ultimate client/holder of trusts and vehicle companies where they may be used to ML; however, the extent of this requirement is inadequate. In addition, it requires obtaining the purpose and intended nature of the business relationships, and to conduct ongoing monitoring of the relationships, and to conduct enhanced CDD measures for some types of higher ML/TF risk. The lack of clarity of the AML/CFT requirements, the multiplication of texts applicable, the overlapping of regulating agencies, and the lack of effective enforcement undermine the effectiveness of the regime, in particular outside of the banking sector.

27. Banking and foreign exchange institutions must apply certain enhanced CDD measures with regard to foreign PEPs, while FIU resolutions issued for the range of reporting parties focuses on domestic PEPs.

28. Argentina has not yet regulated cross-border correspondent banking relationships, nor does it require financial institutions to take any measures to prevent the misuse of technological developments in ML/TF schemes. In addition, there are contradictory provisions concerning the possibility to establish non-face-to-face business relationships. Despite being recognised as a higher risk by the FIU, there is no guidance on which enhanced CDD measures are to be undertaken. Finally, while in practice financial institutions do rely on third parties to perform some CDD measures, there is no requirement regulating the conditions of such reliance.

29. Financial institutions secrecy limits the FIU investigative powers, in particular in the securities sector. Tax secrecy laws are also overly broad.

30. Record keeping requirements in the AML law focus on identification data, while secondary texts as well as provisions in the Commercial Code complement this system. Overall financial institutions, in particular banking and foreign exchange institutions, effectively keep records of transactions.

31. Obligations with regard to Special Recommendation VII are limited to banking and foreign exchange houses. However, these requirements are not comprehensive, and in particular do not cover occasional domestic wire transfers for banks. Money remittance companies and postal services rendering transfer of funds, while representing a large part of the sector, are not specifically regulated.

32. Financial institutions are required to pay special attention and examine unusual transactions, which have no economic or legal justification or are unusually or unjustifiably complex; however, there are no specific sanctions for non-compliance. In addition, financial institutions are not required to maintain in writing the results of their analysis and make them available to competent authorities. There are no measures in Argentina in relation to countries which do not or insufficiently apply the FATF Recommendations.

33. The suspicious transaction reporting requirements are limited. The obligation to report unusual (attempted) transactions covers only six categories of predicate offences. Moreover, the reporting regime focuses on unusual transactions, rather than the proceeds of criminal activity, which do not meet the FATF concept of suspicious transactions. There is no explicit requirement in law or regulation to report TF-related transactions, while there are inconsistencies between the secondary texts issued by the BCRA and FIU in this regard. Apart from important technical deficiencies, the Argentinean reporting system lacks effectiveness: the reporting obligations are unclear, and the FIU has never received any TF-related STR. The total number of STRs remains low, in particular for a system based on unusual transactions. There are also concerns regarding the quality and usefulness of STRs; the FIU does not provide financial institutions with adequate and appropriate feedback and information on ML/TF methods and trends. There is a lack of supervision on the compliance of financial institutions with their reporting obligations, while financial supervisors report a substantive number of unusual transactions instead of financial institutions Finally, provisions related to safe harbor and tipping-off prohibition are not sufficient.

34. Institutions from the banking and foreign exchange sectors are required to establish and maintain internal procedures, policies and controls, as well as compliance functions to prevent ML and TF. Similar provisions for securities and insurance sectors are not set out by other enforceable means. Financial institutions are not required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirement and the FATF Recommendations.

35. There is not yet a sufficient prohibition on operating a shell bank in Argentina, and the licensing process and conditions should be clarified. Despite these deficiencies, the assessment team was not aware of any shell bank operating in Argentina. Financial institutions are not prohibited from entering into or

continuing correspondent relationships with shell banks, or required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

36. There are three supervisory authorities in the financial sector: the Central Bank of Argentina (BCRA) for banks and foreign exchange institutions, the National Securities Commission (CNV) for the securities sector, and the Superintendence of Insurance (SSN) for the insurance sector. However, the BCRA is the only financial supervisor with specific AML/CFT competence. The powers of the two other supervisors are legally limited strictly to prudential supervision, although they have issued AML/CFT rules and have engaged in some level of supervision. Financial institutions such as credit and purchase card operators, issuers of traveler's checks, and money remitters are not regulated or supervised, *mutuales* and *cooperatives* are not subject to AML Law 25 246, and life insurance intermediaries are not supervised in practice.

37. The three financial supervisors are also the licensing authorities in relation to financial institutions they supervise. However, fit and proper tests conducted by these supervisors contain deficiencies, in particular in relation to the securities and insurance sectors.

38. Overall, the supervisory powers of the financial supervisors are not explicitly detailed by the financial sectoral laws. The BCRA appears to be the most efficient supervisor, although the number of inspections it conducts is low, which is also due to the fact that there is no clear information on the importance of the AML/CFT components. Moreover, although the BCRA has a broad range of sanctions at its disposal, the maximum amount of fine is kept confidential and appears to be low. The CNV lacks clear AML/CFT supervisory powers. In addition, it does not have sanction power over agents and brokers, which constitutes the largest part of the securities sector. No sanction has yet been applied. The SSN also lacks clear supervisory powers; the range of sanctions at its disposal is not dissuasive and its sanction regime is not effective. None of these supervisors has powers to supervise and sanction compliance of financial institution with AML/CFT reporting obligations.

4. Preventative measures – Designated Non-Financial Businesses and Professions

39. Casinos, public notaries, and accountants are subject to AML Law 25 246. However, this law only contains general requirements in relation to customer identification, record keeping and unusual transaction reporting. While these are completed by FIU's Resolutions, these are not considered enforceable means due to the lack of supervisory/monitoring and sanction power for non-compliance.

40. There is no regulatory and supervisory regime in Argentina to ensure that casinos are effectively implementing their AML/CFT obligations. Other categories of DNFBPs are not subject to any systems for monitoring and ensuring their compliance with AML/CFT requirements.

41. It should also be noted that Argentina has not taken any measures to encourage the development and use of modern and secure techniques for conducting financial transactions. On the contrary, Argentina's economy relies heavily on cash.

5. Legal Persons and Arrangements & Non-Profit Organisations

42. Legal persons in Argentina are defined by its National Civil Code. Although the national law with requirements for all commercial companies applies throughout the country, registering and oversight of legal persons is set out by each of the 24 jurisdictions. Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. There is not yet a functioning national registry of legal persons; the provincial registries do not contain updated beneficial ownership/control information, and the provincial controlling authorities have limited ability to obtain it; nominee shareholders are allowed by Argentina companies law, although

jurisprudence indicates otherwise, and it is unclear whether the competent authorities have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control information with regard to previously issued bearer shares. Trusts can be registered in Argentina, and competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of these legal arrangements.

43. Argentina has not reviewed the adequacy of its laws and regulations that relate to NPOs or undertaken an assessment of the terrorist financing risk in this sector. There has been no outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. Argentinean authorities do not have the capacity to obtain timely information on the activities, size and other relevant features of its non-profit sector for the purpose of identifying the features and types of non-profit organisations (NPOs). Finally, the extent of oversight and sanction powers for entities outside of the City of Buenos Aires is unclear.

6. National and International Co-operation

44. There are a number of formal and informal mechanisms for inter-agency cooperation at the operational level. The main mechanism for national policy coordination is through the National Coordination Representation for the Financial Action Task Force (FATF-GAFI), Financial Action Task Force of South America (GAFISUD) and the Organization of American States Inter-American Drug Abuse Control Commission (CICAD-OAS). However, the current mechanisms are aimed mainly at the federal level, and domestic cooperation and coordination, at the policy and operational level, are not working effectively. The Argentinean authorities should review the effectiveness of AML/CFT measures in Argentina, and the National Coordination Representation should be provided more authority and resources in order to coordinate more effectively with the Federal and provincial authorities.

45. Argentina has signed and ratified the Vienna Convention, the Palermo Convention, and the United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention). However, certain relevant provisions are not yet being fully implemented (*e.g.*, the limitations on the ML and FT offences).

46. The main basis for mutual legal assistance Where there is no treaty, Argentina uses its Law on International Cooperation in Criminal Matter, Law 24 767 of 1997, which provides a wide range of measures in matter of production, search and seizure of evidence, as well as the ability to identify, freeze, seize, and confiscate assets. There are no undue restrictions, and requests for assistance are not refused if they may also involve tax matters. Nevertheless, the effectiveness of the system for responding to MLA requests in a timely and constructive manner has not been demonstrated; the many steps and authorities in the assistance procedures, especially when there is no treaty, implies delays in the ability to respond to requests without undue delays, and there are only limited statistics available. While as a rule dual criminality does not limit the kinds of assistance that could be provided, deficiencies in the domestic ML and FT offence create similar limitations when providing assistance.

47. Money laundering and terrorist financing are extraditable offences in Argentina, and Argentina uses the same instruments (bi-lateral agreements and Law 24 767) to process extradition requests. Argentinean nationals can be extradited in some cases, especially when the relevant extradition treaty includes this. The effectiveness of Argentina's extradition system has not been demonstrated; Argentina should consider reducing the steps (linked with the administrative, judicial and political or executive procedures) and authorities involved in executing extradition requests, to improve timeliness and effectiveness.

48. The FIU can provide the foreign counterpart with any information already in its power, and seek additional information from reporting parties when there is a domestic STR. As of November 2009, the FIU had entered into MOUs with 23 counterparts, with a number of others in process. However, secrecy provisions still inhibit access to certain information, the law does not provide for spontaneous sharing of information, and there is a legal limitation on its ability to disseminate information. For the cases received and responded to, it seems that the FIU is able to provide assistance in a rapid manner; however, given the lack of other data it was not possible to conclude whether the assistance provided has been constructive and effective. The gateways, mechanisms and channels for law enforcement authorities to cooperate with their foreign counterparts seem to allow the various law customs authority to provide assistance in a rapid, constructive and effective manner. However, in practical terms, no statistics on the exchange of information were provided, and it is therefore not possible to evaluate the effectiveness of this activity.

49. There are no clear and effective gateways, mechanisms of channels in Argentina to ensure that the three financial supervisors provide the widest range of international cooperation with their foreign counterparts. On the contrary, the confidentiality legal provisions have not been lifted to allow the supervisors to exchange information with foreign counterparts, and in practice, they have been unable to demonstrate effectiveness in international cooperation.

7. Resources and Statistics

50. In general, human and financial resources for the various law enforcement and prosecution and other operational bodies are not sufficient and should be increased. AML/CFT training should be increased for all agencies. At the time of the on-site visit, the FIU had insufficient staff, and in particular for the analysis of STRs. UFILAVDIN should also be provided additional personnel resources and through permanent contracts. With regard to the Federal Police, staff numbers, both overall as well as for its personal assets investigations unit are not sufficient.

51. Although, there is no information available regarding the funding of the three financial supervisors, in particular in respect with their AML/CFT activities, CNV and SSN stressed their needs for additional staff to perform their AML/CFT tasks, in particular for trained staff.

52. Argentinean authorities maintain some statistics, particularly with regard to STRs received, analysed, and disseminated, as well as cash seizures and inbound declarations of cash and negotiable instruments, and on-site inspections carried out, but there are a number of other areas where Argentina does not maintain comprehensive statistics. These include: money laundering investigations and prosecutions, the number of cases and the amounts of property frozen, seized, and confiscated relating to ML, FT, and criminal proceeds; declarations of outgoing Argentinean currency; statistics relating to mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond; AML/CFT on-site examinations conducted by the SSN; there are no statistics available on the formal requests for assistance made or received by supervisors, or whether the requests were granted or refused.

1. GENERAL

1.1 General information on Argentina

53. Argentina is the eight-largest country in the world by land area and the second largest country in South America, covering approximately 2.78 million square kilometers, and has common boundaries with Bolivia, Brazil, Chile, Paraguay and Uruguay. Argentina has diverse geographical landscapes, ranging from tropical climates in the north to tundra in the southernmost areas. The plains of the "pampas" stretch across the northern half of the country. In 2009, Argentina had a population of approximately 41 million people; the population and culture are heavily influenced by immigrants from Europe, especially Spain and Italy, with large number of immigrants between 1860 and 1930. The official language is Spanish, and the literacy rate is 97.2%.

Economy

54. Argentina is rich in natural resources and has a highly literate population, an export-oriented agricultural sector, and a diversified industrial base. In 2008, GDP was approximately USD 325 billion. The services sector accounts approximately half of the GDP, with industry approximately a quarter and agriculture approximately 10%. Argentina suffered from a serious financial crisis in 2001 in which Argentina defaulted on its foreign debt; the crisis was brought on by inflation, external debt, capital flight, budget deficits, massive withdrawals from the banks, and a further decline in consumer and investor confidence. In early 2002, the government abandoned its 1-1 peg of the Argentinean peso with the US dollar, resulting in a swift devaluation of the peso (losing about 70% of its value in four months) and a 40% reduction in purchasing power. After 2003 the Argentinean economy greatly improved—with sustained economic growth of 9% per year between 2003 and 2007, and improvements in unemployment and poverty. A reduction in government debt offered the possibility of reducing the burden of interests paid, which in 2001 represented 21.9% of total collection and in 2008, 6.6%.

55. Argentina has since experienced a slowdown in its growth as a result of the current financial crisis, though it is expected to be lower than experienced by other countries. Nevertheless, budgetary pressures and instable world markets led the government in November 2008 to nationalise the private pension system (which was created in 1994) with the intention to further protect the funds from instable markets.

System of Government

56. Argentina is a federal republic made up of 24 jurisdictions—23 provinces and the Autonomous City of Buenos Aires. The Constitution reserves rights for the federal government to exercise certain powers while devolving any other matter to the individual jurisdiction. Each jurisdiction has its own executive, legislative, and judicial branch of government. The federal executive branch is comprised of a president who is both the chief of state and head of government and a cabinet appointed by the President. The federal legislative branch of government is a bicameral National Congress which consists of the Senate (72 seats; members are elected by direct vote; presently one-third of the members being elected every two years to a six-year term) and the Chamber of Deputies (257 seats; members are elected by direct vote; one-half of the members elected every two years to a four-year term). The federal judicial branch is headed by the Supreme Court. There are currently seven Supreme Court justices, the law has been changed so that this will eventually be reduced to five.

Legal and judiciary systems and hierarchy of laws

57. Argentina is a civil law country, meaning that its courts rely on laws compiled in codes. Judicial decisions are typically based on code provisions rather than on precedents set by past judicial decisions. Argentina's laws are derived from various sources, including Roman law, the French Napoleonic Code, and Spanish and Portuguese laws; Italian law is an important source for Argentina's Commercial Code. Argentina's constitution, first passed in 1853 and revised in 1994, has provisions similar to those of the United States Constitution.

58. The federal Government is in charge of legislating the national Criminal, Commerce, and Civil Codes as well as other national laws that apply to the entire country. On the other hand, each province is responsible for legislating the Procedure Codes for applying these laws in its territory. The federal Government issued the National Criminal Procedure Code, which applies only to federal authorities regarding federal crimes all over the territory of the country. The only exception is the City of Buenos Aires in which no local Procedure Code was issued, and the National Criminal Procedure Code is applicable there for federal and common crimes. Federal or "serious" crimes are for example, offences against the sovereignty and security of the nation, counterfeiting, kidnapping, crimes against the common security, unauthorised firearms storage and production, inciting violence against people or institutions. The Provincial authorities apply their own criminal procedure codes to enforce the other offences ("common crimes") of the national Criminal Code. In the event the jurisdiction is unclear, a Federal judge would determine whether the offence falls under federal or provincial jurisdiction. The Supreme Court's Office decides the court that should intervene in the event that there is a conflict of jurisdiction between a provincial court and a federal court.

59. National laws governing ministries and government agencies also authorise those ministries and agencies to issue implementing regulations and other means that intend to further detail and implement the laws. These take the form of decrees, resolutions, and general resolutions. "Communications" from the Central Bank of Argentina (*Banco Central de la República Argentina—BCRA*) inform the resolutions made by the executive board of the Central Bank under the authority governing the BCRA; these contain requirements for the financial entities under its supervision.

Transparency, good governance, ethics and measures against corruption

60. Argentina has ratified the United Nations Convention against Corruption, the Inter-American Convention against Corruption, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Officers of the National Public Administration are also required to file sworn declarations on all their assets to the national Anti-Corruption Office (*Oficina Anticorrupción*—OA) upon taking and leaving office as well as on an annual basis. The OA's objective is to elaborate and coordinate anti-public corruption programmes, including its Unit of Administrative Investigation, which receives complains and, when warranted, develops and forwards cases to the public prosecutors. In 2008, the OECD indicated that a number of serious allegations of corruption, including with regard to alleged bribery by affiliates of foreign companies in Argentina, had been reported. The OECD indicated that, *inter alia*, it was concerned about Argentina's absence of criminal liability for legal persons that engage in bribery and delays in opening active investigations due to initial uncertainties about jurisdiction.[2]

[2] Argentina: OECD Phase 2 Report on the Application of the Convention on Combating Bribery on Foreign Public Officials in International business Transactions and the 1997 Recommendations on Combating Bribery in International Business transactions adopted on 20 June 2008.

1.2 General Situation of Money Laundering and Financing of Terrorism

61. Argentinean authorities identify tax evasion as the domestic offence that generates the largest amount of criminal proceeds. Drug trafficking also generates significant proceeds. Although Argentina has traditionally been only a drug-transiting country of drugs from Bolivia, Peru, and Colombia to Europe and the United States, it is a source country for precursor chemicals. Domestic consumption and production have also increased, especially of a cheap substance known locally as "PACO", and in 2008 authorities uncovered a large methamphetamine production operation. Argentina has also identified smuggling, corruption and different types of fraud as the major sources of illegal proceeds. The number of corruption investigations initiated by the OA has been increasing steadily since 2002, with 7033 in the first have of 2009, although only 12 cases were presented for public prosecution during that time. The tri-border area (Argentine, Paraguay and Brazil) is considered as a major source of smuggling, especially of pirated products. Argentinean authorities are in ongoing cooperation with those authorities as well as the United States (the "Three Plus One Initiative") to address security issues of this region.

62. Argentina authorities stated that the major part of money laundering operations taking place in their country is carried out through financial transactions involving specific off-shore centres. With regard to the non-bank financial sector, the most commonplace money laundering operations that were identified involve: transactions made through attorneys, accountants, notaries (attorneys do not currently have AML/CFT obligations); corporate structures such as companies, trusts or shell companies, and NPOs; setting up or acquisition of businesses related to transportation for use in smuggling money concealed inside other products. The widespread use of cash may also leave Argentina vulnerable to money laundering. During the on-site visit, authorities reported a general lack of confidence in the banking sector, causing citizens to store and use large amounts of cash. Real estate transactions are also regularly performed in cash, and as this sector does not have any AML/CFT obligations and is not supervised, this sector might be vulnerable.

63. Regarding terrorism and terrorist financing, Argentina suffered two serious terrorist attacks. The first was a car bomb attack against the Embassy of Israel in 1992. The attack resulted in the deaths of 22 people and 346 injured. The Court established that the crime was carried out by Islamic Jihad, Hezbollah's armed wing, and has convicted the then head of that organization (Sentence 322:3297) the trial is still pending before the Supreme Court of Justice of the Nation because the bombing attack was against a foreign embassy. The second was the attack against the Jewish Community Center (*Asociación Mutual Israelita Argentina*—AMIA) in 1994, which killed 85 people and wounded more than 300. This investigation was originally mishandled; the main judge was removed from the case in 2003, and that judge is currently being prosecuted for impropriety during the case as are the prosecutors for that investigation among others. The Argentinean government is participating as a plaintiff ("*querellante"*) represented by the Subsecretary of Criminal Policy. A formal indictment has been dictated by the investigating judge, and the government already presented its indictment as a step towards public trial. Regarding the main offences of the case, in 2004, the accused local co-conspirators, including local police, were acquitted. Argentina is still seeking extradition of Iranian citizens accused as authors of the bombing. Argentinean authorities monitor for the possibility that correspondent accounts and NPOs could be used to finance terrorist activities.

1.3 Overview of the Financial Sector and DNFBP

a. Overview of Argentina's Financial Sector

64. The governing law for the majority of Argentina's financial sector classifies "financial entities" into the following categories: (1) commercial banks; (2) investment banks; (3) mortgage banks; (4) financial companies; (5) savings and loan associations; and (6) credit associations. Finance companies are

authorised to carry out the same operations as banks and perform the same services as banks with the exception of checking account services and handling foreign trade transactions. Savings and loan companies have similar functions to those of mortgage banks and may also handle short-term investments. Credit associations grant short and medium-term loans to small business firms, professionals, employees, etc., usually for the purchase of consumer durable goods.

65. Other types of financial institutions operating in Argentina include the following: exchange entities (exchange houses, exchange agencies, and exchange bureaus); companies devoted to the transportation of monies and securities; companies issuing credit cards; providers or concessionaires of postal services that provide money transfers; insurance companies; reinsurance companies; intermediary agents registered in future and option markets; mutual investment funds managing companies; and stock exchange agents.

66. The kinds and number of banks and other institutions supervised by the BCRA as of 31 December 2009 is as follows:

Banks and other institutions supervised by the BCRA (as of 31 December 2009)

Banks	Commercial Banks	Public Banks	State-owned banks		2
			Provincial banks		8
			Municipal Banks		1
			Banks of the City of Buenos Aires		1
			TOTAL		12
		Private Banks	Domestic capital banks	Corporations	32
				Cooperative banks	1
			Foreign capital banks		12
			Branches of foreign financial entities		10
			TOTAL		55
	TOTAL				**67**
Financial Companies	Domestic capital financial companies				4
	Foreign capital financial companies				11
	TOTAL				**15**
Lending Institutions	Domestic capital lending institutions				2
TOTAL					**84**

67. The characteristics and activities of these entities can be summarised as follows:

- *Commercial banks* may carry out any lending and deposit transaction. Investment banks may take term deposits and extend medium and long-term loans and short term ones on a supplementary and limited basis. They also may issue bond obligations and share certificates for the loans they extend, issue securities, collaterals and other guarantees, act as trustees and depositories for mutual investment funds, and manage securities portfolios.

- *Mortgage banks* may take deposits of shares in mortgaged loans and special accounts, extend loans for the purchase, construction, enlargement, reform, refurbish and preservation of urban or rural estate. They also may issue mortgage-backed obligations.

- *Financial companies* may take term deposit and extends loans for the purchase or sale goods payable in instalments or upon maturity, and other consumer loans in instalments. Savings and loan associations for housing or other kind of real estate which may take deposits in which saving is a requirement for granting a loan with the previous saving plan approval by the BCRA.

- *Credit associations* may offer savings accounts and term deposits and extend loans for small and medium-sized urban and rural companies in the area where them are licensed to operate.

- *Financial entities* are public entities (National, provincial, city of Buenos Aires, and municipal) or private entities (Corporations of domestic or foreign capital and branches of foreign financial entities),

68. With regard to securities entities and other supervised by the CNV, the statistics are the following:

Securities entities and other entities supervised by the CNV

FINANCIAL TRUSTS	Registered in the CNV to act as financial trustee	National	Public	4
			Not Public	13
		Foreign		2
		SUB-TOTAL		19
	Trustee Financial Entities	National		11
		Foreign		6
		Foreign Branches		1
		SUB-TOTAL		18
	TOTAL			**37**

ISSUERS	Foreign Corporations	6
	National Corporation with National Capital	138
	National Corporation with Foreign Capital	26
	TOTAL	**170**

DEPOSITORY CORPORATIONS OF INVESTMENT FUNDS	**Public Banks**	National-owned Banks	1
		Provincial-owned Banks	2
		Municipal-owned Banks	0
		Autonomous City of Buenos Aires Bank	1
		SUB-TOTAL	4
	Private Banks	National Capital Banks	7
		Foreign Capital Banks	7
		Branches of Foreign Capital Banks	1
		Cooperative Bank	1
		SUB-TOTAL	16
	TOTAL		**20**

ENTITIES THAT ARE NOT BANKS AND THAT ACT AS DEPOSITORY OF INVESTMENT FUNDS	National Capital	32
	SUB-TOTAL	32
	Foreign Capital	6
	SUB-TOTAL	6
	TOTAL	**38**
TOTAL		**58**

SECURITIES MARKET BROKERS	Local Shareholders	268
	Foreign Shareholders	7
	TOTAL	**275**
FUTURES AND OPTIONS BROKERS	Local Shareholders	198
	Foreign Shareholders	18
	TOTAL	**216**
OPEN ELECTRONIC MARKET BROKERS	Local Shareholders	17
	Foreign Shareholders	72
	TOTAL	**89**
TOTAL		**580**

TOTAL	**845**

69. The characteristics and activities of these entities can be summarised as follows:

- *Financial Trusts* are contracts by which the settlor transfers the trust property on certain assets to the trustee, who manages it for the benefit of the beneficiary, and transfers it at the fulfilment of the term or condition to the settlor, beneficiary or trustee. Both the settlor and the trustee are supervised by the CNV.

- *Issuers* are legal entities that issue either stock or bonds in order to raise capital and then sell those securities in the market.

- *Investment funds* are financial instruments that are managed by investment funds management companies and these funds instruments are deposited in a depositary institution. The funds are represented by quota-certificates and are issued to investors. Both entities, the funds investment management company and the depositary entity are regulated by the CNV.

- *Intermediaries* are individuals or legal entities registered with SROs, and they register the transactions in the markets where they are registered and authorised to perform activities. The transactions could be of their own account of for third parties. There are three types of intermediaries:

  – Securities Market Brokers: They are intermediaries registered in stock markets for the negotiation of stock, private bonds, public bonds, financial trusts, closed-end mutual funds, and all kind of securities that are traded in the stock market where they are registered.

  – Futures and Options Brokers: They are intermediaries registered with the futures and options market, to perform negotiations and transactions of futures and options on futures contracts, on any kind of underlying assets (for ex.: wheat, corn, sunflower, soy, U$S Dollars, Euros, Interest Rate, Commodities Indexes, etc.) that are traded at the futures and options exchange, and all the terms and conditions of that contracts must be previously approved by the CNV.

- Open Electronic Market Brokers: They are intermediaries registered with the open electronic market, to perform negotiations and transactions of private and public bonds, financial trusts, and forwards contracts on financial assets previously approved by this CNV.

- *Exchanges* are SROs authorized by the Executive Branch, with the prior CNV´s advice. Their basic functions are to authorise, suspend and cancel the quotation of securities. The exchanges set for the legal framework to act in the exchange.

- The *markets* are SROs that provide the legal framework for intermediaries; they authorise, supervise and control them, have the legal and regulatory enforcement over the intermediaries and organize the securities trading (stocks, private bonds, futures and options contracts, public bonds, financial trusts, closed mutual funds, etc.). The CNV authorizes the SROs the futures and options markets and the open electronic market. However, the stock markets are directly approved by the Executive Branch with the prior CNV´s advice. These SROs have direct authority over the intermediaries registered therein, delegated either by law, executive orders or regulations issued by the CNV.

- *Credit rating agencies* assess the risk factors that might affect the service of debts of securities traded in the capital markets. They are registered with the CNV and submit periodical information about their assessment methods applied to their activities.

70. Insurance: As at the time of the on-site visit, there were the following types and numbers of insurance sector entities exist in Argentina:

INSURANCE COMPANIES	**177**
Corporations	149
Cooperatives	13
Mutual	9
Public	3
Foreign Insurance Companies	3
INSURANCE INTERMEDIARIES	**25 000**

71. ***Currency exchange:*** Argentina also licenses three types of exchange bureaus. There are currently: 38 exchange houses ("casas"), 25 exchange agencies ("agencias"), and 33 currency exchange brokers ("corredores"). Exchange agencies deal in the purchase and sale of foreign banknotes and coins, coined gold and good delivery gold bars and purchase of traveller's checks in foreign currencies. The traveller's checks so purchased are sold to the entities or houses licensed to conduct exchange transactions. Exchange houses conduct these same functions except they can also purchase, sell or issue checks, postal, telegraphic or telephonic transfers, postal vouchers, drafts and traveller's checks in foreign currencies. Exchange brokers are any natural or legal person who intermediate supply and demand for foreign currency and other services related to their main activity.

72. ***Money remittance*** is not a specifically-regulated activity in Argentina. This activity is carried out by a large number of financial entities described above. In addition, several independent remittance companies act through agents such as banks, the post office as well as through their own office franchises. There are at least five such companies.

b. Overview of Designated Non-Financial Businesses and Professions (DNFBPs)

73. ***Casinos***: Casinos are part of the gambling industry and, under the federal system, each province organises, regulates and supervises the development of games in their own territory. There are 103 gambling houses in total, including casinos, slots and racetracks. They are divided as follows: 25 in the

east of the country; 11 in north; 15 in the northwest; 13 in Patagonia; 9 in the central west; 4 in Buenos Aires City; and 26 in Buenos Aires province and the Midwest.

74. ***Real estate agents:*** The main professions in the Argentinean real estate market are real estate brokers and auctioneers. A broker undertakes on behalf of a principal, to search for a property or who has rights over a specific asset. An auctioneer makes the sale of public assets to the highest bidder, either on behalf of a third party that owns such assets or by order of a judge. The Realtors Association of the City of Buenos Aires has more than 3 800 members qualified as brokers and auctioneers, while in the Province of Buenos Aires there are estimated to be more than 7 000 registered. In the City of Buenos Aires there were 75 959 units bought and sold in 2009.

75. ***Dealers in precious metals and dealers in precious stones***: The main components of the jewellery sector consist of: traders, manufacturers or industrial makers, and importers. At the national level there are approximately 1 800 companies active in this field. There are also some "*cámaras*" (industry bodies), with two registered in the Autonomous City of Buenos Aires, one in Mar del Plata, one in Neuquén, one in Rosario, and one in Córdoba. Dealers in the sector must have the permission of the authorities in order to operate.

76. ***Lawyers:*** In order to practice law in Argentina, lawyers must register with professional bodies for the jurisdiction in which he/she will practice. To practice before national courts lawyers must register with the Bar Association of the Federal Capital, where the number of active lawyers registered is approximately 70 000. It is estimated that there are 130 000 lawyers in active practice in Argentina.

77. ***Accountants:*** Accountants must be registered in the respective councils of each jurisdiction in which they would decide to operate for being legally bound to report suspicious transactions. Besides, the FIU limited the duty of accountants to report suspicious transactions when they behaviour as external auditor or as a corporate trustee. There are approximately 120 000 accountants registered in Argentina.

78. ***Notaries***: Notaries in Argentina authenticate and legalise relevant documentation. They take part and give legal form to the will of the parties in cases such as the purchase of a property, certification of documents, the transfer of rights and in all legal transactions that require the formality of making a public instrument. There are approximately 8 600 notaries registered.

79. ***Trust and company service providers***: Company service providers are not regulated as a separate industry. Company formation and related services may be provided by lawyers or private company service providers. It is not known how many persons or entities are providing such services.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

80. There are a number of different types of legal persons in Argentina, most of which are regulated by Law 19 550 ("The Business Companies Act"), as follows.

81. ***Limited liability company***: (*Sociedad de Responsabilidad Limitada—SRL*). SRL's are owned by a minimum of two and maximum of 50 members (*cuotapartistas*). Members' liability is limited to amount paid for shares (*cuotas*) to which they subscribe or acquire. There is no minimum required capital. The administration and representation of the company shall be in the hands of one or more managers, whether or not they are members, appointed by a specific or indefinite period in the articles of incorporation or later, jointly or indistinctly, with specific or general powers.

82. ***Corporation:*** (*Sociedad anónima—SA):* The capital is represented by shares, and the members limit their liability to the amount paid for their shares. Different classes of shores are permitted. There

must be at least two shareholders, who can be natural or legal persons, and there is a minimum capital of USD 12 000. The administration is conducted by a board of directors, which is elected by shareholders and according to the corporation's articles of incorporation. A majority of directors must be Argentinean residents. The Statutory Auditor or the Supervisory Committee are responsible for monitoring the corporation.

83. ***Corporation with majority state participation*** *(Sociedad anónima con participación estatal mayoritaria)**:*** These corporations are formed by the national government, provincial governments, municipalities, or government bodies legally authorized for this purpose, or the corporations subject to this System where the individual or joint owners of shares which represent at least fifty-one percent (51%) of the share capital and which are sufficient to prevail in the regular and special shareholders' meetings.

84. ***Collective partnership*** *(Sociedad colectiva)*: The partners ("*socios*") are jointly and severally liability for the partnership liabilities. The administration and supervision is carried out by the persons designated in the contact or, otherwise, of any of the partners indistinctly, except their joint administration is specified, in which case they shall not act separately.

85. The ***Sociedad en comandita*** *(similar to a* ***limited partnership)*** has two types of partners: the general or active partner (*camanditado)* and the *limited or silent partner (comanditario).* In the ***simple limited partnership*** (*Sociedad en comandita simple**)*** which are similar to SRLs, the active partner or partners are liable for the partnership commitments similar to the partners of a general partnership, and the special or silent partner or partners are only liable with the capital which they have committed themselves to contribute. The administration and representation of the partnerships are exercised by the active partners or by third parties who are appointed, and are governed by the rules of administration for collective partnerships. In the ***stock limited partnership*** (*Sociedad en comandita por acciones)*, which are more similar to SAs, the active (capital) partner can limit the liability to the capital which they subscribe and represent their participation in shares, leaving, on the other hand, the administration in the hands of silent partners, who are jointly and severally liable for the partnership obligations, as in the collective partnership. The administration may lie on one person and shall be exercised by the active partner or a third party, who shall remain in their position during the term established in the bylaws.

86. ***Capital and industrial partnership (Sociedad de capital e industria):*** The silent partner or partners are liable for the partnership commitments similarly to in a collective partnership; those who contribute exclusively with their industry are liable up to an amount equal to the profits they have not received. The representation and administration of the partnership may be exercised by any of the partners. The industrial partner may administer the company. The administration is restricted to the partners, including the industrial partners.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

87. Argentina's AML System is based on Law 25 246 enacted on 5 May 2000 which altered money laundering offence under Argentinean law and changed the mechanism for enforcement, creating the Financial Information Unit (FIU) under the jurisdiction of the Ministry of Justice, Security and Human Rights. The law also provides for a legal and institutional framework for the FIU's operations with financial and non-financial institutions relating to measures to combat money laundering. AML and CFT provisions apply to a wide range of financial institutions and DNFBPs. Financing of terrorism has been criminalised through Law 26 268.

88. Resolution 792 of 22 May 2006 creates the National Coordination Representation at the International Financial Action Task Force (FATF-GAFI), Financial Action Task Force of South America (GAFISUD) and the Organization of American States Inter-American Drug Abuse Control Commission (CICAD-OAS). The Resolution tasks the National Coordination Representation to prepare a National Agenda on Anti-Money Laundering and Combating the Financing of Terrorism, on which the government agencies involved worked sustainably and participated. On 11 September 2007, this National Agenda was approved through Presidential Decree No. 1225.

89. Argentina believes that a national strategy must be permanently renewed, due to its dynamic nature, so that new goals and objectives will arise in the short term, including proposals made by international agencies on a timely basis.

90. The referred Presidential Decree No. 1225 approving the National Agenda on Anti-Money Laundering and Combating the Financing of Terrorism contains and defines a nationwide strategy against money laundering and financing of terrorism and is the result of the joint work done by seventeen government agencies. The Agenda has established 44 goals distributed in 20 objectives, some of which have already been achieved, some others have reached higher instances as bills or amendments to current laws and others are undergoing implementation by the Coordination or by some of the other competent authorities.

91. The main goals for the coming years are:

- Draft new money laundering and terrorist financing legislation taking into the international standards and any deficiencies found in this current mutual evaluation report.
- Expand mechanisms of supervision and sanctions, working together with the other federal agencies and incorporate new DNFBP sections into the AML/CFT sanctions framework.
- More fully integrate the FIU with the investigation and prosecution agencies.
- Expand the list of obliged entities of the AML/CFT framework.
- Systematise and make compatible the databases and national statistics on beneficial owners, AML/CFT freezing and confiscation, and increasing record keeping requirements.

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

(i) Ministries

92. The ***Ministry of Justice, Security and Human Rights*** develops policies in criminal matters and measures the functioning of the justice system in relation to AML/CFT issues. The Financial Information Unit (FIU) falls under its jurisdiction, and the National Coordination Representation at the FATF-GAFI, GAFISUD, LAVEX/CICAD/OAS directly reports to the Ministry Justice, Security and Human Rights. It shares the international co-operation in criminal matters with the Ministry of Foreign Affairs, International Trade, and Worship. It is also responsible for coordinating Argentinean police forces (described below).

93. The ***Ministry of Foreign Affairs, International Trade and Worship*** is primarily responsible for mutual legal assistance issues. It is also responsible for international co-operation with international bodies.

94. The ***Ministry of Economy and Public Finance*** does not have any primary AML/CFT responsibilities; however, it does have a Working Group on Prevention of Money Laundering and Terrorist Financing.

(ii) Criminal Justice and Operational Agencies

95. The ***National Attorney General's Office*** (*Ministerio Público Fiscal de la Nación*) was created in 1994 and is lead by the Attorney General (*Procurador General*). The Attorney General's Office is responsible for investigating and initiating procedures for all offences in Argentina that have Federal jurisdiction, including financing of terrorism and, depending on the seriousness of the predicate offence, money laundering. Within the Attorney General's Office the Fiscal Unit for Combating Money Laundering (*Unidad Fiscal de Lucha contra el Lavado de Dinero*—***UFILAVDIN***) was created in 2006 to receive and review case files on ML/FT from the FIU, forward appropriate cases for prosecution, and to assist other prosecutors in trying ML/FT cases.

96. ***Financial Information Unit (FIU)/*** (*Unidad de Información Financiera*—***UIF***): The FIU is housed administratively within the Ministry of Justice, Security and Human Rights. It was created in 2000 under the AML Law (Law 25 246) and is responsible for analysing, processing, and forwarding information for the purpose of preventing and deterring money laundering related to certain crimes as well as terrorist financing.

97. The ***Argentinean Federal Police*** (*Policía Federal Argentina*) is responsible for investigating criminal activities on the federal level. Its Superintendency of Federal investigations has two directorates: the anti-organised crime and economic crimes. It also has a Directorate for International Terrorism and Complex Offences, created in 2001. This Directorate is responsible for investigating criminal activities which are thought to be committed either by terrorist organizations or by "gangs".

98. The ***Argentinean National Gendarmerie*** (*Gendarmería Nacional Argentina**)*** is a federal law enforcement body covering all border areas for the country; it is also responsible for the prevention of terrorist acts and for investigations. It has concluded a number of cooperation agreements with counterparts in Chile, Paraguay and Bolivia.

99. The ***Argentinean Coast Guard*** (*Prefectura Naval*) is a federal law enforcement body which structurally and functionally comes under the Ministry of Justice, Security and Human Rights. It exercises intelligence functions as well as security, anti-smuggling, and counter-terrorism functions in all navigable waterways under national jurisdiction.

100. The ***Airport Security Police*** (*Policía de Seguridad Aeroportuaria*-PSA) is responsible for airport security of the Airport National System. Its missions are: 1) preventive airport security, *i.e.*,planning, implementing, assessing and/or coordinating the activities and operations at a strategic and tactical level necessary to prevent, avert and investigate crimes and infringements at airports and 2) planning, implementing, assessing and/or coordinating the activities and operations at a strategic and tactical level necessary to control and avert complex crimes committed by criminal organisations involved in drug trafficking, terrorism, smuggling (including currency smuggling), gunrunning, human trafficking and ancillary offenses.

101. The ***Federal Administration of Public Revenue*** (*Administración Federal de Ingresos Públicos*—***AFIP***) is the Argentinean public revenue collection and customs agency. It also receives declarations of cross-border transportation of cash or monetary instruments and investigates customs-related crimes. AFIP is also an obliged entity for reporting STRs to the FIU. The agency's database is the most comprehensive

in the country, including information on real estate and motor vehicles, notaries public, and information from the Central Bank of Argentina (BCRA) and National Securities Commission (CNV).

102. ***National Intelligence Agency (****Secretaría de Inteligencia-SI):* is under direct command of the Presidency of Argentina, and is the head of the national intelligence system. SIE has an office in charge of investigating ML and TF which has set as its main objective the carrying out of preventive analysis. The aim is to identify vulnerabilities, possible suspects, and operations and relationships that could exist between natural and legal persons that appear in international listings or that have been identified as a result of the joint work performed with foreign organisations regarding their possible actions at the regional level. In case any of the previous is identified as being carried out within the Argentine Republic, the relevant administrative/judicial bodies, and/or the Central Bank of the Argentine Republic, the FIU, the special prosecutor or the relevant authority with legal jurisdiction shall be given due notice of the events.

103. ***Provincial law enforcement and prosecution authorities***: In addition to the federal and City of Buenos Aires authorities described above, each of the 23 other provinces has its own police force and prosecution authority that investigate and prosecute crimes from the national criminal code but that are of a less serious nature and which do not have a national character.

(iii) Financial Sector Bodies—Government

104. The ***Central Bank of Argentina*** (*Banco Central de la República Argentina—****BCRA***) has jurisdiction throughout the country and licenses and supervises a wide range of financial institutions, including banks, financing companies, and exchange entities for both prudential and AML/CFT purposes. It has issued a number of "communications" (which communicate the resolutions of the BCRA board) that implement a range of AML/CFT measures and serve as the basis for AML/CFT supervision.

105. The ***National Securities Commission*** (*Comisión Nacional de Valores—****CNV***) has jurisdiction throughout the country and regulates securities markets, companies, financial trust and investment funds, both for prudential and AML/CFT purposes. The CNV's action is projected on companies issuing securities to be publicly offered, on secondary securities markets and the intermediaries in such markets. The CNV covers public offerings of futures and options in their markets, clearing houses, and intermediaries. It is responsible for regulating the stock exchange, but regulates indirectly intermediaries since they are part of the stock exchange or market, which themselves are self-regulatory organisations.

106. The ***Insurance Authority of the Nation*** (*Superintendencia de Seguros de la Nación—****SSN***) licenses insurance companies and registers insurance intermediaries. SSN also regulates and supervises insurance and reinsurance companies and intermediaries. It created an Anti-Money Laundering Unit through Resolution 28 608.

(iv) Financial Sector Bodies—Associations

107. The ***Association of Argentinean Banks*** (*Asociación de Bancos Argentinos—****ABA***) represents foreign-owned Argentinean banks. Until April 2003, when domestic banks broke off and formed ADEBA, this association represented privately-owned Argentina banks. ABA supports the implementation of AML measures and adopts self-regulatory codes and guidance. It also assists credit institutions with training.

108. The ***Association of Argentinean Private Banks*** (*Asociación de Bancos Privados Argentinos—****ADEBA***) broke off from ABA in April 2003 to form a banking association of only Argentine-owned private banks. It has a similar AML/CFT role to that of the other banking associations.

109. The ***Association of Public and Private Banks of Argentina*** (*Asociación de Bancos Públicos y Privados de Argentina—****ABAPPRA***) is the association of Argentinean state-owned banks. It used to be an

association of provincial banks, both public and mixed ownership. It now represents the remaining state banking sector. It has similar functions than the ABA and ADEBA.

110. The ***Argentinean Association of Exchange Houses and Agencies*** (*Cámara Argentina de Casas y Agencias de Cambio—**CADECAC***) is created as a corporate trade union entity to serve companies in the exchange sector. It has two main objectives: to represent the sector before authorities and different community sectors, and assisting and educating its members such as through on-going training and advice on technological advances. It is responsible for raising awareness of the AML issues in the sector.

111. The ***Argentinean Association of Insurance Companies*** (*Asociación Argentina de Compañías de Seguros*) develops and promotes new insurance practices, proposes general regulations that improve the strength and security of operators.

(v) DNFBPs

112. ***Casinos:*** Casinos are grouped with lotteries and bingos and are licensed and supervised separately by each of Argentina's 24 jurisdictions. For the Autonomous City of Buenos Aires, supervision of lotteries, bingos, and casinos is carried about by *Lotería Nacional Sociedad de Estado*. The *Argentinean Association of Lotteries, Sports Lotteries and state-owned Casinos* is a non-for-profit civil association engaged in defending, facilitating and promoting public good purposes that serve as a basis for the existence of all its members. This association offers its members a field for cooperation and exchange of best practices as regards public management of gambling.

113. ***Professional Council of Economic Sciences*** *(Consejo Profesional de Sciences Económicas)*: Is a self-regulatory organisation overseeing and coordinating activities of accountants and auditors in Argentina. It has also issued guidance for its members on preventing ML/FT. Membership in this organisation is mandatory for anyone seeking to act as an independent account or auditor in Argentina.

114. ***Notaries***: the Federal Council of Argentinean Notaries (*Consejo Federal del Notariado Argentino*) is an industry body that unites and represents the Colleges of Notaries (*Colegio de Escribanos*) from each of the 24 jurisdictions. The Colleges oversee the specific activities of their notaries, including licensing. Each has its own code of ethics, and some also monitor for AML/CFT compliance.

115. The ***Jewellery Companies Association of Argentina*** (*Cámara de Empresarios de Joyería y Afines de la República Argentina*) joins and represents the small and mid-sized jewellery retailers in Argentina.

116. ***Real Estate Association of Argentina*** (*Cámara Inmobiliaria Argentina*): This is an industry body that represents real estate agents in Argentina. It provides technical advise to its members. Real estate activity has only been regulated for approximately 20 years, so not all the provinces have changed their domestic laws to create their own real estate broker association (otherwise, the associations are based at the district and local levels rather than at the provincial level). Approximately 1/3 of the provinces now have their own real estate broker associations. The association for the City of Buenos Aires was created in 2007.

(vi) Legal persons and Arrangements and Non-Profit Organisations

117. While the national companies law provides the basis requirements for registering a range of legal persons, the actual registering and the holding of those registers are done separately by each of the 24 jurisdictions. For the City of Buenos Aires, this is the General Superintendency of Corporations (*Inspección General de Justicia—IGJ*). For the Province of Buenos Aires, this is the Provincial

Directorate of Legal Persons (*Dirección Provincial de Personas Jurídicas*). These include registrations for several types of non-profit organisations and associations.

c. Approach concerning risk

118. Argentina's AML/CFT legislation does not specifically identify risk in determining the levels of requirements for the different financial and DNFBP sectors, nor have sectors or activities been excluded based on proven low risk. However, Argentina's supervisory authorities (BCRA, CNV, and SSN) do take risk into account when determining their supervision matrices and supervisory visits.

d. Progress since the last mutual evaluation

119. Since Argentina's last mutual evaluation in 2004, the authorities have been working to address the deficiencies identified in the mutual evaluation report as being insufficiently or not in compliance with the FATF Recommendations.

• Restructure the AML provisions in the Criminal Code in order to have a consistent regime of criminalisation of the laundering of proceeds of crime	No action taken
• Remove the exemption of close relatives, intimate friends and persons to whom a debt is owed from criminal liability for the offences of concealment, acquisition, possession or use of criminal proceeds	Law 26 087 of April 2006, which amended the ML offence, specifically provided that this exemption does not apply in terms conversion and transfer of proceeds of crime (article 278); however, the exemption had not specifically applied previously for article 278. Rather it applied for article 277 (concealment, acquisition, and possession). With regard to the latter, an additional exception was added to this exemption (*i.e.,*"habitually commits acts of concealment"). See R.1 for more details.
• Ratify and fully implement the UN International Convention for the Suppression of the Financing of Terrorism 1999.	Argentina ratified the CFT Convention through Act 26024 of 2005.
• Adopt a comprehensive terrorist financing offence that criminalises, at a minimum, the collection or provision of resources or financial services for domestic or foreign terrorists or terrorist organisations, and to support terrorist acts within or outside of Argentina. Ensure that the offence can serve as a true predicate for money laundering.	Law No. 26 268 on Terrorist Criminal Associations and Financing of Terrorism, promulgated on July 4, 2007, introduced the offences of terrorist criminal associations and financing of terrorism. As it is a crime in the Criminal Code, terrorist financing is also a predicate offence for money laundering.
• With regard to Special Recommendation III, take steps to fully implement S/RES/1267(1999), and S/RES/1373(2001) and consider adopting additional legislation, which would among other things, establish express authority to block the assets of terrorists not identified by the UN.	Some action has been taken, although it is incomplete. FIU Resolution 125/2009 indicates that reporting parties must report suspected FT-related transactions to the FIU (who may request a freezing order), or the financial institution may report the operations directly to a judge to issue a freezing order.
• Extend the reporting obligation to all transactions related to ML/TF. Entrust the FIU with the analysis, processing and dissemination information to prevent and detect ML from all "delitos" or criminal offences	Law 26 268 of July 2007 added suspected transactions involving criminal terrorist association and terrorism financing to the list of predicated offences that the FIU may analyse and disseminate. No other predicate offences were added.
• Adopt appropriate mechanisms or task forces to ensure adequate co-operation and information sharing between the different government agencies that may be involved in investigations of ML/TF and predicate offences. Reduce the compartmentalisation of information and facilitate the exchange of information.	Argentina's National Coordination Office on AML/CFT was created in 2006, aimed at improving policy cooperation and information exchange and to prepare a National Agenda on Anti-money Laundering and Counter-terrorist Financing, on which the government agencies involved worked sustainably and participated. Argentinean authorities have implemented actions for the cooperation among different sectors, as well as the integration of the private sector, so that cooperation and technical assistance agreements have been signed with various associations representing the private sector.

• Create specialised units the field of money laundering in the Attorney General's Office.	This has been now been created: Resolution 130/2006 created the Fiscal Unit for the Prevention of Money Laundering and Financing of Terrorism with the Attorney General's Office (*UFILAVDIN*).
• Amend confidentiality and secrecy provisions. Develop a clear procedure for financial institutions to receive and respond to requests properly made by competent authorities.	Law 26 087, enacted in 2006 amended the Criminal Code and Law 25 246 on "Concealing and laundering of money of illicit origin" and provides that reporting parties may not invoke banking, trading or professional secrecy or legal or contractual confidentiality agreements as an obstacle to providing information to the FIU in the framework of an STR. The AFIP may also lift the tax secrecy in the context of subject reported as part of an STR.
• Develop deeper awareness of those customers (PEPs, non-resident customers and legal persons or arrangements such as trusts) or those transactions (cross-border correspondent banking, private banking and wire transfers) which imply a higher money laundering risk.	FIU Resolutions in force include under the situations requiring enhanced CDD measures domestic PEPs, wire transfers, and shell/vehicle companies and trusts . These Resolutions, which are not OEM, are complemented by the rules issued by the BCRA and CNV. BCRA Communication "A" 4835, in force since April 2009, extends the requirement for enhanced CDD measures to foreign PEPs, and so does CNV General Resolution 547/2009, although this latter only provides for a general enhanced CDD without specifying the measures foreseen under Recommendation 6. There are no provisions concerning PEPs for the insurance sector. No action has been taken regarding non-resident customers. BCRA also provides for the identification of the beneficial owner of vehicle companies and trusts but only in the cases that the FI has reasons to assume that the customer is acting on behalf of another person. Concerning wire transfers, FIU only provides a general requirement for FIs to ensure that complete information on the originator is included. BCRA Communication "A" 4965, in force since August 2009, requires banks and exchange houses to apply some additional measures for cross-border wire transfers. BCRA rules also address the case of domestic wire transfers made by regular customers of the banking institutions However, no provision is foreseen for occasional domestic transfers conducted by banks and domestic transfers made by exchange houses. There are no direct requirements on wire transfers conducted by postal services and money remitters. No new provisions had been taken concerning private banking or cross-border correspondent banking although the assessment team was informed of a BCRA Communication aimed at addressing the latter, approved in June 2010.
• Harmonise existing standards applicable to financial entities and adopt a clear and unique set of requirements.	FIU Resolutions issued from 2007 tended to harmonise requirements applicable to financial entities. Pursuant to the Resolution 228/2007 the FIU harmonised requirements for the banking and foreign exchange sector with those established by the BCRA . However, there are still some differences (such as PEPS).. For the securities sector, CNV General Rules require institutions also to apply FIU Rules and also establish additional identification requirements in certain circumstances.
• Reconsider the current standards applicable to the insurance sector, *i.e.,*centre surveillance and control on the payment of claims and policy rescues, rather than in the moment of the establishment of the business relationship and the knowledge of the policy holder.	FIU Resolution 50/2008 introduced measures to identify the beneficiary of the policy at the moment of the payment of claims, or change of the beneficiary (including the reason for this change and the link with the policy holder). In case there's a policy rescue over a certain threshold, additional identification requirements are foreseen.

• Clearly state that the identification of beneficial owners is an objective of the identification process as much as the identification of clients themselves. Deliver clear guidance to financial institutions in that respect, especially with regard to legal entities (impose the requirement to obtain from the customer information on principal owners, beneficiaries or whoever has actual control of the entity).	No action taken to require systematically the identification of the beneficial owner.
• Adopt a legislative framework in relation to the requirements set out in Special Recommendation VII.	BCRA Communication "A" 4965, in force since August 2009, requires banks and exchange houses to apply some additional measures for cross-border wire transfers. However, no provision is foreseen for the domestic ones and the said communication does not apply to postal services and money remitters that perform wire transfers.
• Develop a strong supervision of compliance with AML measures and effective corrective measures when failures are identified. Grant supervisory authorities with adequate powers and resources.	The Supervisory authorities still lack resources and the SSN and CNV have not yet developed a strong supervision of compliance with AML/CFT measures and effective sanction measures when failures are identified.
• Develop appropriate mechanisms of supervision in the insurance and postal services sectors.	Postal service sector is not subject to supervision and the insurance sector still lack appropriate and effective mechanisms of supervision.
• Start an inspection programme for all financial institutions in order to determine the level of compliance of the financial sector for the AML framework set out by the FIU.	BCRA is conducting an inspection programme, which cycle remains very long. CNV and SSN do not seem to have developed an effective inspection programme for all financial institutions
• Clearly grant the FIU with adequate resources to truly perform its duties of sanction.	The FIU has not been granted specific supervisory powers and had not yet imposed any sanction at the time of the on-site visit or immediately thereafter.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis[3]

Recommendation 1

Physical elements of the offence

120. The Anti Money Laundering (AML) system of Argentina was established in the year 2000 by Law 25 246 that modified the Criminal Code (CC) to include a new chapter XIII of Title XI called "Concealment and Laundering of Proceeds of Crime" which includes three sections pertinent to money laundering: sections 277, 278, and 279. The law also created the FIU and indicates that the Attorney General's Office will receive reports on possible ML activities from the FIU.

121. Section 278 of the Criminal Code specifically criminalises certain money laundering offences. That section penalises whoever "*converts*, *transfers*, manages, sells, encumbers or applies in any other way… money or any other kind of assets arising from a crime in which he/she has not participated, with the possible consequence that the original assets or the substitutes thereof appear to come from a lawful source."

122. Section 277 of Law 25 246 criminalises concealment and acquisition of criminal proceeds in general. Section 277 criminalises, *inter alia*, the following acts, after the crime of another individual in which he/she has not participated: helping someone to avoid investigation or to elude the latter's actions; *concealing*, altering, or removing traces from the crime or aiding the perpetrator to conceal, alter or remove such traces; *acquiring*, receiving, or *concealing* money, things or effects proceeding from a crime; making safe or helping the perpetrator or participant to make safe the product or benefit of the crime. However, there are exemptions from criminal liability for the offences set out in this section, if they are committed to benefit a spouse or relative within the fourth degree of consanguinity or the second degree of affinity, or a close friend or person to whom he/she owed special gratitude unless the wrongdoer is also acting for profit, or is a public official, or habitually commit acts of concealment. This last element of "habitually commits acts of concealment" was added with amendments to the Criminal Code via Law 26 087 of 24 April 2006. Nevertheless, this broad exemption that still applies after the adoption of Law 26 087 to family and friends in cases of concealment and acquisition of criminal proceeds without profit interests under section 277 is still a serious legal loophole that should be removed.

123. These two provisions therefore cover most of the physical elements of the offences as required by the Vienna and Palermo Conventions. However, possession is not specifically criminalised, and acquisition is only criminalised as a form of the general offence of concealment under section 277 of the Criminal

[3] Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

Code and not for the specific conversion/transfer elements of the money laundering crime under section 278 of the same Code.

Definition of property

124. The sections above refer to "money, things, or effects" proceeding from a crime and "money or any other kind of assets" arising from a crime. Sections 2.311-2.312 of the Civil Code define a "thing" as any object which could have a value and "property" as immaterial object or thing that has a value. These provisions therefore cover all types of property that is directly the proceeds of crime. While these provisions do not specifically mention legal documents or legal instruments evidencing title to or interest in property, the provisions seem broad enough to cover these categories. With regard to property that indirectly represents the proceeds of crime, section 278 specifically refers to substitute assets, while section 277 does not. Therefore, the acquisition and concealment elements of the money laundering offence do not cover property that is indirectly the proceeds of crime.

Predicate offences

125. The law does not require that a person be convicted of a predicate offence in order to prove that property is the proceeds of crime. It is, however, necessary to prove the facts that structure the predicate offence—i.e., the prosecutor will need to give evidence of the predicate offence to link the assets with an illegal activity.

126. The predicate offence of ML in Argentina can be any kind of crime in the Criminal Code or other criminal laws. They can be serious and not serious criminal offences; felonies and misdemeanours. In this sense, a range of offences within almost all the categories of crimes included in the glossary of FATF are money laundering predicates. However, neither the Criminal Code nor or criminal laws contain criminal punishment for the insider trading and the market manipulation. Therefore, insider trading and market manipulation are not money laundering predicate offences. In addition, while participation in an organised criminal group is only covered if the organisation has at least three people and intents to commit more than one crime. Finally, while there is a terrorist financing offence (see the discussion below under SR.II), the range of offences within terrorism and terrorist financing are not sufficient. The chart below specifies where in the Criminal Code and other laws the designated categories of offences are covered.

Predicate offence	Law and Articles
1. Participation in an organized criminal group and racketeering	Criminal Code, sections 210 *bis* – 213 *bis*
2. Terrorism, including terrorist financing	Criminal Code, sections 213 *ter* – 213 *quater*
3. Trafficking in human beings and migrant smuggling	Criminal Code, sections 145 – 145 *ter* and Law 25 871, sections 116 to 121
4. Sexual exploitation, including sexual exploitation of children	Criminal Code, sections 125, 125 bis, 126, 127 y 128
5. Illicit trafficking in narcotic drugs and psychotropic substances	Law 23 737, sections 1 – 11 and 23, 24 and 28
6. Illicit arms trafficking	Law 22 415, sections 864 – 867
7. Illicit trafficking in stolen and other goods	Criminal Code, sections 163 and 277
8. Corruption and bribery	Criminal Code, sections 256 – 268
9. Fraud	Criminal Code, sections 172 – 174 and 300 – 301
10. Counterfeiting currency	Criminal Code, sections 282 – 286
11. Counterfeiting and piracy of products	Criminal Code, sections 288 – 291 and Law 11 723, Law 22 362 Act (Trademark Law) and Law 25 036 (Intellectual Property Law)
12. Environmental crime	Criminal Code, sections 200-201 and Law 24 051 – Chapter IV
13. Murder, grievous bodily injury	Criminal Code, sections 79 – 82 and 89 – 94
14. Kidnapping, illegal restraint and hostage-taking	Criminal Code, sections 140 – 142 *bis* and 170

Predicate offence	Law and Articles
15. Robbery or theft	Criminal Code, sections 164 – 167 *quinque*
16. Smuggling	Law 22 415
17. Extortion	Criminal Code, sections 168 – 169
18. Forgery	Criminal Code, sections 288 – 292
19. Piracy	Criminal Code, sections 190 – 193
20. Insider trading and market manipulation	These actions are not designated crimes in the Criminal Code, although they are Civil violations under Law 17 811 and Decree 677/2001 (insider trading under section 33 and market manipulation under section 34)

127. Section 4 of AML Law 25 246 (which incorporates section 279 (4) into the Criminal Code) specifies that money laundering crimes in Argentina can be punished when predicate offences are committed abroad if it is a crime both in Argentina and the other country.

Self-laundering

128. The money laundering offences only apply for third party launderers, and not for the perpetrator of the predicate offence, and there is no fundamental principle in Argentinean law that prohibits this. Prosecutors interviewed refer that legal constraint as one of the most important obstacles to penalise money laundering that occurs in Argentina.[4]

Ancillary offences

129. *Conspiracy*: Conspiracy exists in Argentina's legal system only with regard to crimes related to the security of the nation (Criminal Code, sections 216, 226, 229, 233 and 234) and narcotics crimes (Narcotics Law 23 737, section 29 *bis*) and not in relation to money laundering crimes. Section 210 of Criminal Code criminalised participation in a criminal association, but only when there are at least three wrongdoers and more than one crime as the goal of this organisation.

130. *Attempt:* Attempt is punishable under the rules contained in sections 42, 43 and 44 of the Criminal Code.

131. *Aiding and abetting, Facilitating, Counselling the commission*: Aiding, abetting, facilitating and counselling the commission of a ML crime are punishable under the rules contained in section 46 of the Criminal Code.

Additional Elements

132. Where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, this does not constitute a money laundering offence.

Recommendation 2

133. The offence of ML applies to natural persons that knowingly engage in ML activity. By reference to acts that could have actions that have the possibility that the assets appear to come from a

[4] Draft amendments to Section 278 of the Criminal Code submitted to Parliament in June 2010 would extend the money laundering offences of conversion or transfer of criminal proceeds (but not acquisition, concealing disguising of criminal proceeds) to the person who committed the predicate offence.

lawful source, sections 277 and 278 also incorporate eventual intention (*dolus eventualis*). Recklessness was also in the original draft of the money laundering law; however, it was vetoed by the government.

134. Under sections 123, 398 and 404 of the Criminal Procedure Code, a judge directing the investigation has the power to pursue the case without rigid rules, so it is therefore possible to infer the intentional elements of money laundering from objective factual circumstances. The criminal judges interviewed confirmed this situation, although given the lack of any conviction for ML, the assessment team was unable to verify this statement.

135. Argentina does not have criminal liability for legal persons. The AML Law contains in sections 23 – 26 a criminal administrative penalty regime that applies to the (conversion/transfer) offences of section 278, but not the acquisition/concealment offences of section 277. This system is not proper criminal liability of the legal person mainly because the punishment is not applied by a criminal judge; rather it is responsibility of the FIU, and no criminal administrative punishment has ever been applied. Regarding the lack of criminal liability of legal persons, it is worth noting that it does already exist in Argentina for some types of drug trafficking offences and that since the on-site visit Argentina has prepared a draft law to extend criminal liability to legal persons for ML cases. Therefore, there is no fundamental principle of Argentinean law to prohibit criminal liability for legal persons.

136. The criminal sanctions for money laundering vary from a fine of ARS 1 000 (approximately USD 270 US dollars) up to 10 years of imprisonment, depending on the specific activity conducted, the amount of the proceeds involved, and certain aggravating factors.

137. The acts of acquiring, receiving or concealing, or disguising things or effects arising from a crime are punishable with prison terms from six months to three years (section 277). However it is possible to increase to twice those penalties if the wrongdoer had acted for profit, habitually commits concealment acts or was a public official.

138. Whoever converts, transfers, manages, sells, encumbers (or burden), or applies in any other way assets with a value over ARS 50 000 (approximately USD 13 500) are punishable with 2 to 10 years of imprisonment and a fine of two to 10 times the amount of the transactions made (section 278). If the value of the proceeds is below ARS 50 000, the penalties for section 277 apply. In the case of the wrongdoer became to a criminal association or gang with the aim of continuously committing acts of a similar nature the minimum punishment shall be five years of imprisonment.

139. Moreover in all cases if the ML crime is committed by a public officer when fulfilling his duties, he/she shall be disqualified from service for three to 10 years.

140. However, according to section 279, subsection 1) of the Criminal Code, the penalty of the predicate offence shall be applied to the ML crime if it is lower than the potential ML penalty. If the predicate offence is not punishable with imprisonment, the ML offence shall be punished with a fine of ARS 1 000 to 20 000 (approximately USD 270 – USD 5 400).

141. The criminal penalties can be summarised as follows:

Section	Activity	Basic offence	Aggravated/ repeated offence
277	acquiring, receiving, concealing, or disguising	6 months – 3 years	Double penalties can apply if: 1) the wrongdoer acted for profit 2) the predicate offense has a penalty of more than three years imprisonment 3) the wrongdoer habitually commits concealment acts; 4) the wrongdoer is a public official

Section	Activity	Basic offence	Aggravated/ repeated offence
			If committed by a public official while fulfilling his/her duties: a disqualification from service for 3-10 years
278	converting, transferring, managing, selling, or applying	If proceeds of crime is < ARS 50 000: 6 months – 3 years	If committed by a public official while fulfilling his/her duties: a disqualification from service for 3-10 years
278	converting, transferring, managing, selling, or applying	If proceeds of crime is ≥ ARS 50 00: 2-10 years and fine of 2-10 times the amount of the transactions made	If the wrongdoer carries out the act on a regular basis or as part of a criminal association: 5-10 years If committed by a public official while fulfilling his/her duties: a disqualification from service for 3-10 years

142. In general, the sanctions for converting or transferring criminal proceeds above the ARS 50 000 threshold are proportional if you compare them with some important crimes as trafficking of narcotics (four to 15 years of imprisonment) or illicit arms (2 to 8 years of imprisonment), murder (8 to 20 years of imprisonment), robbery (5 to 15 years of imprisonment), etc. However, the penalties for acquiring, receiving, or concealing or disguising, as well as converting or transferring proceeds of crime below the 50 000 peso threshold[5], are low. In addition, the effectiveness and dissuasiveness of the available sanctions cannot be assessed, since no penalty has yet been applied under the provisions in sections 277 – 279 of the criminal code that have been in place for the 10 years since 2000.

Statistics and effectiveness

143. Although the offence is over 10 years old, there have been only 4 prosecutions and no convictions. These statistics raise very serious effectiveness issues, given the level of criminality and ML risk in the country.

144. The issue of the jurisdiction for predicate offences creates systemic problems in pursuing money laundering. A criminal action can only start by the presentation of a prosecutor ("*fiscal*") to a judge who must authorise and direct the criminal investigation. The National Criminal Procedure Code applies only to the federal authorities and indicates which crimes fall under their jurisdiction—namely "serious crimes" such as offences against the sovereignty and security of the nation, counterfeiting, kidnapping, crimes against the common security, unauthorised firearms storage and production, inciting violence against people or institutions, as well as all offences that occur in whole or in part in the City of Buenos Aires. The provincial authorities apply their own criminal procedure codes to enforce other offences ("common crimes") of the National Criminal Code.

145. The money laundering jurisdiction is determined by the jurisdiction of the predicate offence—i.e., whether it should be prosecuted by the Federal or Provincial authorities. In the event the jurisdiction is unclear, a Federal judge would determine whether the offence falls under federal or provincial jurisdiction. In any case, the prosecution of money laundering is under the jurisdiction of the criminal judge that would pursue the predicate offence. This creates a systemic problem in pursuing money laundering charges, since, after a judge initiates an investigation based on the premise of one predicate offence, and evidence subsequently suggests a different predicate offence, then a new criminal investigation would have to be initiated by a different judge.

[5] Draft amendments to Section 278 of the Criminal Code submitted to Parliament in June 2010 would raise the ARS 50 000 threshold to ARS 200 000.

146. Argentina does not maintain reliable or comprehensive statistics on money laundering prosecutions (or investigations). Within the Attorney General's Office the Fiscal Unit for the Prevention of Money Laundering and Financing of Terrorism (*Unidad Fiscal de Lucha contra el Lavado de Dinero—UFILAVDIN*) was created in 2006 to receive and review case files on ML/FT from the FIU, forward appropriate cases for prosecution, play as general coordinator on money laundering and FT prosecution, and to assist other prosecutors in trying ML/FT cases. The statistics provided refer mainly to such reports from the FIU to UFILAVDIN. The procedural progress of such files is:

STRs received by the FIU	5 567
Case files sent to UFILAVDIN	586
Files sent to the court in connection with another ongoing judicial investigation	111
Archiving of the file	154
Files sent to another prosecutor to continue the investigation	16
Request for lifting tax secrecy	94
Undergoing analysis by UFILAVDIN	80
Criminal complaints made for section 278 of Criminal Code (conversion/transfer of proceeds of crime)	44
Criminal complaint for an offence other than section 278 of Criminal Code	81
Files returned to the FIU for further analysis	5
Files returned to the FIU for having requested the lifting of securities secrecy	1

147. Additional details provided are as follows:

- 43 files were archived;
- 33 files turned their investigation to the possible commission of other offences not contemplated by law 25 246;
- 29 files were received to proceed, through the competent judge, to lift bank and/or tax secrecy imposed;
- 1 file is reserved by the court responsible for the investigation until new proof of evidence is available;
- 31 files are undergoing analysis.

148. However, there are also money laundering criminal investigations without a link to a report of the FIU, and these investigations are around the country led by different judges or prosecutors. UFILAVDIN provided some information of these cases with the prosecution offices in all the provinces but this information is only preliminary and partial. UFILADVIN provided information of 44 cases that began by a complaint of this UFILAVDIN and 40 cases with other origins. However, none has resulted in a formal indictment (*acusación*) for ML following the criminal investigation.

149. During the on-site visit, the evaluation team received evidence of only four cases of prosecution for money laundering—all at the federal level—and none has yet resulted in an indictment. In this sense they are probably not near the trial stage.

150. In addition, all of the 44 cases indicated by UFILAVDIN apply to violations of section 278 of the Criminal Code (conversion, transfer, etc). In general, Argentina does not treat the acquisition, concealing, and disguising elements of ML as separate and as serious. In addition to the broad exemptions for family and friends that apply to those provisions, as well as the much lower criminal penalties available (see Recommendation 2), it is not within the FIU's specific authority to forward cases relating to section 277 (see Recommendation 26).

2.1.2 Recommendations and Comments

151. The lack of any conviction since the money laundering legislation has been in force in (approximately 10 years) evidences a variety of reasons why the Argentina AML provisions are deficient and not being effectively applied--especially the lack of self-laundering, the close jurisdictional link with the predicate offence, and the low penalties and prioritisation provided for acquisition and concealment offences as well as the family/friends exemption in the special cases that still exists for those offences in section 277. The evident risk of money laundering in Argentina should justify many more investigations and prosecutions. Only four prosecutions for money laundering demonstrate a very low result given the ML risks in the country. Argentina should take a number of measures to regulate better the jurisdiction for investigating ML, so that a judge who advances a case would not lose jurisdiction over that case, and the judicial process would have to begin over if the case reveals the likelihood of a different predicate offence. Specifically, Argentina should prioritise the following:

- *Strengthening the autonomy of the ML offence.* Argentina should strengthen the autonomy of the ML offence relative to the predicate offence, so that jurisdictional and procedural requirements do not interfere with the consistent prosecution of money laundering cases.

- *Proper treatment of concealment in relation to other ML offences***.** The ML as a form of concealment produces difficulties in prosecuting and convicting for these offences and this should be rectified.

- *Regulation of the all acts of UN Vienna and Palermo Conventions in the ML crime.* The legislation should be amended to specifically cover possession of proceeds of crime. "Proceeds of crime" should also apply to assets that indirectly represent the proceeds of crime with regard to acquisition and concealment offences.

- *Elimination of the exemption to relatives or friends in all the cases of ML acts required under the standards.* In spite of the modifications of Law 25 246 law (with Law 26 087), there are still broad exemptions for family and friends under section 277; these should be removed.

- *Self-laundering:* Criminal liability for money laundering should also be made to apply to the person who commits the predicate offence. Such self-laundering should be established in the law to cover many cases that the investigative authorities recognised as occurring frequently.

- *Conspiracy:* The law should cover conspiracy in the same way that it is now treated in the narcotics law.

- *Insider trading and market manipulation:* These offences should be incorporated into the Criminal Code or other criminal laws, so that they would become predicate offences for money laundering.

- *Criminal liability for legal persons:* Argentina should provide for criminal liability of the legal persons as there is not a fundamental principal of domestic law that prevents this.

- Available criminal penalties for acquisition, concealment, or disguising, as well as conversion or transfer of proceeds of crime below the 50 000 threshold, should be increased.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating[a]
R.1	PC	• 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. • Jurisdictional difficulties and a close link with the predicate offence impede effective money laundering investigation/prosecution. • Exemption for criminal responsibility to relatives or friends for some money laundering offences (*e.g.,* acquisition, concealing and disguising under section 277). • Self-laundering is not criminalised. • The ancillary offence of conspiracy is not covered. • Insider trading and manipulation market are not predicate offences and the range of offences within the terrorism and terrorist financing definitions are not sufficient. • Possession of proceeds of crime is not specifically covered. • The acquisition, concealment, and disguising elements of the money laundering offence do not cover property that is indirectly the proceeds of crime.
R.2	PC	• The sanctions for ML are not dissuasive and have never been applied. • The penalties for acquiring, receiving and concealing, as well as converting or transferring proceeds of crime below the ARS 50 000 threshold, are low. • No criminal liability for legal persons, and there is no fundamental principle of domestic law that prohibits this. • Lack of effectiveness of the system of administrative liability of legal persons.

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

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Special Recommendation II

152. The amendments of the Criminal Code (CC) made under Law 26 268 of July 2007 add a Chapter VI to the Title VIII of the Book 2 of the Criminal Code called "Terrorist criminal association and financing of terrorism". Section 213 *ter* of this chapter establishes criminal penalties of 5 – 20 years imprisonment for anyone who is part of a criminal association set up with the aim of, through the commission of crimes, terrorising the population or compelling a government or an international organisation to do or abstain from doing an act, provided that such criminal association has follow features:

- An action plan aimed at spreading ethnic, religious or political hatred;
- Organised in international operative networks;
- Availability of war weapons, explosives, bacteriological or chemical agents or any other means capable of endangering the life or integrity of an indefinite number of persons;

153. Section 213 *quarter* of this chapter criminalises collecting or providing property or money, in the knowledge that they are to be used, in full or in a part, to finance a terrorist criminal association as described under section 213 *ter* (special terrorism association) or a member of such association in order to commit any of the crimes for which they have been set up, regardless of whether such crimes are ultimately committed or not.

154. The terrorism financing offence is limited. Most importantly, it does not cover collection or provision of funds to be used (for any purpose) by an individual terrorist or a terrorist act outside of the context of the terrorist organisation as defined above. Secondly, the definition of terrorist organisation is

limited in that it must also have the characteristics above (an action plan aimed at spreading ethnic, religious or political hatred, be organised in international operative networks, and have the availability of war weapons, etc). These factors are very restrictive, for example, they would not cover terrorist organisations that exist solely within Argentina, and they 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. Finally, while the law refers to acts aimed at "terrorising the population or compelling a government or an international organization to do or abstain from doing an act", 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)(b).

155. Section 213 *quarter* does not require that funds are actually used to carry out a terrorist act, or that they be linked to a specific terrorist act, but it does require the knowledge that those will used to commit any of the crimes for which the special type of terrorist criminal organisation has been set up.

Definition of funds

156. In matter of extension of the funds for TF, the law use the terms "money or property". "Property" is used in the Criminal Code of Argentina to mean assets of any kind and with the scope of the meaning of the Article 2(d) of the Palermo Convention and Article 1(1) of the CFT Convention, whether from a lawful or unlawful source. The problems with the CFT criminalisation in Argentina are more in matter of subject (*i.e.*,the deficiencies in the physical elements of the offence) rather than the object (*i.e.*, the property in question).

Ancillary offences for FT

157. Attempt is covered in the criminal code for all offences (see Recommendation 1).

158. Sections 42 to 46 of the Criminal Code adequately cover attempt, participating as an accomplice, organising or directing others to commit an offence, and contributing to the commission of an offence by a group of persons acting with a common purpose all the ancillary of offences are also punishable. Only the ancillary offence of conspiracy is not covered in the Criminal Code, as described above in Recommendation 1.

TF as predicate offence of ML

159. Terrorism financing is a predicate offence of ML as any kind of crimes in Argentina Law. However, the range of offences within this category is not sufficient, given the deficiencies described above.

FT and terrorist acts or terrorist organisations in other countries

160. Section 1 subsection 1 of the Criminal Code indicates that for any crime committed in Argentina, or has any effects in Argentina, the Criminal Code applies. Thus, terrorist financing offences apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

Application of Recommendation 2

161. *Inference from objective factual circumstances in FT:* As indicated above under Recommendation 2, inference of knowledge from objective factual circumstances is possible through sections 123, 398 and 404 of the Criminal Procedure Code.

162. *Criminal liability of legal persons*: Argentina does not have criminal liability for legal persons, and the there is no fundamental principle of domestic law that prevents this (see discussion of Recommendation 1 above). Nor is there other administrative or civil liability similar to the "criminal administrative penalties" regime which could apply to legal persons for money laundering.

163. *Effective, proportionate and dissuasive criminal, civil or administrative sanctions*: The penalty of the FT is confinement or imprisonment of 5 to 15 years, unless a more severe punishment were appropriate pursuant to provisions under sections 45 and 48 (attempt or other forms of participation in the crime) of the Criminal Code shall be imposed. Founders or heads of the association under section 213 *ter* shall be punished with the minimum penalty of 10 years of confinement or imprisonment. In general, the sanctions are proportional if you compare that with some important crimes as narcotics or illicit arms trafficking, murder, robbery, etc. However, it is not possible to assess the effectiveness and dissuasiveness of the sanctions, as during the more than two years of the law there have been no investigations (and hence no prosecution or conviction) for FT.

Statistics and effectiveness

164. Argentina does not maintain reliable statistics on FT investigations and prosecutions. However, during the on-site visit, the evaluation team was told that there were no investigations or prosecutions of FT since the law was passed in July 2007, so therefore sanctions have not yet been applied. The effectiveness of the terrorist financing offences in Argentina is not yet demonstrated.

2.2.2 Recommendations and Comments

165. The regulation of the FT in section 213 *quarter* in relationship to the section 213 *ter* of the Criminal Code is very limited and clearly insufficient. Terrorism and FT should be broadened so that the current limitations on terrorist organisations are removed. Argentina should also specifically criminalise the collection or provision of funds to be used (for any purpose) for a terrorist act or an individual terrorist outside of a terrorist organisation and ensure that all the acts of terrorism mentioned in Article 2(1)(a) and (b) of the CFT Convention are clearly covered.

166. Argentina should also introduce criminal liability of the legal persons in FT. As a starting point, Argentina could implement an effective system of administrative or civil liability. Finally, the Argentinean authorities should more proactively investigate, and if necessary, prosecute FT activities.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	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. • 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. • 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). (See examples in Recommendation 35). • No criminal liability for legal persons, and there is no fundamental principle of domestic law that prohibits this. • The effectiveness of the provisions has not yet been demonstrated.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Recommendation 3

167. When pronouncing a sentence, the criminal judge has the power, under section 23 of the Criminal Code (CC) to confiscate assets. That section establishes that "In all cases sentence be given for crimes foreseen in this Code or in special criminal laws, such sentence shall order the confiscation of things that have served to commit the unlawful act and of the things or gains that are the product or the benefit of the crime, to go to the national State, of the provinces or the municipalities, except for the rights of restitution or identification of the victim and of third parties". It is therefore possible to confiscate property that has been laundered or which constitute the proceeds from; instrumentalities used and intended for use in ML and predicate offence crimes. For FT this is more limited, as it would apply only within the limited extent to which FT is criminalised. Confiscation does not apply for 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. Also, as insider trading and market manipulation are not criminalised, it is not possible to freeze/confiscate in such cases.

168. Confiscation can be applied for property owned by a criminal defendant or a third party.

Provisional measures

169. The last two paragraphs of section 23 of the Criminal Code set forth: "The judge shall adopt, from the beginning of court proceedings, sufficient injunctions to ensure the confiscation of the real property, goodwill, warehouses, transportation, IT, technical and communication elements, and any other asset or equity right that may be presumably subject to the confiscation for being instruments or property related to the crimes under investigation". "The same scope could be shared by the injunctions aimed at ending the commission of the crime or its effects, or to avoid the consolidation of its benefit or to hinder the impunity of its participants. In all cases rights of restitution or indemnification of the victim and third parties shall be protected."

170. There are no further restrictions to this authority provided to the judge on confiscation; the law therefore allows the initial application to freeze or seize property to be made ex-parte or without prior notice to the person affected. The ability to freeze FT-related assets is limited to the extent to which FT is criminalised.

171. In matter of power to identify or trace assets, there are difficulties for law enforcement agencies and FIU because of a lack of databases of real states located across the country and other important assets. In general, there are not adequate sources that allow access to centralised information and analysis to identify and trace assets, as these resources are protected by tax secrecy provisions. See paragraphs 219-220.

172. According to section 23 of the Criminal Code, the rights of restitution or indemnification of the victim and bone fide third parties shall be protected.

173. There is no specific authority for a criminal judge or another party to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. Section 526 of the Criminal Procedure Code indicates that when a sentence declares a public instrument to

be false, the judge shall order it to be changed. However, neither this authority nor the general seizing powers of section 23 of the Criminal Code are sufficient in this regard.

Additional elements

174. Argentina permits the confiscation of assets of unlawful association under section 23 of the Criminal Code, but the law does not authorise civil forfeiture or confiscation without a conviction of any person, nor for confiscation which would require the offender to demonstrate the lawful origin of the property.

Statistics and Effectiveness

175. There are no statistics available regarding the number of cases and the amounts of property frozen, seized, and confiscated relating to (i) ML, (ii) FT, and (iii) criminal proceeds. In general, provisional and confiscation measures are not commonly used (and there has been no confiscation for money laundering, since there has been no conviction), which evidences that the confiscation regime is not being effectively applied.

2.3.2 Recommendations and Comments

176. In general, criminal judges have adequate powers to take provisional measures to freeze and definitive measures to confiscate assets arising from money laundering and predicate offences; however, the Argentinean authorities are not effectively implementing the confiscation regime. The law should be amended to allow for the seizing and confiscation for property of corresponding value as well as the indirect proceeds of crime, including income, profits or other benefits from the proceeds of crime. Also, authorities should be provided increased resources to identify and trace assets, such as the creation of a central database with real estate assets. Finally, judges should be provided clear powers to void illicit acts and contracts.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The confiscation regime is not effectively applied. Neither statistics for ML/FT nor for predicate offences (such as drug trafficking, corruption, etc), were provided. • 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. • Ability to freeze/confiscate property relating to FT is limited due to the limitations of the FT offence. • Insider trading/market manipulations are not criminalised, so it is possible to freeze/confiscate in such cases. • There are practical difficulties in identification and tracing of assets, especially because there are no unified databases under federal system. • No clear powers for judges to void illicit acts and contracts.

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

2.4.1 Description and Analysis

Special Recommendation III

177. Argentina's framework to freeze funds in relation to the obligations SR.III is contained in Decree 253/2000, Decree 1235/2001, Decree 1521/2004, FIU Resolution 125 of 5 May 2009 ("Resolution 125/2009"), section 23 of the Criminal Code, and mutual legal assistance provisions.

178. Argentina, as a member of the United Nations, is bound by the resolutions adopted by the Security Council under Chapter VII of the UN Charter. This Charter, just as with all other international treaties to which Argentina subscribes, has been approved by law of the National Congress (Law 12 838) and, according to the Argentine constitutional system (article 75, para. 22, of the National Constitution), prevails over any domestic legislation.

179. S/RES/1267(1999) was published by Decree 253/2000 in the Official Gazette on 10 October 2001, and S/RES/1373(2001) was published by the Decree 1235/2001 in the Official Gazette on 11 October 2001. The list of persons and institutions affected under S/RES/1267(1999) and S/RES/1390 was published in the Official Gazette on 24 April 2002 by Resolution 263/2002 and others. The last was published in the Official Gazette on 5 April 2005 by Resolution 349/2005 of the Ministry of Foreign Affairs, International Trade and Worship. Decree 1521/2004 indicates that the Security Council Resolutions adopted pursuant to Chapter VII of the UN Charter that set out mandatory measures for members states aimed at imposing sanctions, and the lists that identify persons and entities subject to a UN sanctions regime will be informed through additional Resolutions passed by the Ministry of Foreign Affairs, International Trade and Worship.

180. The Decree also indicates that all the authorities "shall adopt, within their jurisdictions, any necessary measure to comply with the Security Council Resolutions…" However, in law and practice, only a criminal judge can order to freeze as part of a criminal investigation (through section 23 of the Criminal Code—see the previous section of this report), or in the case of a request from the FIU or reporting party under section 14 (4) of Law 25 246. This section allows the FIU "to request from the Attorney General´s Office to ask the competent judge to order to suspend, for the term he decides, any transaction or act previously reported pursuant to subsection b) of section 21" of that law, "or any other act linked to them, before they are carried out, when suspicious activities are investigated and there exists circumstantial evidence that they constitute laundering of proceeds arising from any of the crimes under section 6" of Law 25 246 hereof (the crimes that this section establish as scope of the FIU that there are less than the predicate offence for money laundering, which is discussed in greater detail in section 2.5 of this report) or "financing of terrorism".

Freezing in the context of S/RES/1267(1999)

181. Argentina relies on FIU Resolution 125/2009 to help implement the freezing mechanisms. As a general note, due to a lack of sanction authority for non-compliance and no supervisory powers to monitor for compliance, the FIU Resolutions cannot be considered as regulation or "other enforceable means" as defined by the FATF. (See introduction to section 3 of this report, and in particular subheading "Law, regulation, and other enforceable means" for more information). However, as FIU Resolution 125/2009 is intended to implement the obligations of SR.III, its features will be described below.

182. Resolution 125/2009 indicates that reporting parties must inform the FIU of transaction carried out or service provided, or proposals of transactions or to provide services, of any value, where any of the following are involved:

- natural or legal persons included in the terrorist listings issued by the United Nations Security Council;
- funds, property or other assets, owned or controlled (directly or indirectly) by the persons included.

183. In cases of urgency or distance, reporting parties are entitled to inform the competent judge immediately and to report to FIU subsequently.

184. Though FIU Resolution 125/2009 indicates that reporting parties musts report "without delay"; this therefore applies to the reporting, and not to the freezing of terrorist-related funds. There is no direct freezing obligation placed on the financial institution or other person who may hold terrorist-related funds. The FIU, after considering the information it receives, must go to a judge to obtain a freezing order which would apply to the funds held by a financial institution or elsewhere. It is not necessary to give notice to the designated person involved. Nevertheless, the power to freeze is predicated upon a police inquiry or criminal action being underway, and cannot be executed without obtaining a warrant, issued by a court of law, on the basis of sufficient evidence to establish grounds relating to a crime of terrorist financing, as defined in Argentinean law. The appearance of the name only on the list would likely not constitute sufficient evidence. This means that, in practice, there is no legal or policy distinction between the freezing of terrorist related assets in the context of S/RES/1267(1999) and the freezing of other criminal funds. This is not consistent with Special Recommendation III which requires the assets of persons/entities designated pursuant to S/RES/1267(1999) to be frozen until delisted by the United Nations Security Council, regardless of the outcome of domestic proceedings. This is a serious deficiency in Argentina's AML/CFT framework.

185. The judicial procedure for freezing funds does not constitute "without delay", which according to the AML/CFT Methodology is "ideally, within a matter of hours of a designation by the Al Qaida and Taliban Sanctions Committee." Delay is caused by the reporting of a match or suspected match with the UN list and steps and decisions to be made by the FIU, then subsequently the judge who must consider the case in order issue a freezing order. This system has never been tested in practice.

Freezing in the context of S/RES/1373(2001) and freezing mechanisms of other jurisdictions

186. FIU Resolution 125/2009 also indicates that reporting parties must report to the FIU without delay any transaction carried out or service provided, or proposals to conduct transactions or provide services, of any value, that may constitute acts of financing of terrorism pursuant to section 213 *quáter* of the Criminal Code of the Nation. For this purpose, they shall take into account: the official listings compiled by the European Union, the United States of America, the United Kingdom and Canada (the Resolution indicates that a search system is available on the FIU website); the nature of the transaction or service and the parties involved. While these lists are presented for the financial institution to take into account, Argentina does not adopt lists of other jurisdictions as mandatory instruments. Nor does Argentina have any specific measures to consider designating terrorists in relation to S/RES/1373 if determined by Argentina to be terrorists or terrorist organisations.

187. Argentina does not have specific laws and procedures to freeze terrorist funds or other assets of persons designated by the S/RES/1373(2001). Once the transaction has been reported (either to the FIU or in cases of urgency directly to a competent judge), the same judicial process described above would apply.

188. This judicial procedure to be followed would not allow the freezing of funds "without delay", which in relation to S/RES/1373 is defined in the Methodology as upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism, or a terrorist organisation." The FIU Resolution 125/2009 refers to the terrorist financing provisions in the Criminal Code, which as indicated in section 2.2 of this report are very limited. Therefore the funds would only very narrowly apply to those funds used by a very specific kind of terrorist organisation (*e.g.*, it must also operate in international networks) and not to funds of terrorist organisations more broadly, or to funds provided or collected for used to commit a terrorist act or by an individual terrorist outside of such a defined terrorist organisation.

189. Besides the taking into account of foreign countries' terrorist list when considering reporting an STR, Argentina does not have specific laws and procedures to examine and give effect, if appropriate, to the actions initiated under the freezing mechanisms of other jurisdictions. Instead, it relies on its legal and institutional framework to provide mutual legal assistance in criminal matters. Therefore in practice, a mutual legal assistance request relating to S/RES/1373(2001) is subject to the same procedures as a mutual legal assistance request relating to an ordinary criminal matter. This is regulated under section 68 of Law 24 767 on International Cooperation on Criminal Matters. This section permits legal assistance to implement the freezing measure through the criminal judge but only if arising from a crime punishable under Argentinean law. Thus, the requirement on dual criminality and the limited nature of Argentina's terrorist financing offence further limits this ability to provide assistance. A judge would receive a letter rogatory or a request from Interpol, evaluate it and make the decision of to implement the freezing measure, which would then be communicated to the FIU or directly to the institution linked with the transaction and without notice to the person(s) affected. See section 6.3 – 6.4 of this report for more information on the mutual legal assistance process in Argentina. The lengthy process of examining and giving effect to mutual legal assistance request would not be completed "without delay" for the numerous reasons mentioned above. In summary, Argentina's mutual legal assistance measures are not adequate to examine and give effect to, if appropriate, actions initiated under the freezing mechanisms of other jurisdictions.

Definition of funds

190. In the case of S/RES/1267, FIU Resolution 125/2009 refers to reporting any transaction carried out or service provided, or proposal for a transaction or to provide services, of any value (in the case of S/RES/1267) that include any natural or legal persons included in the UN lists; or funds, property or other assets, owned or controlled (directly or indirectly) by the persons included. In the case of S/RES/1373, the FIU Resolution refers only to any transaction carried out or service provided, or proposal for a transaction or to provide services, of any value. So these do not include funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. For S/RES/1373, this scope does not adequately cover funds of terrorists or terrorist organisations, outside the narrow definition of these in Argentinean law. For designated persons, this does not specifically include funds or other assets owned or controlled wholly or jointly.

Communication and guidance to financial institutions and other potential holders of assets

191. The UN lists have been communicated to the public through different Resolutions of the Ministry of Foreign Affairs, International Trade, and Worship, as well as subsequent Resolutions, and as indicated in FIU Resolution 125/2009, through a link on the FIU website. The website link consolidates designated terrorists lists from the UN, the European Union, Canada, the United Kingdom, and the United States, the Canada, which allows the user to enter a name to search against the database. Although this is a useful

tool, it does not provide any additional guidance on what financial institutions and other institutions need to do in practice.

192. FIU Resolution 125/2009 provides only general guidance to financial institutions by indicating that legally bound reporting parties must report the transactions or services of persons listed in the UN Resolutions or linked with the terrorist financing crimes of under section 213 *quater* of the Criminal Code. There is no guidance relating to transactions of terrorists and terrorist organisations in lists other than the UN lists and individual terrorists or terrorist organisations outside of the limited scope of Argentina's terrorist financing offence. No specific guidance has been provided to any of the financial or DNFBP sectors that are not legally bound reporting parties.

193. The communication of an actual freezing would depend on the judicial process. In the cases that the FIU requests to the prosecutor to obtain a freezing order from a judge, the FIU and the prosecutor should ensure the communication of the measure to the financial institution. However, no such freezing action has yet taken place in Argentina.

De-listing, unfreezing, and obtaining access to frozen funds

194. Argentina has not implemented any procedures for considering de-listing requests, for unfreezing the funds/assets of de-listed persons/entities or for authorising access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses, in accordance with S/RES/1452(2002).

195. For unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism upon verification that they are not a designated person/entity, Argentina could use its general criminal procedures, but this has not yet been tested in practice.

196. In matter of unfreezing, only there is the way of the criminal judge that has the power to unfreeze without and regulated procedure.

197. Section 14 (5) of Law 25 246 provides for an appeal to review of the freezing measure of the judge, in the cases linked with a report to the FIU.

Freezing, Seizing and Confiscation in other circumstances

198. As Argentina's system for freezing funds in relation to terrorist financing use the criminal procedure, these same procedures would apply for freezing, seizing and confiscation of terrorist-related funds or assets in contexts other than those described in SR.III. (See section 2.3 of this report for a fuller description of these measures). In general, same deficiencies apply in these cases, such as property of corresponding value cannot be confiscated and property relating to FT is limited due to the limitations of the FT offence. There are also practical difficulties in identification and tracing of assets, and no clear powers for judges to avoid illicit acts and contracts.

Rights of bona fide third parties

199. Section 23 of the Criminal Code establishes that the restoration or compensation rights of injured or bone fide third parties shall be safeguarded. Section 14 of Law 25 246 also provides the right to appeal freezing measures.

Monitor compliance with the obligations under SR III and sanctions

200. Argentina does not have a system to monitor compliance with the obligations under SR.III. There are general measures in Law 25 246 for sanctions to be applied in the case of not complying with the obligations in the law to report to the FIU. Section 24 provides for a punishment of a fine of one to ten times the total value of the assets or transaction to which the violation is related, provided that the act doesn't constitute a more serious crime. The same punishment shall be applied to the corporation where the offender works. When the actual value of the assets cannot be established, the fine will be from 10 000 – 100 000 pesos (approximately USD 2 700 – 27 000). The reporting provisions relating to the UN lists and other matters of terrorist financing are contained in an FIU Resolution, which does not contain any sanction for non compliance. In any case, the FIU does not have any mechanism to monitor or sanction any party for non-compliance with the law or its Resolutions. The Central Bank does not have any monitoring or sanction authority regarding elements outside of its specific regulatory framework (*i.e.,* BCRA Communications).

Additional elements

201. Argentina has not yet implemented the measures set out in the Best Practices Paper for SR.III.

Statistics

202. Argentina has not yet identified and frozen any funds of suspected terrorists or terrorist organisations.

2.4.2 Recommendations and Comments

203. Argentina relies on reporting measures and ordinary criminal and mutual legal assistance procedures to implement S/RES/1267(1999) and S/RES/1373(2001). This approach undermines Argentina's ability to freeze, in a timely way, terrorist-related assets in the context of the UN Resolutions. Argentina should implement effective laws and procedures to take freezing action pursuant to S/RES/1267(1999) and S/RES/1373(2001). Such measures should include a rapid and effective mechanism for examining and giving effect to the requests of other countries in the context of S/RES/1373.

204. Once such measures are in place, guidance should be issued to all financial and DNFBP sectors on how, in practice, to meet these obligations. Guidance from the FIU should be more useful for example to regulate the actions recommended with the transactions of the terrorism organizations included in other list different than UN lists and individual terrorist or an terrorism organization outside of the limited definition of terrorist organisation in the domestic legal regime. Argentina should ensure that the supervisory authorities, in all financial and DNFBP sectors, routinely monitor for compliance and have the authority to apply appropriate sanctions to both natural and legal persons.

205. Argentina should have specific regulation in the matter of communication of freezing and unfreezing to the financial institutions. Argentina should also implement effective and publicly-known procedures for considering delisting requests, unfreezing the funds/assets of persons inadvertently affected by a freezing mechanism, and authorising access to funds/assets pursuant to S/RES/1452(2002).

206. Finally, Argentina should broaden its definition of terrorist financing and provide criminal judges the authority to freeze property of corresponding value, in order to freeze more comprehensively the funds of terrorist related funds in all circumstances.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• 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. • The effectiveness of Argentina's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) has not been demonstrated. • Laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal procedures which do not ensure that an effective freezing action can to 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. • No measures for monitoring or sanctioning for non-compliance with the obligations of SR.III. • 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. • Lack of adequate guidance to the financial and DNFBP sectors. • 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). • The effectiveness of Argentina's measures for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism cannot be assessed. • No specific provisions for authorising access to funds/assets in accordance with S/RES/1452(2002). • Lack of power to freeze property of corresponding value. • Limited role of the FIU in freezing due to its dealing with the limited definition of terrorist financing.

Authorities

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

2.5.1 Description and Analysis

Recommendation 26

Overview and functions of the FIU

207. The Argentinean FIU was established in 2000 with Law 25 246 "Amendment. Concealment and laundering of proceeds of crime. Financial Information Unit. Duty to report. Legally bound reporting parties. Criminal Administrative Regime. Attorney General's Office. Abrogation of section 25 of Law 23 737". However, the failure to make necessary funds to provide the FIU with appropriate resources caused the FIU to become operational only in November 2002. Section 5 of the Law stipulates that the Financial Information Unit (FIU) "shall enjoy functional independence within the Ministry of Justice, Security and Human Rights of the Nation and shall be ruled by the provisions of this law is hereby set up".

208. According to section 6 (as replaced by Law 26 268 (section 4) of 5 July 2007), the Financial Information Unit shall be responsible for analysing, handling and disclosing information with the purpose of preventing and deterring:

- Laundering of proceeds of crime (section 278, subsection (1) of the Criminal Code) arising from the commission of certain crimes: drug trafficking (Law 23 737); gunrunning (Law 22 415); criminal association and terrorist criminal association (sections 210, 210 bis and 213 ter of the Criminal Code); fraud against the Public Administration (section 174 subsection (5) of the

Criminal Code); Crimes against the Public Administration as set forth by Chapters VI, VII, IX and IX bis, Title XI, Book Two of the Criminal Code (i.e., sections 256 – 264 and 266 – 268 *bis* of the Criminal Code); Crimes related to the prostitution of minors and child pornography as set forth by sections 125, 125 bis, 127 bis, and 128 of the Criminal Code;

- Crimes related to terrorist financing (section 213 *quáter* of the Criminal Code).

209. This is an important deficiency that limits the FIU's capability to receive, analyse, and disseminate information that falls outside of these provisions. Firstly, as indicated in section 2.1 of this report, section 278 of the Criminal Code refers to the conversion and transfer elements of money laundering. The acquisition, concealing and disguising elements are contained in section 277; these are thus not within the FIU's specific capacity. In addition, even though all crimes in the Criminal Code are predicate offences for money laundering in Argentina, predicate offences not included in the above list remain outside the FIU's scope. Of the 20 designated categories of offences, only 6 are included. Excluded are; trafficking in human beings and migrant smuggling, general smuggling, illicit trafficking in stolen and other goods, most types of fraud, counterfeiting currency, counterfeiting and piracy of products, environmental crime, murder and grievous bodily injury, kidnapping, illegal restraint and hostage-taking, robbery or theft, extortion, forgery, and piracy (as well as insider trading and market manipulation, which are not predicate offences for money laundering in Argentina).

210. Section 13 of Law 25 246 stipulates the mandate of FIU. The Financial Information Unit will: receive, request and file the information referred to under section 21 hereof; perform and direct the analysis of acts, transactions that may related to money laundering and terrorist financing, and, if pertinent, shall make the elements gathered available to the Attorney General's Office so as to bring the appropriate actions. The FIU shall also assist the judicial system and the Attorney General's Office (for the appropriate actions) in the criminal prosecution of the crimes punished by the law, and issue its internal regulation.

211. In practice, according to interviews done during the on-site visit, it seems that the obliged reporting parties send to the FIU all unusual transactions irrespective of the predicate offence. And, due to the fact that in the analysis phase, the predicate offence might not be known, the FIU should still report its findings to the Attorney General's Office once the administrative investigation is concluded under the general obligations in the Criminal Procedure Code (section 177 subsection 1) for public officials to inform judicial authorities about any crime that might have come to their knowledge when complying with their duties. Nevertheless, the legality of receiving the information relating to crimes not specified above is unclear, and in any case there is no specific legal basis in the AML law or the FIU's authorities for analysis and dissemination of information outside the scope of these offences.

Guidance and reporting forms

212. The FIU instructs reporting parties through guidelines about the manner and timing on compliance with the obligation to report suspicious transactions. Since 2002, the FIU has issued approximately 20 such resolutions to report parties, which lay down general guidelines, procedures to detect unusual or suspicious transactions, the timelines for reporting, as well types of unusual or suspicious transactions within the sphere of each category of businesses and a sample of suspicious transaction report. The number of Resolutions issued per year is as follows.

Year	Number of Resolutions issued
2002	2
2003	6
2004	2
2008	1

Year	Number of Resolutions issued
2009	10

213. Thus, the FIU issued no Resolutions between 2005 and 2007, and then there was a large increase in 2009. It is important to highlight that until 2009 (seven years since the FIU was created), the FIU had not provided guidelines for the certain reporting parties and only issued Resolutions in 2009 for the following sectors: legal persons who receive donations or contributions by third parties; Registries of Motor Vehicles and Registries of Chattel Mortgages; and capitalisation and savings companies.

214. In the FATF's last mutual evaluation of Argentina (of 30 June 2004) it was reported that "the STRs are currently received in a written format and scanned. The FIU has been trying to set up a project to computerise the process for the past several years. Inputting the data will eventually be decentralised by means of a module to be distributed among entities, allowing for entry and authentication of data, printing of the form stipulated by rules, and creation of a magnetic file which will be saved onto a CD. During a second phase, STRs shall be transmitted via electronic encryption and accompanied by a digital signature. Once received and authenticated, STRs will be added to the database and automatically linked with other STRs in which same persons are indicated." Currently, after more than five years later, only three types of reporting parties may send STRs in an electronic format through the Internet (public notaries, game of chance, and money remitters).

Access to information

215. Due to section 14 subsection 1 of Law 25 246, the FIU has access to the financial, administrative and law enforcement information to undertake its functions. The FIU has direct access to the following databases:

- Office of the Superintendent of Insurance of the Nation (SSN—https://seguro.ssn.gov.ar/antilavado/): life and/or retirement policies (restricted information).
- Social Security National Administration (ANSES—www.anses.gov.ar). Public information: CUIL (Employee Identification Number), identification basic data of persons; negative certification (if a contribution is recorded, ongoing social plan, health insurance plan). It does not provide data on persons within the purview of similar provincial and/or municipal agencies.
- Registry of legal persons (IGJ—www.jus.gov.ar): Public information: company registration number (it is used to ascertain if a company is registered within the Autonomous City of Buenos Aires; the FIU does not have access to other jurisdictions' registries).
- Ministry of Labor, Employment and Social Security (http://cuilpublico.trabajo.gov.ar/busqueda/cuil.asp): Public information: provides information only on persons receiving national benefits and complements the information provided by ANSES "negative certification".
- Suppliers to the State: public information (https://www.argentinacompra.gov.ar/prod/onc/sitio/Paginas/Contenido/FrontEnd/index2.asp): It provides information regarding persons registered as suppliers to the State.

216. The FIU also has access to the following databases, which are restricted from the public:

- Electoral Roll (internal FIU database): roll of individuals entitled to vote. It provides information on the identity document number, date of birth, and the jurisdiction in which an individual casts its vote.

- Games of Chance (internal FIU database): information periodically sent by companies related to these activities (pursuant to FIU Resolution 17/2003.

- Notaries Public (internal FIU database): information periodically sent by notaries public (pursuant to FIU Resolution 10/2004).

- Money Remitters (internal FIU database): information periodically sent by companies related to this activity (pursuant to FIU Resolution 230/2009).

- Cross-border Transportations of Currency and negotiable instruments: Information received from AFIP, based on the statements of cash carried by passengers coming to/leaving the national territory. Federal Administration of Public Revenue—AFIP (Customs). Through AFIP's Resolutions 1172/01 1176/01, the FIU had access to information on any inbound and outbound currency declared. This Resolution was replaced on 24 November 24 2009 by General Resolutions AFIP 2704/09 and 2705/09 which also created a new system called "Inbound and Outbound Value Instruments" to which the FIU now has direct on-line access.

- PEPS (internal FIU database): Database of politically exposed persons, managed by the Information Technology and Security Division of the Unit. Database of Politically Exposed Persons, managed by the Information Technology and Security Division of the Unit. The Unit is searches the following websites regarding PEPs:

  - International: www.loc.gov/rr/international/portals.html, www.cia.gov./cia/publications/chiefs/index.htmi, www.rulers.org;

  - National: www.argentina.gov.ar, www.pjn.gov.ar, www.hcdn.gov.ar, http://www.senado.gov.ar www.mrecic.gov.ar;

  - The Anti-Corruption Office (OA) also sends a file to the FIU containing national officials, but since the OA does not forward the changes on a regular basis, our Unit looks up the abovementioned websites.

- National Department of Migration: Migratory activity, possible residences in the country and data related to falsified immigration documents.

- National Directorate of Recidivism and Criminal Statistics: Information on whether a person has or had criminal records.

- National Registry of Real Property of the City of Buenos Aires.

- National Registry of Motor Vehicles Ownership and Chattel Mortgages.

- NOSIS S.A. (Commercial and Credit Information on Companies and Individuals).

- Central Bank of Argentina. Access to financial system debtors (natural or legal persons) with the Argentinean financial system, rejected checks, checks reported as stolen or lost as well as information about outstanding tax provincial debts.

- AFIP (Tax): Access to basic information on whether or not a natural or legal person has filed his tax declaration.

217. Section 14 of the law authorises the FIU to request for reports, documents, background information and any other element it considers useful for the fulfilment of its duties, from any public agency, whether national, provincial or local, and from natural or artificial persons, whether public or private, all of whom shall have the obligation to deliver them within the term established, under the penalties prescribed by law.

218. To remove the significant difficulties the FIU previously had to deal with in obtaining additional information from the reporting parties, Law 26 087, promulgated on 21 April 2006, has replaced the previous section of the law so that it now stipulates that: "Reporting parties under Section 20 shall not be entitled to invoke banking, securities and professional secrecy nor confidentiality legal or contractual agreements against the Financial Information Unit where a suspicious transaction report is under analysis." This was an important step forward.

219. Nevertheless, the restrictions on access to AFIP's databases, which are covered by "tax secrecy" were not removed. AFIP may only lift tax secrecy (and hence grant information in its databases to the FIU without a court order) where a suspicious transaction report was filed by such agency and in relation to the natural and legal persons directly involved in the transaction reported. While "tax secrecy" protects AFIP's information, it is in fact not access to the tax information, but lack of access to other important commercial information also contained in the AFIP's databases that strongly impacts the FIU's effectiveness.

220. The AFIP database is the only one that collects the all information related to a person (natural or legal), such as: incomes; companies where he/she is a shareholder or director; and real estate properties. For companies, lack of access to this information could result in the FIU's inability to obtain important company information that was not included in the STR. For real estate, it should be noted the 24 jurisdictions in Argentina each maintain their own real property registry. However, AFIP, as a result of information exchange agreements with the Provinces, unifies the 24 separate real estate registries from the City of Buenos Aires (to which the FIU has direct access) and the 23 other Provinces (to which the FIU does not). The information can be searched by name, address, and CUIT. Access could be provided to most or all of this information without violating "tax secrecy."

221. At the time of the on-site visit, the FIU had requested the lifting of tax 100 times for the 5 567 STRs received as of October 2009. No request by the FIU for the lifting of tax secrecy has been denied.

222. Another problem related to secrecy is complicating the FIU's access to additional information, and in particular, related to securities companies. The lifting of the financial secrecy only reaches the reporting parties. In the securities sector, the *Caja de Valores*, which is a compensation and liquidation entity, is not subject to the AML Law 25.246. As the FIU is not included in the list of agencies which can have access to information detained by the *Caja de Valores*, it cannot have direct access to essential information for investigating suspicious operations unless through a specific judicial authorisation. Alternatively, the FIU could obtain that information through the CNV but, according to Law 17 811 the CNV is also subject to secrecy provisions concerning the information gathered in the exercise of its duties. The CNV is a reporting party, and therefore, cannot oppose the securities secrecy to the FIU. However, whilst it seems clear that the CNV would be obliged to provide any information already in its power, there seems to be some problems of interpretation whether disclosing information obtained from another party, such as Caja de Valores or the Exchanges, would be a violation of the secrecy. This process may prevent the FIU from obtaining the necessary information to conduct its functions and would be, in the best case, very time consuming.

223. Secondly, reporting parties only have to lift financial secrecy in the framework of a STR. The FIU cannot have systematic and immediate access to the databases that banks have to keep for operations

over ARS 30 000 (USD 7 900—see Recommendation 19), which could be a valuable source of information for the FIU in the exercise of its duty to analyse the activities that could be linked to money laundering or to the financing of terrorism. The different layers of confidentiality also undermine the implementation of large currency transaction reporting system.

Analysis and dissemination of information

224. The FIU receives STRs through the General Entry Desk of the Executive Secretariat, and once granted a file and SISA (Assignment Monitoring System) numbers, it is dispatched to the Analysis Division to proceed with its handling. In the Analysis Division, the file receives an STR number and is later assigned to an analyst. The intervening analyst evaluates the information requests to be conducted and the databases to be consulted in order to analyse the STR. When the responses to information requests issued are received and the analysis is concluded, a report document is prepared proposing the transmission of the docket to the Attorney General's Office of or its filing. It is then turned over to the Legal Division, which issues its opinion and turns the docket to the Executive Secretariat to be subsequently submitted for consideration of the FIU President. The Advisory Council makes a proposal on the course of action to be taken, but the President has the capacity to agree, partially agree, or completely ignore this recommendation. So in fact, the Advisory Council has a supportive function but without any power of decision.

225. The FIU is authorised to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect money laundering or terrorist financing. In fact, the basic FIU framework is set up to produce AML/CFT case files for consideration and prosecution by the Attorney General's Office. This framework has not yet produced any results, as there has been no conviction for money laundering since the AML law (Law 25 246) was first introduced in 2000.

226. Section 19 of Law 25 246 (as amended by Law 26087 of 2006), indicates: where the Financial Information Unit completes the analysis of a reported transaction and sufficient grounds for confirming the suspicion of laundering of proceeds of crime or terrorist financing pursuant to this law arise, the Attorney General's Office shall be informed of the situation so that it may conduct a criminal prosecution, if appropriate.

227. Furthermore, the FIU can obtain the assistance of PFA (Argentinean Federal Police) when it needs to get more information to analyse an STR. Due to a cooperation agreement between the PFA and the FIU (signed on 9 December 2008 and ratified on 20 February 2009), the PFA shall cooperate with FIU —with the limitations imposed by regulations in force— in the fulfilment of its duties, supplying available information on facts, modus operandi and acts detected related to natural and legal persons being investigated by the FIU, provided that the request were made through a document signed by an authorised official from the FIU, as a request for assistance strictly exercising his legal prerogatives in compliance with this agreement.

228. As of October 2009, the FIU had received 5 567 STRs since 2002, and had forwarded 586 case files to UFILAVDIN (in the Attorney General's Office).

229. In addition, the FIU provided statistics on the overall number of STRs received (see Recommendation 13), as well as figures for the number of cases it has "resolved."

STRs	2002	2003	2004	2005	2006	2007	2008	2009 (to October)	Total
Received	94	338	526	587	740	949	1159	1274	5 567
Resolved	4	71	40	78	34	203	366	286	1 082
Pending	90	267	486	509	706	746	793	988	4 485

230. There has been a large increase in the number of STRs received by the FIU in recent years, and a long delay in their analysis; the low number of completed cases (1 082 out of 5 667 STRs received means just 19% of cases resolved). This delay in analysis is a strong weakness, compromising the outputs and therefore overall effectiveness of the FIU. The reasons for this are to be found probably, but not only, in: low budgetary resources in the past years; lack of adequate human resources overall (49 out of 74 positions filled), and lack of adequate resources for the analysis division (24 people); technical resources that could be improved; inadequate quality of the STRs its receives making analysis more difficult and slow; and the need to request additional information which slows down the process of analysis by lengthening the working hours of each individual case.

231. As at the time of the on-site visit, the FIU had not clarified why the important delay in the STRs analysis nor how it would address this.

Operational independence

232. Section 5 of Law 25 246 provides that: "A Financial Information Unit (FIU) which shall enjoy functional independence within the Ministry of Justice, Security and Human Rights of the Nation, and shall be ruled by the provisions of this law is hereby set up." The governing structure in the administrative is determined, in accordance with Argentinean legal principles, as a form of organization for certain public tasks assigned to an agency of the Administrative State hierarchy. The FIU is subject only to the administrative control of the Executive Branch, through the jurisdiction of the Ministry of Justice, Security and Human Rights, but not regarding the exercising of its specific powers granted by law (section 6 of Law 25 246). These powers cannot be challenged administratively.

233. According to sections 8 and 9 of Law 25 246, the FIU shall be comprised of a President and Vice President (who are appointed by the Executive Branch, at the suggestion of the Ministry of Justice, Security and Human Rights) and a seven-member "Advisory Council." This Council consists of a representative from other sectors: The Central Bank, AFIP, CNV, SEDRONAR, Ministry of Justice, Security and Human Rights, Ministry of Economy and Production, Ministry of Internal Affairs. These members are also appointed by the Executive Branch at the suggestions made by the head of agencies they represent. While the Advisory Council does not make specific decisions for the FIU, one of its key functions is to make a recommendation to the President of the FIU as to whether or not a case file should be submitted to UFILAVDIN (in the Attorney General's Office). Therefore, the FIU has sufficient operational independence.

Confidentiality

234. Information held by the FIU is securely protected and disseminated in accordance with the law. According to Section 22 of Law 25 246 officers and employees at the FIU are bound to secrecy as regards the information received in the exercise of their duties and the relevant intelligence work performed. The officers and employees of the FIU, as well as those persons who by themselves or on behalf of another disclose confidential information outside the FIU, can be punished with six months to three years of imprisonment. In addition, staff members sign confidentiality agreements when they join the Unit. Administrative and professional staff of the FIU have to comply with provisions under the Code of Ethics for Public Officials, approved by Decree 41/99. During the on-site visit, the evaluation team confirmed that the possible to determinate that information received by the FIU in the exercise of its duties remains confidential.

235. Furthermore, the assessment team verified that security procedures to access computer data are in effect: access to the entire area is guarded by PFA policemen; all the areas are protected with video recording cameras, and the records are stored for three months; to access various areas an electronic card

with magnetic stripe is required; for photocopies, a password is required; access to IT system requires user identification and passwords on different levels.

236. During 2007, security experts from AFIP (advanced experts that dominate global technologies in cyber-security), conduct simulated "attacks" against the computer protection systems of the FIU using usual techniques of "hackers" to test the degree of existing security. The study was performed during March 2007 with satisfactory results for the security of the FIU: under the same stringent controls that the AFIP applies to itself, no failures or weaknesses that could affect the privacy, confidentiality, or reliability of information of the FIU were detected.

Public reports and typologies

237. Section 15 of Law 25 246 stipulates that the FIU shall, *inter alia*, submit an annual report of its activities to the National Congress. The FIU has produced such report since 2002, which are available on the website (www.uif.gov.ar). The reports updates on the FIU's activities, such as new Resolutions issues, training, participation in international activities. The reports also provide basic statistics such as the number of STRs received, analysed, and resolved.

238. The FIU also publishes more detailed statistics separately on its website, which in addition to the above data, include information on the number of STRs broken down by type of reporting entity. It also includes the yearly information on the number of case files sent to UFILAVDIN, statistics on reports received that are not STRs ("information from other sources"), collaboration with the judiciary, and information exchange with other FIUs.

239. The statistics do not include other, more important information such as: the quality, accuracy, and completeness of the STRs received; how many times the FIU requested additional elements from reporting parties; how long an STR is stored before analysis is conducted, and how long STR analysis takes. Internally, however, the FIU does keep more detailed statistics on STRs received since 2006 with regard to the completeness and quality of the reports, and the delay in the reporting entity's sending the STR to the FIU. They can be summarised as follows:

Completeness	Quality	Delay
23% complete	11% good quality	22% up to 30 days
71% incomplete	58% regular quality	33% from 31 days up to 180 days
7% not presented	31% poor quality	15% from 181 days up to 360 days

240. Analysing this it can be demonstrated that: 1) there is a long delay in sending STRs by the reporting parties (50%, on average, over 90 days from the date of the suspicious transactions); even when statistics had been maintained, the related information has not been included in the report.

241. The FIU has not published any reports or other documents that include ML/FT typologies or trends in Argentina.

Egmont Group

242. The FIU has been member of the Egmont Group since year 2003. Since that time the FIU participates in the meetings that the Group periodically holds. In addition to attending the Egmont Plenary and Working Group Meetings, the Unit is a member of the Operational Working Group, which has the aim of improving cooperation between member FIUs. The topics of this group focus on the principal activities of an FIU – collection, analysis and disclosure of financial information related to money laundering and terrorist financing. This Group has specialized working sub-groups, according to the new needs that may arise. The FIU is a member of the Terrorist Financing Sub-Group, which provides assistance in the

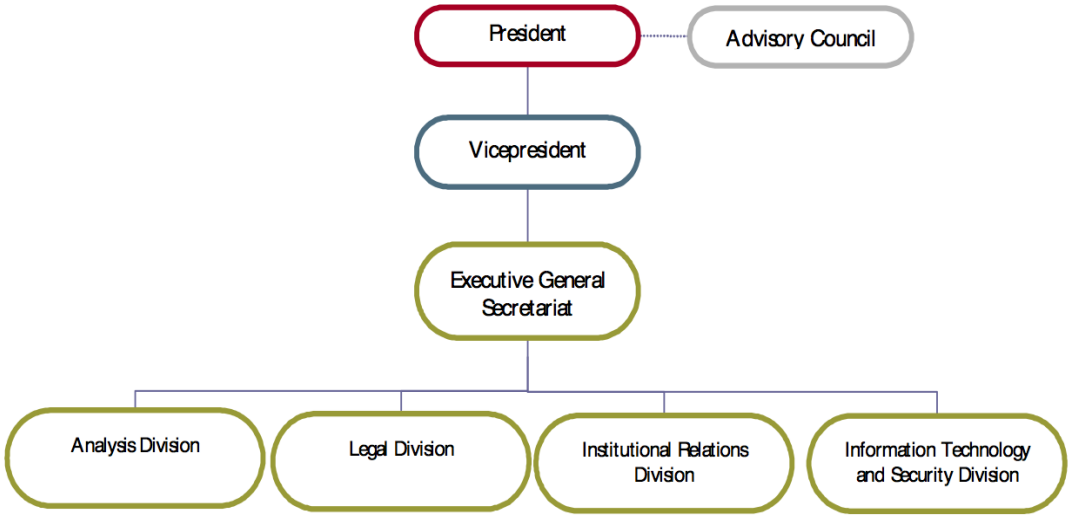
development of papers that lay down guidelines for FIUs in that regard. It also participates with right to speak and vote in the "Head of FIUs" Meeting where structural issues of the Group are defined.

243. The FIU regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units. The FIU has the legal authority to enter into agreements and contracts with international and foreign agencies, and may participate in information sharing networks on the condition that there is a necessary and effective reciprocity. The FIU has adopted the Egmont Group and CICAD-OEA (Inter-American Drug Abuse Control Commission of the Organisation of American States) model of Memorandum of Understanding. Until November 2009 FIU has entered into an MOU with 23 counterparts (see Recommendation 40 for details).

FIU resources

Structure, staffing, and funding

244. The organisational chart for the FIU is as follows:



245. The governing structure of the FIU now consists of a President, a Vice President and a Advisory Council of seven members comprised of: An officer from the Central Bank of the Argentinean Republic; an officer from the Federal Administration of Public Revenue; an officer from the National Securities and Exchange Commission; an expert in matters related to laundering of proceeds of crime from the Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking under the Presidency of the Nation; an officer from the Ministry of Justice, Security, and Human Rights; an officer from the Ministry of Economy and Production; and an officer from the Ministry of Internal Affairs. In all cases, the appointments are for a term of office stipulated by law covering the period beginning on 1 January 2007 and ending on 31 December 2010.

246. As of the time of the on-site visit, there were 74 staff members in the FIU. The functions of the various departments and staffing details are as follows.

247. *Executive General Secretariat* (10 including 1 professional[6]): Coordinates and supervises activities of different areas within the FIU. It oversees issues related to personnel, FIU expense budget, and administratively coordinates acts issued by the Presidency.

248. *Analysis Division* (24, including 20 professionals): Deals with all aspects related to analysis and exchange of information. It also gathers reports, documents, and all other information from different bodies (public, national, provincial or municipal). It arranges, studies, and interprets information collected.

249. *Legal Division* (11, including 9 professionals): Issues legal opinions in all suspicious reports, legally advises the FIU, and represents the State in considerations in capacity of the FIU. It also participates in drafting settlements, contracts and cooperation and assistance agreements that the FIU enters with other national or international agencies.

250. *Institutional Relations Division* (8, including 3 professionals); Some of its functions are the translation to English of all rules and documents drafted by the FIU; the coordination of relationships with other national or international, foreign, provincial or municipal public bodies. It also coordinates press matters.

251. *Information Technology and Security Division* (6, including 5 professionals): Outlines, develops and manages information and security systems of this Unit. Manages the information related to agreements and contracts entered by FIU with national, international and foreign agencies as to integrate IT webs referred to the prevention and control of money laundering and also looks after the outline of protocols, security schemes and information systems related to this Unit's activity.

252. *Secretarial* (6, including 2 professionals)

253. *Presidency*: (4, including 2 professionals)

254. The FIU is also supported by liaison officers appointed by the heads of the Ministry of Justice, Security and Human Rights; Ministry of Foreign Affairs, International Trade and Worship; Ministry of Internal Affairs, Ministry of Economy and Production; the Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking of the Presidency of the Nation, the Central Bank of the Argentinean Republic, the Federal Administration of Public Revenue, the Public Registries of Commerce or similar provincial entities, the National Securities and Exchange Commission, and Superintendence of Insurance of the Nation.

255. The modalities of the recruitment for the FIU staff are as follows:

Contracting Method	Quantity
President – Decree 1918/06	1
Vice president – Decree 316/07	1
Advisory Council – Decrees 126 and 712/07 (attached to this document).	7
Transitory Appointment (renewable every 180 days)	38
Permanent Position	2
Contracted	25
Total	**74**

[6] "Professional" refers to staff with a university degree such as accounting, law, business administration, information technology, political science.

256. At the time of the on-site visit, only two employees were in Permanent Position while the large majority of the employees were under temporary contract, which is a less stable form of employment. This does not seem in line or adequate to: 1) fulfil the permanent mandate of the FIU's structure; 2) ensure more job security and therefore freedom from undue influence or interference; 3) ensure the continued confidentiality requirements of the FIU.

257. The design of an increase in staff confirms that the deficiency of people is real and is understood by the FIU. During the onsite visit, the FIU confirmed that an increase of the Unit staff of 37 new agents is also under consideration, including analysts, lawyers assigned to the Legal Division for the purpose to making legal decisions on STRs and IOF, on administrative actions to entities that have not complied with the obligation to report, and on institution of proceedings as plaintiffs; as well as administrative personnel. The final staff of the Unit would be of 111 people.

258. Below please find the FIU's total funding from 2004. The 2009 funding was originally set at 5 439 071 but received a much needed increase of ARS 10 million through Administrative Decision 56/2009.

Year	Budget (in ARS)
2004	4 655 201 [a]
2005	3 322 286
2006	2 975 521
2007	4 586 519
2008	5 319 477
2009	15 439 071

a. The assigned budget of $ 20,994,555 was reduced by $ 16,494,000 without consulting FIU.

Technical resources

259. Among the obligations imposed by section 15 of Law 25 246, the Financial Information Unit has to set up a Single Information Registry with the databases of the parties bound to provide them and with information received as a result of its activity. In that respect, a database containing suspicious transaction reports (STRs) and reports from other sources (IOF) filed by legally bound reporting parties was created. The name of this database is SAIR (Integral Risk Analysis System).

260. The FIU has also begun implementing a software program that allows parties bound to report suspicious transactions, to enter data directly, to generate a STR and to send it the Unit via the Internet. This system is called SIAIOS (Support Integrated System for Suspicious Transaction Investigation). This project aims to replace the current SAIR system application. The first phase of the project has been completed; the specific needs of the Analysis Division have been defined; a document showing the needs and interactions with other Divisions were generated. Because the software was not yet operational at the time of the on-site visit, the evaluation team has not been able to assess its quality and its impact on the system in terms of effectiveness.

261. The FIU currently has 10 servers. During the on-site visit, the FIU confirmed that for the purposes of obtaining new benefits and streamlining aforesaid system, a technological renovation programme has been launched in order to: ensure operation continuity, increase the threshold of information logic security, increase the information processing speed, enable enhancement of functionality, and reduce risks due to hardware/software failures.

262. To that end, FIU is managing the purchase of following hardware: 18 new servers with different features and functionalities, a protecting system against electric energy shortage for servers, 132 PC with

different features, 12 notebooks, etc. In addition, with respect to software, the purchase of various licenses, training and consulting hours of personnel specialized in IT are under consideration.

Professional standards, confidentiality and training

263. The FIU maintains comprehensive confidentiality requirements. See the "Confidentiality" section above for more information. To integrate the provision of above section 24, as an excluding condition to entering the Unit, all administrative and professional staff shall subscribe commitments on confidentiality. Staff shall also submit a certificate attesting not having criminal records. Such certificate shall be arranged through the National Registry of Recidivism and Criminal Statistics, agency within the sphere of the Ministry of Justice, Security and Human Rights.

264. Professional staff acting in the Unit are qualified professionals holding junior and senior college as well as university degrees such as public accountants, lawyers, graduates in economics, business administration graduates, sworn translator, graduates in information technology, political science, international relations, computer science and graphic and visual arts technician. A significant percentage of staff has masters and postgraduate courses credits. Professionals are also registered in their respective Professional Councils and must comply with the Professional Ethics Code. All professional and administrative personnel of the Unit, shall comply with what is provided in the Ethics Code for Public Officials.

265. The FIU has reported the following numbers of training activities for the last three years:

- 24 activities in 2007 (one of which jointly organized by FIU and GAFISUD).
- 18 activities in 2008.
- 10 activities in 2009.

266. The agents of the legal divisions attended 20 seminars given by the Treasury Procurement of the Nation during 2008 and 2009. In most of the other activities, FIU staff participated as speakers in domestic and international events or in the various activities of the FATF, GAFISUD, and the Egmont Group. Most of the others are one-day meetings.

267. FIU staff has generally not participated in courses on further learning or external training on AML/CFT, and therefore receive inadequate training on these issues. The FIU has instead stressed the importance of internal "on the job" training for personnel who are hired.

Statistics

268. The FIU maintains statistics on STRs received by the FIU, including a breakdown of the type of financial institution, DNFBP, as well as reports from other sources (*Información de Otras Fuentes*—OIF). The FIU also maintains statistics on STRs analysed and disseminated. UFILAVDIN (in the Attorney General's Office) maintains statistics on STRs resulting in investigation and prosecution. There have not yet been any convictions for ML or FT.

2.5.2 Recommendations and Comments

269. As of the time of the on-site visit, the FIU is was not effective. The limitation introduced by Article 6 of Law 25 246 (*i.e.*,a limited list of crimes that the FIU is empowered to examine and process) should be rectified; the FIU's authority should be expanded to be able to receive, analyse, and disseminate suspected money laundering related to the remaining 14 designated categories of offences as well as other

crimes in the Criminal Code, which are predicate offences for money laundering in Argentina. This should also include the authority to receive and process suspected cases of the acquisition, concealment, and disguising proceeds of crime. Although article 14 (10) of Law 25 246 explicitly grants the authority to the FIU to approve directives and instructions, there is still a lack of clarity regarding the legal basis for enforcing the FIU Resolutions (the evaluation team determined that these could not be considered as "other enforceable means—see section 3 of this report). This lack of clarity may reduce the effectiveness of the relevant provisions, since certain basic AML measures are established in the FIU Resolutions, and this should instead be addressed in law.

270. In its Resolutions, the FIU provides guidelines to the reporting parties. Nevertheless, these guidelines should be developed over time and in a more timely way. The FIU should also develop general and specific feedback to reporting parties, which would allow it to evaluate the efficiency of the whole system, especially the added value of the intelligence reports for investigations. This is an important factor in improving the level and quality of STRs. Both general and specific feedback are important tools especially for persuading the reporting entities to commit the necessary resources for developing an effective reporting system.

271. The FIU's ability to analyse STRs properly is weakened by secrecy provision that limit its access to financial information. Existing secrecy and confidentiality provisions for accessing databases relating to the subject held separately by each of the 24 provinces complicates the exchange of information between national agencies for investigations on money laundering and potentially reduce the quality and usefulness of the analysis carried out by the FIU. In order to be able to fully perform proper its work, the FIU must have access to all the information necessary to effectively carry out its functions. Therefore, obstructions and impediments in the exchange of information among national agencies should be removed, in order to provide more timely access to information, and clear instructions should be sent to competent authorities when exchanging information.

272. The FIU should also increase its analytical staff, AML/CFT training for analytical and other employees, and technical resources to receive STRs such as the SIAIOS (Support Integrated System for Suspicious Transaction Investigation) project in order to improve the FIU's analytical capabilities.

273. It should be noted that on 13 January 2010 (within the two-months following the on-site visit), the President, Vice President, and seven other staff, including the entire Advisory Council abruptly resigned. The Law provides a selection procedure that includes the public consultation on the technical, moral and commitment to the democratic system and respect for human rights. Citizens and associations may file objections to the proposed appointment conducted by the Ministry of Justice, Security and Human Rights. Once the procedure is finished, they are designated in the office through a Presidential Decree. The advisory council is appointed by presidential decree on a proposal from each of the organisms that compose it. After the assumption in office, the new authorities maintained the personnel of the FIU and added new personnel.[7]

[7] This change initiated a large number of other initiatives since that time, including: 1) an increase in personnel (37 new positions, mainly at the Analysis and Legal Division, for a total staff complement of 109 persons) and training; 2) a detailed action plan; 3) a number of new initiatives to increase the FIU's supervisory role; 4) the FIU has acted as a plaintiff before the courts; the first sanction in February 2010 (a fine of over ARS 4 000 000 (four million Argentine pesos), issued to a bank for failure to report, although this sanction is still on appeal. Since all these activities took place outside the mutual evaluation time-frame, these changes have not been analysed.

Statistics

274. The FIU needs to improve the quality of statistics prepared by adding important information. Statistics such as the quality, the accuracy and the completeness of the STRs received; how many times the FIU had to ask the reporting parties to send additional elements; how long an STR is filed before it is fully analysed (both for domestic and International STRs); how long an STR analysis takes (both for domestic and International STR); should be maintained in order to concretely understand and the improve the effectiveness of the system.

275. The FIU should also improve significantly its annual reports sent to the National Congress. The lack of important information (such as those that could be provided maintaining important statistics; or those that should be provided to explain the delay in the analysis activity) has a negative impact on the annual reports on its activities that FIU submits. Without this kind of information the annual reports lose importance and do not adequately perform their function.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating

R.26	**PC**	• 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.
		• The FIU does not have adequate access to additional information to assist in its analysis functions. This is partly due to secrecy provisions.
		• The FIU has not published reports on ML/FT trends or typologies in Argentina.
		• *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.

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

2.6.1 Description and Analysis

Recommendation 27

276. In Argentina, the jurisdiction for investigating and prosecuting money laundering is determined by the jurisdiction for the predicate offence. In the event that the type of the underlying offence was one under federal jurisdiction, the criminal proceedings ("*la instrucción*") is governed by the National Code of Criminal Procedure. In the meantime, if the jurisdiction is not federal, the proceedings are conducted according to Code of Criminal Procedure of the jurisdiction where the offence may have been committed.

277. All preliminary investigations as well as prosecutions for offences under federal jurisdiction in Argentina are led by the Attorney General's Office. The Office requests from the court arrest warrants,

searches for and submits evidence, verifies that judgements are legally developed, requests the application of penalties, and participates in all matters specified by law. The Office is also responsible for coordinating actions with the various national, provincial or municipal authorities, requiring their collaboration when it is necessary.

278. An ordinary jurisdiction district attorney ("*fiscal de primera instancia*") conducts the preliminary investigation. Once this is completed, if there is sufficient evidence to proceed, a criminal complaint ("*denuncia penal*") is submitted to a competent judge in criminal and correctional matters to carry out the criminal proceedings ("*la instrucción*"). Or, if there is not sufficient evidence, the cases are filed. The judge is an investigating judge ("*juez de instrucción")* who conducts the criminal proceedings and who according to section 26 of the National Criminal Procedure Code, investigates cases involving criminal offences against public order, except when it has delegated the responsibility to the district attorney's office *("el fiscal").* This is thus a combined trial system, as it involves both of these entities in order to successfully complete the prosecution and trial.

279. ML and TF are offences against the public order in Argentina and the procedure for their trial is the same as that for the remaining offences. As the trial system in Argentina is combined, it is so that it is the judge's duty, as well as the district attorney's, to ensure the proper investigation of ML and TF offences.

280. When the FIU completes the analysis of a reported transaction and sufficient grounds for confirming the suspicion of money laundering (although only in relation to conversion or transfer, and not acquisition or concealment of criminal proceeds), the FIU must inform the Attorney General's Office so that it may conduct a criminal prosecution, if appropriate (section 19, Law 25 246). In November 2006, the Attorney General's Office created a special unit in this regard (Resolution PGN 130), the Fiscal Unit for Combating Money Laundering (*Unidad Fiscal de Lucha Contra el Lavado de Dinero— **UFILAVDIN)***. UFILAVDIN's thus receives the case files that are forwarded by the FIU, conducts a preliminary investigation to determine, as according to the procedure described above, if a public criminal action ("*denuncia pública*") should be filed with a judge and criminal proceedings commenced. During this process, the judge and public prosecutor work closely with the police and domestic security forces (such the Argentinean Federal Police). The FIU is often asked to provide technical expertise in order to obtain a comprehensive analysis of the case. Details on the numbers of cases received by UFILAVDIN as well as the numbers of cases submitted for criminal proceedings and their outcomes are described in section 2.1 of this report.

281. The various police forces do not independently investigate money laundering or terrorist financing, as preliminary investigations must be led and coordinated by the Attorney General's office, and criminal proceedings are led and coordinated by the Attorney General's office and the investigating judge. However, as indicated above, the police forces do assist throughout these two processes.

282. At the time of the on-site visits, no criminal proceedings had yet been initiated in any of the 23 jurisdictions outside of the Federal jurisdiction. Nor had UFILAVDIN or any Provincial authority initiated any preliminary investigation for the specific terrorist financing provisions. It should be noticed that there were two large terrorist attacks in Argentina, in 1992 and 1994. However, these events occurred long before the current terrorist financing offence (2006), and the FT provisions cannot be applied to these cases.

283. There are no specific legislative or other measures in place that permit the competent authorities to postpone or waive the arrest of suspected persons, nor the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering, in the money laundering investigations. During the on-site visit, the authorities (UFILAVDIN, judges, and police agencies), confirmed that in the absence of a specific piece of legislation, it was not possible to postpone or wave

arrest and/or the seizure of money for the purposes of evidence gathering, and that this has not been applied to date.

284. It should be noted that for drug trafficking offences, Law 23 737, the trial judge has specific authority to defer the detainment of persons or the seizure of narcotics drugs if he considers that the immediate taking of such measures may jeopardise the outcome of the investigation (section 33). The judge may also suspend the interception on Argentinean territory of illicit shipments of narcotics and permit its exit from the country if he has assurances that it will be monitored by the judicial authorities of the country of destination.

Special investigative techniques and specialised groups

285. Under the Code of Criminal Procedure, orders for wiretaps can be obtained from judges for use in ML/FT investigations and prosecutions (section 236); however, there are no other special investigative techniques available. There are a number of such techniques that can be applied for drug-related offences (according to the Narcotics Law 23 737), such as: use of undercover agents (section 31 *bis*), offences by undercover agents (section 31 *ter*), and monitored delivery (section 33). These techniques are used in drug trafficking investigations.

286. Argentina has the following permanent units specially constituted with the task in investigating the proceeds of crime (financial investigators):

- The Argentinean Federal Police (*Policía Federal de Argentina—PFA*) has 13 Superintendencies, one of which is the Superintendence of federal investigations, that includes, a personal assets investigation division.

- Argentinean National Gendarmerie (*Gendarmerie Nacional Argentina—GNA*) - Special Bureau For Economic Crimes. It is a Special Tasks Bureau point-blanked to the investigation, analysis, technical assistance and juridical procedure that acts at the request of National Justice Courts and its respective crimes prosecutor's authorities, -as general attorneys-, developing its role in the scope of Argentinean National Gendarmerie. Special Bureau For Economic Crimes intervenes in crimes related to money laundering, international trade frauds with affections of exchequer, tax evasion, and any crime against Public Administration.

- Argentinean Coast Guard (*Prefectura Naval de Argentina—PNA*) - Economic Crime Department. Its structure is quite similar to the PFA structure. Inside the General Security Division, there is the Criminal Intelligence Division, which includes the following Departments: Drugs, Economic Crime, and Antiterrorism. The Economic Crime Department has a specific area that fight with ML and FT investigation.

- AFIP - The General Customs Bureau has a Department called Drug Trafficking which, among other duties, makes inquiries about the economic-financial development, flow of funds, and import—export transactions that might qualify as money or asset laundering from drug trafficking.

287. No information has been provided regarding co-operative investigations with appropriate competent authorities in other countries, including the use of special investigative techniques, provided that adequate safeguards are in place.

288. ML and FT methods, techniques and trends are not regularly reviewed by law enforcement authorities, or other competent authorities on a regular, interagency basis. The absence of a formal system of feedback has a negative impact on the effectiveness of Argentina's AML/CFT investigative framework.

Recommendation 28

289. Although all the crimes in Argentina's Criminal Code apply throughout the country, the jurisdiction (*i.e.,*Federal or Provincial) for investigating and prosecuting crimes will depend on the specific offence. All terrorism and terrorist financing offences, as well as all offences committed involving the City of Buenos Aires fall under federal jurisdiction. The jurisdiction of predicate offences for money laundering depends on the seriousness of the offence—serious crimes ("*delitos graves*") fall under Federal jurisdiction whereas common crimes ("*delitos communes*") would be pursued by the Provincial authorities. The jurisdiction for investigating and prosecuting money laundering will be the same as that of the predicate (or suspected predicate) offence.

290. To carry out the investigation and prosecution, the federal and 23 Provincial authorities each use their own Criminal Procedure Code, which contain the relevant powers which are sufficient to compel production of, search persons and premises for, and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. Such powers are exercised through lawful process and are available for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions *e.g.,* actions to freeze and confiscate the proceeds of crime.

291. The federal authorities apply the National Criminal Procedure Code, which contain adequate powers in this regard. The evaluation team also reviewed the Criminal Procedure Codes of Mendoza, Cordoba and Santa Cruz, which all contain similar articles granting judges the opportunity to exercise the following powers that derive from the following articles of the Criminal Procedure National Code:

Compel production of information

292. The authorities responsible for criminal investigation can compel that any documentation or operating records or any material effect linked with the crime be exhibited them. It also provides that for the greater efficiency of these orders can be sorted all the technical and scientific advice.

293. **Section 230**. - The judge shall order an individual's search, by means of a well founded decree, provided there are sufficient grounds to assume that he may conceal offence-related things in his body. Before proceeding to the action he may be invited to **disclose the object** at issue.

294. **Section 232.** - Instead of ordering the seizure the judge may **order**, when appropriate, the appearance of the individuals or the **submission of the documents r**eferred to in the preceding section, but this order shall not be intended to individuals who may or should refrain from declaring as witnesses due to relationship, professional secrecy or reasons of State.

295. It should be noted that under section 244 of the National Criminal Procedure Code, lawyers and notaries must not provide information relating to confidential acts that came to their knowledge through their office or profession. This wide exemption extends to all information gained by these professionals when exercising their functions. This raises serious concerns that authorities cannot obtain information from lawyers and notaries when they are not acting in defence of a client.

296. Section 26 of Law 24 946 (Organic Law of the Attorney General's Office) empowers the members of any level of the Attorney General's Office, to request reports from national, provincial, community entities, private bodies and individuals, when appropriate, as well as to obtain assistance from police authorities to carry out procedures and summon persons to its offices for the sole purpose of give testimony.

Search and seizure

297. The authorities responsible for criminal investigation may inspect, register people, documents, places and things, signs and any other material fact, ordering them not to be absent for the act of people who are there. Be available for these acts of law enforcement. Authorities are empowered to perform the inspection of the accused, making sure that your modesty is respected; can pave dwellings and other premises, personal requisitions can be made, upon invitation to exhibit the object is presumed. The aforementioned authorities are empowered to obtain and seize things, goods, documents or any other object that is conducive for criminal investigation.

298. Section 216 indicates that the investigative judge shall verify, by inspecting individuals, places and things, the traces and other material effects that the event might have left; he shall describe them in detail and, when possible, he shall collect or retain useful evidence. Section 224 indicates that if there were any reason to assume that at a certain location there are things related to the offence being investigated, the judge shall order that the premises be searched with a well founded order. Section 229 indicates that, when to fulfilling his duties any competent authority should need to carry out searches, he shall request a search warrant to the judge. Section 230 indicates that the judge shall order an individual's search, by means of a well founded decree, provided there are sufficient grounds to assume that he may conceal offence-related things in his body. Section 230 *bis* indicates that police and security force agents, without a court order, may search individuals and inspect the personal effects that may carry with them, as well as the inside of vehicles, aircraft and vessels of any kind for the purpose of finding whether there are things probably resulting from or constituting an offence or elements that could be used to commit an offence in accordance with the specific circumstances under which they were found. Finally, section 234 indicates that, provided he deems it advisable to prove the offence, the judge shall instruct, by means of a well-founded order, the interception and seizure of postal or telegraphic correspondence or of any other item forwarded by the suspect or addressed thereto, even under a false name.

299. With regard to seizure, section 231 indicates that the judge shall order the seizure of offence-related things, those subject to confiscation or those that may be produced as evidence. However, this action shall be taken and fulfilled by police or security force agents, when these things are found as a result of a search or a personal search or inspection under the provisions of section 230 *bis*. Section 234 indicates that, provided he deems it advisable to prove the offence, the judge shall instruct, by means of a well-founded order, the interception and seizure of postal or telegraphic correspondence or of any other item forwarded by the suspect or addressed thereto. If, after examining them, it is determined that they were related to the proceedings, he shall order their seizure.

300. Unfortunately, even if the adequate provisional measures on criminal procedures are contained in the Argentinean legislation, they are never applied in the initial phase of the investigation; thus preventing the recovery of staff, evidence, and assets from a crime.

301. Law enforcement authorities also face practical difficulties in identifying and tracing assets effectiveness of these powers are also affected by the practical difficulties due to a lack of centralised information on real estate assets and other information (See Recommendation 3).

Witness statements

302. There are a number of articles in the Criminal Procedure Code dealing with witness statements. Section 232 authorises a judge to order the appearance of individuals; section 239 indicates that the judge shall question any person who is aware of the investigated events, when his statement may be useful to find out the truth. Every person shall be obliged when summoned by the court to tell the truth of what he could be aware of and were asked about, save the exceptions established by law. If a witness allegedly incur in

perjury, the appropriate copies shall be ordered and forwarded to the competent judge, irrespective of ordering his arrest (section 252).

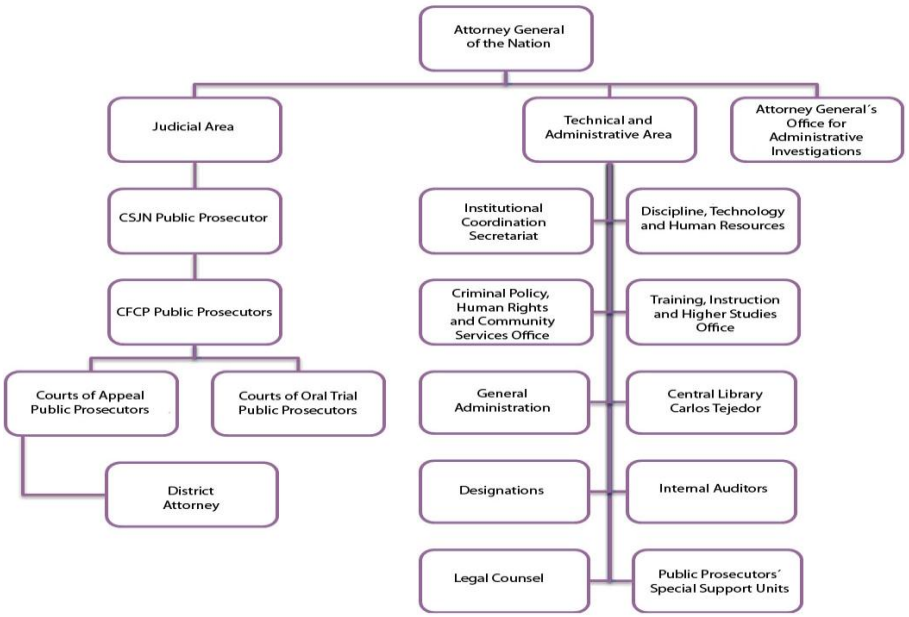
Structure, funding, staffing and resources of law enforcement and prosecution authorities

Attorney General's office

303. The highest authority of the Attorney General's Office (*Ministerio Público Fiscal de la Nación)* is the Attorney General of the Nation (*Procurador General de la Nación*), who performs two duties. On the one hand, he is the Public Prosecutor before the Supreme Court of Justice of the Nation and gives his opinion on the lawsuits that reach this instance. On the other hand, he is the head of public prosecutors and as such, he coordinates their actions, establishing, among other powers, the guidelines for criminal prosecution by the *Ministerio Público*.

304. To perform his duties as head of the *Ministerio Público Fiscal* and also to support to public prosecutors in the performance of their specific tasks, the Attorney General has a technical-administrative structure. The powers and authority of the Attorney General in the matter of governance and administration of the Attorney General's Office are within this structure. To assist him in this task there are four Assistant District Attorney Offices before the Supreme Court, specialised according to subject matter (two specialised in criminal law, one in private law and one in public law).

305. The following organization chart shows the present structure.



UFILAVDIN

306. The Unit for Money Laundering and Terrorist Financing Investigations (UFILAVDIN) is staffed with a total of eight persons. The Unit is led by a General Public Prosecutor acting before the National Court of Cassation in Criminal Matters and also includes: one contract equal to the Director General (lawyer); one contract equal to Secretary of First Instance (lawyer); three contracts equals to Chief Administrative Officer (Chief Clerks), (Students); one Secretary of the Attorney General's Office, a lawyer

who is in charge of the international cooperation; and one contract equal to the ordinance, providing cleaning services. As this is the key body within the Attorney General's office focusing in ML, human resources for this unit should be increased.

307. The above mentioned seven persons are hired under a temporary contract and not in permanent positions, which is a more instable situation and is not adequate to fulfil the: 1) permanent mandate of the structure; 2) the needs to ensure freedom from undue influence or interference; and 3) the confidentiality requirement attached to such mandate. The normal complement of a Prosecutor of First Instance in other areas of the Attorney General's Office is 12 to 14 staff, ranging from Prosecutor or Director, to senior officers and auxiliaries, with about 90% of those staff members in permanent positions, which ensures more stability. This should be rectified.

308. UFILAVDIN rents premises that includes a room for 25 persons and a meeting room for 10 persons. The employees of UFILAVDIN share these premises. Each has a computer (monitor, PC, printer, scanner). UFILAVDIN has three telephone lines accessible to all employees (for domestic and trunk calls). It also has a monthly allowance to cover it domestic expenses. The property's expenses (electric power, fresh water, gas supply, common maintenance fees) are paid directly by the *Procuración General de la Nación*. Budget figures for 2009 were not provided; however, UFILAVDIN's budget for 2010 is as follows:

ITEM	MONTH		YEAR	
FACILITIES	ARS	6 403,44	ARS	76 846,56
HUMAN RESOURCES	ARS	140 552,44	ARS	1 686 629,28
OPERATIVITY	ARS	1 938,47	ARS	23 261,65
TOTAL	ARS	148 894,79	ARS	1 786 737,49

309. *Integrity and confidentiality standards:* The Organic Law of Public Prosecutions (Law 24 946) provides integrity requirements for the Attorney General in charge of the UFILAVDIN. Staff members shall not practice law or conduct trials on behalf of third parties and are subject to the same incompatibilities established by law for judges of the Nation. Prosecutors may not be relatives within the fourth degree of consanguinity or second degree of affinity of the judges before whom they present cases. Prosecutors may be removed from office by a Court of Impeachment, on the grounds of poor performance, gross negligence or wilful commission of crime of any kind.

310. PGN Resolution 2/2006, "Basic Conditions of Officials and Employees of the Attorney General's Office" provides, among that employees must: maintain absolute secrecy about all matters that are informed by reason or in the exercise of their functions and jobs; declare his assets under oath and subsequent amendments, subject to psycho-physical examination and other requirements relating to occupational health and safety; recuse themselves from intervening in all matters in which their actions can lead to biased interpretations of moral violence. It is also prohibited to: access, manage, or give advice in cases so actual or potential legal proceedings; accept gifts or benefits of any kind to or on the occasion of the performance of their jobs and functions; play games for money or frequenting places for them, or hold other jobs. Public Prosecutors may not have been convicted or criminally prosecuted for a crime, whether intentional or negligent, relating to the exercise of his functions. Public prosecutors may not have been separated from public employment through proven poor performance.

311. *Training:* Within the scope of the Attorney General's Office, UFILAVDIN has prompted the following measures and in their context provided relevant training to staff:

- PGN-resolution 45/09 (Adoption of workshop on "Money Laundering and Terrorist Financing," August / November 2009).
- Resolution PGN 60/07 (Adoption of the Seminar for Judges and Officers of the Criminal Justice on "Financial Aspects of Research Money Laundering and Terrorist Financing", June 2007).
- PGN-Resolution 68/08 (Approval of the Days of Training in 'Rules of Money Laundering Law', Mar del Plata, prov. Buenos Aires, June 2008).
- PGN-Resolution 63/2007 (Adoption of Intensive School of Education & Training, pt. 5: "Money Laundering and Terrorist Financing," June / November 2007).
- PGN-Resolution 168/06 ("Measures of research related to the economic aspect of criminal activity").
- PGN-resolution 34/09 ("Course Approval terrorist racketeering")
- PGN-resolution 53/09 Training Program Approval for Asset Tracking and Recovery.

Argentinean Federal Police (Policía Federal Argentina—PFA)

312. The PFA has 13 Superintendencies, one of which is the Superintendence of Federal Investigations, which includes a Personal Assets Investigations Division (*División de Investigaciones Patrimoniales*) whose specific task is investigating the offences of concealment and laundering of criminal assets, and to carry out investigations of personal assets. There is also an Anti-Terrorist Investigation Unit, which reports to the Superintendence of the Interior *(Superintendencia de Interior)*, which carries out investigations related to terrorist financing.

313. The staff of the Personal Assets Investigations Division (a total of 24 people) is structured as follows: One Division Chief whose rank is Commissioner (*Comisario*) and two Assistant Commissioners (*Subcomisarios*), four Task Groups each manned by two Junior Officers (*Oficiales Subalternos*) and two non-commissioned officers (*Suboficiales*) for each group, specialized in the subject matter. They are supported by a professional staff consisting of five accountants and two lawyers, two brigades each consisting of a Junior Officer and two non-commissioned officers, to assist the task groups; one Administrative Office with one Junior Officer and two Non-Commissioned Officers and auxiliary staff and junior staff, five in total, to perform specific tasks. The total number of staff seems to be very low and should be increased.[8]

314. The PFA has a yearly budget that is distributed among all divisions as needed, and technical resources are given in relation to the yearly plan of needs.

315. Details about the budget were not provided and the response has been clarified that "the confidentiality provisions fall under the framework of secrecy established in the National Code of Criminal Procedure of the Republic of Argentina". The evaluation team therefore has no evidence to make an assessment regarding the adequacy of funds available to the PFA.

[8] The PFA reported that this Division had increased its staff to 30 people as of May 2010.

316. *Integrity and confidentiality standards:* Argentina informed that the PFA officers must respect confidentiality policies or face criminal sanctions, although no other details were provided.

317. *Training:* All PFA officers have general training upon commencing their assignments. The Personal Assets Investigation Division provides two courses annually for staff officers and other officers and agents of the PFA, as well as other Security Forces, such as the National Guard, Coast Guard Argentina, Airport Security Police and other provincial police. In addition, this staff of this Division attends various seminars and conferences both at home and abroad, conducted by CICAD, the OAS, and GAFISUD.

Argentinean National Gendarmerie (Gendarmería Nacional Argentina--GNA))

318. The GNA is a federal security force of a military nature under the Ministry of Justice, Security, and Human Rights. Specifically, it and has responsibilities in the area of homeland security and national defence (border control and surveillance and performing other functions arising from the National Defence Act) and national foreign policy (engage in peacekeeping missions and United Nations Security and safeguard people and property of the National State abroad). It maintains bilateral relations and multilateral police cooperation with a number of foreign police and security forces.

319. GNA's Special Economic Crimes Unit (*Unidad Especial de Delitos Económicos*) is a special tasks bureau for the investigation, analysis, technical assistance and juridical procedure that acts at the request of National Justice Courts and the respective prosecution authorities. The Special Unit intervenes in crimes related to money laundering, foreign trade, tax evasion, and any crime against the Public Administration. Its major activities include: 1) Investigating and analysing financial and economic crimes, and their typologies; 2) analysing active cases, and leading investigations in accordance with judicial authority's instructions; 3) providing professional technical assistance to federal Courts, as any other that needs it, that on the above crimes mentioned; 4) providing as request to the whole manpower of GNA the basic knowledge of money laundering typologies, methods of investigation, as well any other money-tracking investigative methods.

320. *Human resources:* The GNA has about 27 000 troops and 70 000 employees overall. The Special Economic Crimes Unit has 29 people, which are professionals—most have post-graduate degrees in the field of judicial-legal assistance, Bachelors in International Trade and Commerce, Sciences of Public Administration, and Public Accountants. There are seven lawyers and seven accountants. It also includes criminal intelligence personnel and computer systems specialists.

321. *Budget:* The General Budget of the GNA for the entire 2010 financial year is $3,145,214,415.00. This amount corresponds to the appropriations for: Activities Center, Operational Capability, Education & Training, Health Care, passivity, humanitarian and peacekeeping missions and Border Crossings Care. The budget assigned per year for the Special Economic Crimes Unit is estimated on ARS 130 000 (approximately USD 34 000). This figure is very low and should be increased.

322. Both the budget as the number of people for the Special Economic Crimes Unit could be increased to allow for better performance in its AML/CFT functions.

323. *Integrity and confidentiality standards:* There are a number of standardised requirements regarding the selection of staff, depending on the position or office to fulfil. Admission to the GNA is subject to prior accreditation of the following minimum requirements: being an Argentinean citizen; agreeing to a terms of conduct; mental and physical fitness for the required service; a high school diploma;

possessing a degree or technical skill in some art, trade or profession, or specialty required under the vacancy to be filled.

324. As the Internal Service Regulations, the documents that are processed have the security classification assigned to documents that are processed in the Force, which meets the need to preserve, to varying degrees, the contents of those documents.

325. *Training*: Depending on the area of work, GNA staff are taught both general and specific training in the following GNA schools: Department of Police; School of Gendarmerie; Officers School; Specialized Training Institute; Training Center Missions Abroad; and Training Centres (mountain and jungle). Similarly, personnel involved in activities or specific areas (Support Centers, research, etc.) may receive special training courses and / or training programs outside the institution, or receive training to update knowledge specific to their specialty. Staff of the Special Economic Crimes Unit is trained regarding the crimes to be pursued by the unit.

Argentinean Coast Guard (Prefectura Naval Argentina-PNA) - Economic Crime Department.

326. The PNA acts according to Law 18 398 and has jurisdiction around the shorelines of rivers and lakes, and along the coast. This structure is quite similar to the PFA structure. Inside the General Security Division, there is the Criminal Intelligence Division, that includes the following Departments: Drugs, Economic Crime, and Antiterrorism. The Economic Crime department has a specific area that deals with ML and FT investigation.

327. Staff of the Economic Crime department includes people with university degrees in many disciplines. The department has teams of criminal lawyers and certified public accountants. In the last four years, PFA conducted five investigations involving money laundering; one prosecution is now in the court awaiting the oral phase of the trial. The staff at the Department for Economic Crime Investigation receives training by regular courses to keep continuously updated. With regard to confidentiality, most of cases have the character of classified information and must be treated as such. Further details about the budget, staff, integrity and confidentiality standards, and training were not provided.

The Airport Security Police (Policía de Seguridad Aeroportuaria-PSA)

328. The PSA is responsible for airport security of the Airport National System. Its missions are: 1) preventive airport security, *i.e.*,planning, implementing, assessing and/or coordinating the activities and operations at a strategic and tactical level necessary to prevent, avert and investigate crimes and infringements at airports and 2) complex airport security, *i.e.*,planning, implementing, assessing and/or coordinating the activities and operations at a strategic and tactical level necessary to control and avert complex crimes committed by criminal organizations involved in drug trafficking, terrorism, smuggling (including currency smuggling), gunrunning, human trafficking and ancillary offenses. PSA's jurisdiction extends to any area, zone, part and premises at airports and to any natural or legal, the services provided within an airport or with any direct or indirect relation with airport, aeronautical or non aeronautical activities carried out in an airport (Law 26102, Title I, Section 5). This jurisdiction can be extended to the national territory when the facts under investigation may jeopardise airport security.

329. PSA is the smallest and newest of the police forces (five years old) and have 3 000 staff throughout the country. This includes 170 Officers that have graduated from the Airport Security Superior Institute (ISSA) since it become operative in 2007. Terrorism, drug trafficking and fight against money laundering are part of the subjects and seminars for the Admission Course. PSA does not have a specific money laundering investigations unit but does have a specific anti-terrorism unit. The PSA's initial budget amounted to total of over ARS 364 630 871.

330. Admission to the Airport Security General Ranking (*Escalafón General de Seguridad Aeroportuaria)* is conditional upon graduation from the Officers´ Course of Airport Security Police run by the PSA's Institute. The requirements for the basic admission to the PSA, established by Decree 836/2008, include: high school diploma or its equivalent and accreditation, through individual assessment, of a broad range of psycho-physical aptitude indicators.

331. The number of cases of currency smuggling that PSA pursued during 2007-2009 is as follows.

Year	2007	2008	2009	Total
Number of cases	1	9	25	35

332. The amounts of money seized, disaggregated by type of currency, during 2007-2009 is as follows:

Year	USD	EUR	ARS
2007	40 000	(-)	(-)
2008	1 393 545	685 000	(-)
2009	905 760	194 385	60 823
Total	**2 339 305**	**879 385**	**60 823**

Anti-Corruption Office

333. The Anti-Corruption Office (*Oficina Anticorrupción*—OA) was created in 1999 and restructured in 2005 and in 2007. It is an independent Unit under the Ministry of Justice, Security and Human Rights and has the rank of a State Secretary. The Anti-Corruption Office has a criminal investigation power similar to General Attorney Office. Its Investigations Division can start investigating any public official starting from a report made by another Authority or directly when they become aware; however, the OA does not conduct field investigations. The OA sends to the judicial authority a report with the evidence specifically for the corruption crimes as defined in the Inter-American Convention against Corruption. The OA can request for cooperation from one of the security forces in this process. Most corruption cases in Argentina involve illicit enrichment, and the AO has detected cases of money laundering which were and are brought to the attention of the competent courts in this area, highlighting aspects related to its own jurisdiction, that is to say illicit enrichment incompatible negotiations with public office, bribery, etc.

334. The OA has 35 officers in Investigation Area and 92 officers in total, generally lawyers who are highly trained and specialised in investigation of corruption crimes. Budget figures for 2009 were not provided; however, the OA's budget for 2010 is approximately ARS 4 900 000.

Statistics and Effectiveness

335. There is very limited data on investigations involving money laundering conducted by the various law enforcement authorities. At the time of the on-site visit, UFILAVDIN was conducting 79 investigations and 2 prosecutions based on referrals from the FIU (both in the oral phase). One was under section 25 of Law 23 737 (Narcotics Drugs Law) and the other was under section 278 of the Criminal Code (conversion/transfer components of money laundering). There were also two other prosecutions for ML which did not originate with FIU referrals. There had also been two convictions under provisions of the Narcotics Drugs Law, in the years 1999 and 2003.

336. Since the CFT Law 26 268 was enacted and sections 213 *ter* and 213 *quater* were introduced in the Criminal Code in 2007, there have been no investigations, prosecutions and convictions in relation to terrorism financing in Argentina. It is a concern that there are at least no investigations, given the FT risks that exist in Argentina.

337. The low number of money laundering investigations, prosecutions, and lack of a conviction in Argentina is a serious concern. Argentina obtained two convictions for drug-related money laundering; however, these were obtained before the general money laundering provisions in the Criminal Code went into effect in the year 2000, and prior to the last mutual evaluation of Argentina in 2004 (which also pointed out this deficiency). The explanation delivered at that time related among other things to the lack of expertise and resources for financial crime investigations, as well as the lack of criminal liability for money laundering by the person who committed the predicate offence (i.e., "self-laundering"). The creation of the FIU should have been able to help solve some of the concerns about the necessary bodies with expertise in money laundering analysis. Nevertheless, as explained before, this, to date, has not yet occurred and a number of substantial difficulties remain unsolved in relation to money laundering prosecutions and the establishment of the necessary evidentiary basis for conviction for money laundering.

338. Neither special techniques of investigation nor appropriate mechanisms or task forces exist to ensure adequate co-operation and information sharing between the different government agencies that may be involved in investigations of money laundering, financing of terrorism and predicate offences. Even if, since the last evaluation, a specialised units in the field of money laundering (UFILAVDIN) in the Attorney's General Office, Argentina should consider adopting more effective mechanisms to reduce the compartmentalisation of information and facilitate the exchange of information.

339. In the course of the investigations carried out on the predicate offence, insufficient attention is paid to developing, in parallel, investigation of the criminal proceeds. Police do not have independent powers to begin investigations without a special court order, and judges cannot initiate independent investigations without initiating criminal proceedings.

340. The problem is understood by competent authorities, and many are working to bring about structural and systemic to policies to combat money laundering, and in particular, to increase improve investigation of assets in addition to the predicate offences. For example, the Chief Prosecutor and Coordinator of UFILAVDIN on 6 March 2009, wrote a letter to the Attorney General of the Nation, with the aim of suggesting guidelines to be followed in policies to combat money laundering, including measures to coordinate both through the National Executive (which would instruct the police and security forces) and the Attorney General's Office (which educates prosecutors in investigations) to increase efforts to investigate and seize assets in parallel during the investigation of predicate offences.

341. Considering it important to raise the level of efficiency in investigating economic crime, the Attorney's General Office issued Resolution No. 134/09 PGN on 13 October 2009, which requires that the prosecutor pursuing cases of corruption, drug trafficking, money laundering, human trafficking, tax evasion, smuggling, and crimes related to economic criminality to simultaneously pursue asset investigations for each of the persons involved. Due to the recency of Resolution No. 134/09 PGN, however, its effectiveness on the system cannot be assessed. But it could have a positive impact for law enforcement to combat money laundering going forward.

2.6.2 Recommendations and Comments

342. Money laundering offences are not effectively investigated and prosecuted; the lack of a conviction for ML since the year 2000 is a serious concern, and evidences the lack of effectiveness in the investigation and prosecution phases. Argentinean authorities should more proactively pursue ML offences and the proceeds of crime in addition to predicate offences. As a first approach to generating a culture of comprehensive asset investigation, Argentina should intensify training at all levels of the criminal justice system and police forces in order to make money laundering and asset tracing a regular part of criminal cases. Basic courses on money laundering, terrorist financing and confiscation should be incorporated into the basic curriculum of all prosecutors and federal police agents, not just those

specialised in money laundering. In addition, the knowledge on trends, typologies and modus operandi should be communicated to all parties involved in AML efforts. In addition, comprehensive CFT programmes should be developed. Argentina should also consider providing law enforcement authorities with a broader range of special investigative techniques. Finally, Argentina should remove the professional secrecy provisions that prevent lawyers from providing information to appropriate law enforcement authorities upon appropriate authority.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• ML offences are not effectively investigated and prosecuted. • There is a low number of ML investigations and prosecutions, and no investigations or prosecutions for FT. • Lack of specific authority to waive or postpone arrest or seizure of criminal proceeds for evidence gather purposes; these actions are not taken in practice.
R.28	**LC**	• Prosecutors and investigators have comprehensive powers to obtain evidence; however, they are not effectively used. • Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession. • There are practical difficulties in identification and tracing of assets.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Special Recommendation IX

System for declaring cross border movements of cash and bearer negotiable instruments

343. In Argentina, currency is considered as "merchandise" and as such is subject to the rules of the Customs Code, Law 22 415[9]. To this effect, the Federal Administration of Public Revenues (AFIP), through the General Directorate of Customs has a predominant role in order to collect information on the movement of money or monetary instruments entering or leaving Argentina. The Customs Code confers sufficient powers to the Customs Service staff to control the entry of individuals, luggage, means of transport and goods, since the General Customs Administration is an agency that has under its control the entrance to and exit from the country of goods, individuals, luggage and means of transport, which among other things verifies compliance with the rules and regulations on the entry of foreign currency or other monetary instruments.

344. Argentina has adopted a sworn declaration system, and all persons making a physical cross-border transportation of currency or bearer negotiable instruments that are of a value exceeding a prescribed threshold are required to submit a truthful declaration to the designated competent authorities.

345. On 23 November 2009, AFIP replaced and upgraded the legal instruments that applied for the entry and exit of foreign currency and/or bearer negotiable instruments. They are as follows:

	Up to 22 November 2009	23 November 2009 and thereafter
Incoming currency and/or BNI	AFIP General Resolution 1172/2001: regulating the entry of bills (paper money), certified pure gold, gold coins and/or other	AFIP General Resolution 2704/2009 on "Incoming of cash and Monetary Instruments to the Argentinean territory. General Resolution 1172. Its

[9] Article 10 .- 1. For the purposes of this Code merchandise ("*mercadería*") is considered to be every object which would be liable to be imported or exported.

	Up to 22 November 2009	23 November 2009 and thereafter
	securities coming into the national territory as Luggage	Replacement."
Outgoing currency and/or BNI	AFIP General Resolution 1176/2001: regulating Currency Exports (bills and coins) and minted precious metals. Resolution AFIP-DGA 160/2001: regulating the amount of outgoing foreign currency allowed to minors under 21 years of age.	AFIP General Resolution 2705/2009 on "Outgoing of Banknotes, Coins & Precious Metals coined of the Argentinean territory. General Resolution No. 1176 and its complementary. Its Replacement."

346. AFIP General Resolutions 2704/2009 and 2705/2009 were issued during the on-site visit. While the analysis of these legislative provisions is included below, the analysis of the effectiveness of the system for cross border declarations below is based solely on the prior system, as the effectiveness of the new requirements cannot yet be assessed.

Incoming currency/ BNI

347. AFIP General Resolution 1172/2001, requires passengers and crew members entering Argentina to declare in a specific form the entry, as luggage or bulk, of more than USD 10 000 or its equivalent in Argentinean currency, or in any other foreign currency, in cash or in any monetary instruments. It specifies that monetary instruments should be understood to be "any method of payment, checks, including travellers' checks" (section 1). AFIP General Resolution 2704/2009 contains the same requirements (section 1), except that it specifies that monetary instruments are understood to be "any method of payment, such as travellers checks, checks, and promissory notes."

348. Mail and containerised cargo: There are no provisions in Argentina relating to incoming cash or BNI through the mail or containerised cargo.

Outgoing currency/ BNI

349. The framework concerning outgoing currency and BNI is more complex, as the there are different rules pertaining to Argentina and non-Argentinean currency, as well as for people above and under 21 years of age.

350. *Non-Argentinean currency*: AFIP General Resolution 1176/2001 prohibits the export of foreign currency (notes and coins) and coined precious metals above USD 10 000 or equivalent amounts in other currencies, in cash or in traveller's check for people 21 years of age and over and emancipated minors (section 1). For those between 16 and 21 years of age, the limit is USD 2 000, and for those under 16 the limit is USD 1 000 (sections 1 and 2, Decree 1606/01). Amounts above that amount must be carried out through an entity supervised by the Central Bank of Argentina. AFIP General Resolution 2705/2009 consolidated and updated these requirements—the prohibition on transporting USD 10 000 or its equivalent in foreign currencies, in cash or traveller's checks now applies to those over 16, as well as emancipated minors. For those under 16, the limit is USD 5 000 or its equivalent. These requirements are limited to foreign cash, coins, and travellers checks, and do not include negotiable instruments (bearer or otherwise).

351. *Argentinean currency*: AFIP General Resolution 1176/2001 did not prohibit or call for the declaration of cash or bearer negotiable instruments of Argentinean currency exiting the country. However, AFIP General Resolution 2705/2009 now requires travellers departing Argentina to declare amounts of Argentinean currency equal to or above USD 10 000 (section 4). Argentinean negotiable instruments (bearer or otherwise) are not included.

352. *Mail and containerised cargo*: Executive Order 1570/2001, amended by Executive Order 1606/2001, prohibits all exports of foreign bills, currency and precious metal coins worth more than USD 10 000 except if the export is made through an entity previously authorised by the BCRA (section 7). There are no provisions relating to the export of Argentinean currency and BNI through mail and containerised cargo.

353. In addition, AFIP General Resolution 9/2002 which set forth the registration of applications of consumption import and export "destinations" (*destinaciones*), but only when such movements are made by the entities subject to BCRA supervision. These applications are for notes, foreign currency, gold of good delivery, gold coins, checks, bonds, public and private securities, shares, debentures and similar instruments. Customs control of these goods is carried out in the places specified by the abovementioned entities. This registration is only for statistics purposes as the competent authority in all cases is the Central Bank of Argentine Republic; it does not create an enforceable obligation regarding import and export of cash/BNI through mail or containerised cargo and in any case only applies when entities subject to BCRA supervision are carrying out these activities. Argentinean authorities indicate that cash and BNI exportations conducted by persons or outside BCRA supervision does not occur through containerised cargo; however, this could not be verified.

Authority to request and obtain further information from the carrier

354. The Customs Code provides for a range of powers that the authorities can use to perform their duties through checks on persons and goods. Article 112 provides general powers to exercise control over people and goods, including means of transport, in relation to international traffic of goods. The intensity of the powers granted depends on the "zone" where people and goods to be checked are, as provided in the Section II – Control; Title I "General Provisions"[10]. In order to perform its supervisory duties, the Customs Service is allowed to adopt measures which may prove more convenient according to circumstances.[11]

355. Regardless of the type of area, the Customs Service agents and, within the scope of their respective jurisdiction, the security forces and police, may conduct identification and registration of persons and goods, including means of transport when used as means for the commission of the customs crimes, as well as the capture or seizure and my hold them for 48 hours before making them available to the competent authorities[12]. The powers are even greater and effective in the primary customs supervision area[13] where, without prior authorisation, the Customs authorities may:

a) stop people and goods, including means of transportation, in order to proceed with its identification and registration. This will allow customs authorities to ask the person more information about the origin and intended use of the currency
b) search and record deposits, businesses, offices, dwellings, residences, houses and any other places;
c) interdict and seize merchandise, including books, records, documents, papers or other vouchers.

[10] Article 113 - Customs Code, Law 22.415.

[11] Article 114 - Customs Code, Law 22.415.

[12] Article 119 - Customs Code, Law 22.415.

[13] Article 122 - Customs Code, Law 22.415.

356. As required by Article 497 of that law, the customs officers, in exercising control over goods and people, may inspect the luggage[14] of passengers and staff through their search and review. Control of persons and luggage is carried, usually randomly on a selective basis; however, Customs Agents will proceed with the personal search of the passenger and his baggage when there is a suspicion of any crime.

Authority to restrain currency/BNI for suspicion of ML/FT and false declaration

357. In the event of a false declaration of incoming currency and negotiable instruments, Article 2 of AFIP General Resolution 1172/2001 authorises the customs authorities to seize the surplus (*i.e.*,undeclared amounts over USD 10 000 or its equivalent) but not the funds below that amount. A similar provision exists for outgoing foreign currency and coined precious metals (section 2, Decree 1606/2001). Nevertheless, the Customs Code (section 863) makes it a criminal offence (with two to eight years imprisonment) for anyone who by any act or omission, impedes, through deceit the adequate exercising of the customs laws concerning control of imports and exports. Section 864 makes it a criminal offence (with two to eight years imprisonment) to conduct any action or omission which impedes the customs authorities' duties in terms of submitting merchandise to customs control, or concealing, substituting or shielding, totally or partially, goods or merchandise that are subject to customs control. In this sense, making a false declaration would amount to a customs crime, and therefore Customs Service agents and, within the scope of their respective jurisdiction, the security forces and police, may capture and seize goods and hold them for up to 48 hours before making them available to competent authorities.[15] The new AFIP General Resolution 2704/2009 explicitly indicates that non-compliance with the Resolution would subject the perpetrator to sanctions in the Customs Code (section 5). Similarly, AFIP General Resolution 2705/2009 indicates that non-compliance with the Resolution (*e.g.*, illegally exporting foreign currency or falsely declaring Argentinean currency) would subject the perpetrator to sanctions in the Customs Code (section 6). There is no specific authority to seize or restrain currency/BNI when there is a suspicion of ML/FT and no suspicion of customs offence.

Information to be retained

358. AFIP General Resolutions 2704/2009 and 2705/2009 contain references to specific declaration forms that must be used to declare inbound currency and negotiable instrument declarations and outbound Argentinean currency. Previously, AFIP General Resolution 1172/2001 contained a similar form for inbound declarations. Each sworn declaration for incoming/outgoing currency/negotiable instruments must include the amount as well as the identification information of the bearer; AFIP also records the names and amounts when there is a false declaration and this is discovered. Previously, AFIP General Resolution 1176/2001 contained a form where the travel must swear to not exceeding the threshold of foreign currency and travellers' checks. There is no requirement that the amount of currency/negotiable instruments or the identification of the bearer be recorded when there is a suspicion of ML/FT.

Information to be made available to the FIU

359. All four AFIP General Resolutions require that the information from the sworn declarations be made available to the FIU. However, the system has been enhanced with the implementation of the new AFIP resolutions in November 2009 and an upgraded and more centralised reporting system.

[14] Luggage includes new or used effects that a traveller, in consideration of the circumstances of his/her trip, might reasonably be used for personal use or consumption or to be entertained, provided that the quantity, quality, variety and value does not result in that it would presumably be imported or exported for commercial or industrial purposes. Article 489 - Customs Code, Law 22.415.

[15] Article 119 - Customs Code, Law 22.415.

360. Resolution 1172/2001 (sections 3 – 5) provides that the customs authority will inform the General Tax Directorate and the FIU of inbound currency/negotiable instrument declarations. This information is also uploaded to the Customs Agency's IT systems to allow the DGI to review and take any necessary action. Since 23 March 2009, the information on foreign currency inflows is captured through an IT application, but until its final implementation, the manual system continues alongside the computerised system. In practice, the Customs (through its General Assistant Directorate for Official Supervision Liaison with the FIU) regularly reported this information to the FIU, via magnetic bulk data.

361. On 28 October 2008, a Framework Agreement was signed by the Financial Information Unit and AFIP. The resources that the parties will facilitate to each other include: training in different subject matters; uses by both parties of the existing communications infrastructure; development and/or implementation of information technology and technological innovation projects; carrying out proprietary IT developments and any other resource that either party can facilitate to the other or any project that can be developed jointly according to the each party's objectives, tasks and functions, subject to the execution of specific agreements.

362. In this context, and in the context of "National Agenda for the Fight against Money Laundering and Terrorism Financing" adopted on 11 September 2007, the introductions in the new AFIP General Resolutions 2704/2009 and 2705/2009 refer to the new system for automatically recording the declarations of incoming and outgoing declarations in a real-time database called the "System of Entry and Exit of Assets". These Resolutions subsequently and specifically indicate that the currency/negotiable instrument declarations will be recorded in a special form and entered into the new System and be made directly available to the FIU (sections 3-4, AFIP General Resolution 2704/2009, for incoming declarations and sections 4-5, AFIP General Resolution 2705/2009, for outbound declarations). During the on-site visit, the implementation of this system was still in its early stages, but when completed the FIU will have direct, on-line access through the Internet.

Domestic and international cooperation

363. The Customs Authority works closely with immigration, health, security, judicial, tax and other authorities to prevent and detect illicit transactions that violate the laws and other legal provisions relative to the illegal entry or exit of merchandise through Argentina, including illegal smuggling of foreign cash. At the time of the on-site visit, joint work was also underway with the immigration authority in the customs entry and exit points of the country, which allows for the exchange of data on alerts or other aspects concerning the entrance or exit of individuals to and from Argentina.

364. Joint work is under way with the Customs other security forces such as: Border Patroller Police (*Gendarmería Nacional Argentina – GNA*) in the land border areas, the Argentina Coast Guard (*Prefectura Naval Argentina – PNA*) in the port areas; and the Air Military Police (*Policía de Seguridad Aeroportuaria – PSA*) in the airport areas. In the "tri-border" area (Paraguay, Brazil, and Argentina borders) the collaboration is even stronger.

365. Internationally, the Argentinean Customs is a member of the World Customs Organization (WCO) within which agreements with different countries contemplate international customs cooperation and exchange of information. These include the COMALEP agreement signed by Latin American countries, Spain and Portugal, and the 1953 Customs Cooperation Framework Agreement, with the participation of 40 countries of all continents, used for information exchange. Furthermore, customs office can count on several MOUs and other international agreements that are in place, including agreements with Brazil, Chile, Peru, Spain, the United States, France, Hungary, Italy, Libya, the Russian Federation and MERCOSUR. In general the Agreements have provisions regarding the exchange of information between Customs Administrations, these are the so called "Framework Agreements" and they cover a number of

subjects, such as cross border transport and seizures of cash. Others are in progress. Information on the amount of currency and the bearer in relation to a false declaration or when there is a suspicion of ML/FT is not recorded, and so this information cannot be shared internationally.

Sanctions and confiscation

366. Argentina generally has a broad range of sanctions that can be applied in the event of a false declaration. As mentioned above, in the event of a breach of the rules and regulations regarding the cross-border movement of money, the penalties provided for in the Customs Code (Law 22 415) apply. While these were implicitly applicable for violating AFIP General Resolutions 1172/2001 and 1176/2001, the new Resolutions 2704/2009 and 2705/2009 specifically indicate that violations of the new Resolutions would result in sanctions contained in the Customs Code. Section 863 of the Customs Code makes it a criminal offence (with two to eight years imprisonment) for anyone who by any act or omission, impedes, through deceit, the adequate exercising of the customs laws concerning control of imports and exports. Section 864 makes it a criminal offence (with two to eight years imprisonment) to conduct any action or omission which impedes the customs authorities' duties in terms of submitting merchandise to customs control, or concealing, substituting or shielding, totally or partially, goods or merchandise that are subject to customs control.

367. In addition to imprisonment, section 876 (1) authorises additional penalties such as: seizure of the goods, a fine of four to 20 times the value of the object, and a prohibition for three to 15 years to exercise import or export activities. Section 977 penalises persons who bring into or attempt to bring goods into Argentina contrary to applicable regulations through their luggage, a fine of one to three times the value of the goods.

368. Legal persons are liable along with their employees for the financial penalties when committing customs crimes in exercise of their functions. [16] When a legal person is convicted of having committed a breach of customs, and has not paid the fines, its directors, officers and managers are liable to pay such penalties[17]. The penalty for the legal person can be up to the dissolution of the legal person through cancellation of its registration from the Public Register of Commerce[18].

369. While these sanctions are generally broad, there would be no ability to apply sanctions if a person makes a truthful declaration but the authorities suspect that the currency could be related to terrorist financing or money laundering.

370. Within the framework of a judicial proceeding, the general freezing/restraint measures described in section 2.3 of this report would apply. Nevertheless, there are deficiencies in this area such as the inability to seize and confiscate property of corresponding value, and the ability to confiscate property related to terrorist financing is limited to the limitations of the FT offence.

371. For a cross-border transportation that is related to persons/entities designated pursuant to S/RES/1267(1999) and S/RES/1373(2001), the freezing measures described in section 2.4 of this report would apply; however, these measures are very limited, and suffer from the deficiencies noted above in section 2.4 of this report.

[16] Article 887 - Customs Code, Law 22.415.

[17] Article 888 - Customs Code, Law 22.415.

[18] Article 876, subsection i) - Customs Code, Law 22.415.

Cross-border movement of gold, precious metals and stones

372. If the customs authorities discover unusual cross-border movement of gold, precious metals or precious stones, it can notify, as appropriate, the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined, and can co-operate with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action. With neighbouring countries the Customs Services maintains in certain places an integrated control system where the services of both countries work together.

Information management

373. The systems for reporting cross-border transactions are subject to strict safeguards to ensure proper use of the information or data that is reported or recorded. The system of entry of foreign currency declaration is operated on two supports: documentary and computerised. Access to the systems is restricted to the operating control personnel and the information is protected by the confidentiality duty regulated by the agency's Ethics Code. Furthermore, the information reported to the FIU is protected by section 22 of Law 25 246 (See section 2.5 of this report).

374. Training, data collection, enforcement (including R.17) and targeting programmes are applied by Argentina. In addition to the data collection, enforcement provisions and programmes described above, see below for training information for the customs authorities.

Additional elements

375. Certain measures from the Best Practices Paper for SR.IX have been implemented. The threshold for declarations in Argentina (USD 10 000) is lower than in SR.IX. Argentina employs X-ray technology and scanners in the principal inspection points to detect cash within baggage or shipments. The mechanisms employed are utilised on a risk and intelligence led basis given the volume of cross-border movement.

376. Through its intelligence areas, Argentinean Customs has developed risk profiles of persons and companies subject to investigation, in addition to determining the principal currency-trafficking routes or flights inside and outside the country. In this context, it works jointly with police and immigration authorities in order to detect suspicious or illicit transactions prior to o during the entry into Argentina.

377. At the time of the on-site visit, data concerning incoming declarations exceeding USD 10 000 in currency or negotiable instruments was recorded in the customs database and provided directly the FIU. Upon full implementation of the System for Entry and Exit of Assets, a real-time database will be available to the FIU that includes all declarations of incoming as well as outgoing currency.

Structure, resources, and training of customs authorities

378. AFIP is responsible for customs and fiscal intelligence, and deals with tax fraud and other economic crimes and can come across money laundering cases in the context of its investigations. AFIP seems to be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions. AFIP has a total staff of approximately 4 000 agents diversified in research, verification and control areas. It has the technical and information technology resources and databases required to perform its work.

379. Within AFIP, the General Customs Bureau has a department called Drug Trafficking which, among other duties, makes inquiries about the economic-financial development, flow of funds, and import/export transactions that might qualify as money laundering from drug trafficking. The Department

has 25 agents qualified in different specialisations (accountants, lawyers, engineers, holders of bachelor's degrees and research analysts). It performs its duties with its own vehicles (four cars) and information technology resources and other items (computers, GPS, recorders, cameras). It also has special equipment to detect drugs (3 molecular detecting devices).

380. AFIP staff is bound to secrecy as regards the entity's information, by the Ethical Code issued in its jurisdiction and the duties of reserve established by section 22 of Law 25 246.

381. AFIP's staff specialised in Money Laundering and Financing of Terrorism attends training seminars on the subject organised both at national and international level.

382. Furthermore, AFIP's Training Department gives a course on "Laundering of Proceeds of Crime" oriented to the operating areas agents. In 2008 it organised 30 events for 902 attendees (including the training of 52 officers of the provinces in order to make a replication in their areas of responsibility). In 2009 up to September, it organised 32 events for 486 attendees. For the period August – December 2009, 75 events were be organised for 1 500 attendees.

383. During 2009, the National Bureau of Migrations started a training and standardisation process immediately intended to have the ISO 9001 standard certified in the migration control process at the National Ezeiza Airport and the Buenos Aires Port (Buquebús area) during the last quarter of the year to extend such ongoing improvement to the remaining deployment.

Statistics

384. AFIP maintains statistics on the declarations of incoming cross-border transportations of currency and negotiable instruments, which are also reported to the FIU, and with the implementation of the System for Entry and Exit of Assets, AFIP will also maintain statistics on declarations of outgoing Argentinean currency.

385. AFIP also maintains statistics on undeclared money seized upon arrival in Argentina. The amount seized in this regard the last three years is over USD 4 million.

386. Specific statistics provided are as follows:

Cash seizures (amounts in USD)

Year	2007	2008	2009
Amount seized	1 614 674	2 110 860	1 198 463
Number of people detained	41	31	32

Amounts of currency declared (amount in USD)

Year	2007	2008	2009
Amount declared	25 820 021	41,689 797	17 318 480

2.7.2 Recommendations and Comments

387. The statistics maintained shown important seizures relating to undeclared currency and negotiable instruments. But whereas the total amount seized in the last three years is over USD 4 million, and significant cases were uncovered, Argentina reported that only one STR has been sent to FIU relating to the cross-border transportation of currency. And the FIU has not spontaneously sent any information

relating to these significant currency seizures. The Customs, the FIU and other law enforcement agencies should improve the coordination to work more closely and permanently to investigate significant cash-smuggling cases, as such currency may be the proceeds of criminal conduct committed in the country of origin.

388. The Customs Authority should be given clear authority to retain, seize or confiscate currency and BNI when the authorities suspect that the currency can be possible related to money laundering or terrorist financing. In the same frame, it should also consider improving specific training to provide its personnel with higher capacities to deal with the identification of money possibly linked to terrorist financing activities, persons, or organisations.

389. The requirements for declaring outgoing currency/BNI, should be expanded to include foreign negotiable instruments (other than travellers' checks), as well as Argentinean negotiable instruments, bearer or otherwise.

390. There should also be a requirement to record the amounts of currency/BNI when there is a suspicion of ML/FT, with a corresponding ability to share this information domestically and internationally.

391. Argentina should also enhance its ability to seize and confiscate currency and BNI relating to the financing of terrorism and instrumentalities used in money laundering offences as well as property of corresponding value.

392. Finally, Argentina should ensure that cross-border movements of currency and BNI through the mail and containerised cargo are fully covered by the requirements of SR.IX.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• Mail and containerised cargo: no provisions relating to incoming cash or BNI; no provisions relating to the export of Argentinean currency and BNI. • For outgoing currency/BNI, the requirements do not include foreign negotiable instruments (other than travellers' checks), or Argentinean negotiable instruments, bearer or otherwise. • There is no authority to seize or restrain currency/BNI when there is a suspicion of ML/FT. • There is no requirement that the amount of currency/negotiable instruments or the identification of the bearer be recorded when there is a suspicion of ML/FT. • There would be no ability to apply sanctions if a person makes a truthful declaration but the authorities suspect that the currency could be related to terrorist financing or money laundering. • Inability to seize and confiscate property of corresponding value, and the ability to confiscate property related to terrorist financing is limited to the limitations of the FT offence. • For a cross-border transportation that is related to persons/entities designated pursuant to S/RES/1267(1999) and S/RES/1373(2001), these measures are very limited, and suffer from the deficiencies noted above in section 2.4 of this report.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

Scope Issues:

393. In Argentina, the preventive side of the AML/CFT system is based in Law 25 246. In addition to containing the criminalisation of ML, the law lists a number of entities obligated to report suspicious transactions to the FIU and identify their customers. The scope is defined by article 20 of Law 25 246, and includes a number of financial and non-financial businesses and professions. Law 25 246 covers most of the financial activities defined by the FATF, in particular:

- Financial institutions subject to the provisions of the Financial Entities Act, Law 21 526: banks (commercial banks, investment banks, mortgage banks), financial companies, and credit unions.
- Private pension funds managers, which no longer existed in Argentina at the time of the on-site visit.
- Financial institutions subject to the provisions of Law 18 924: exchange houses, exchanges agencies, and exchange bureaus.
- Companies issuing traveller's cheques or operating with credit or purchase cards.
- Stockbrokers and stockbrokerage firms, companies managing funds, and those intermediaries engaged in the purchase, lease or borrowing of securities trading in the field of stock exchanges with or without a market attached to them.
- Intermediaries registered with futures and options markets whatever their purpose may be.
- Insurance companies as well as insurance advisors, agents and brokers subject to Laws 20 091 and 22 400.
- Companies and concessionaires rendering postal services that carry out foreign currency transfers or remittances of different types of currency or notes.
- Entities covered by article 9° of the Law 22 315 (capitalisation and saving companies).

394. Article 20 of Law 25 246 does not cover "*mutuales*" and "*cooperativas*", which perform banking activities and represent an important part of the financial sector in Argentina. There is also doubt as to the coverage of money remitters, as the law refers to "companies and concessionaires rendering postal services that carry out foreign currency transfers or remittances of different types of currency or notes". While FIU Resolution 9/2003, aimed at implementing this provision, added a specific reference to "money remitters" into the Resolution that was not in the law, this language was taken out of the updated Resolution 230/2009, which supersedes 9/2003. Moreover, regarding the securities sector, whilst intermediaries are

subject to the AML law, the stock exchange market and the stock exchanges without a market are not covered, which poses some difficulties explained later in this report.

395. In addition, regarding the financial institutions subject to the AML law, it should be noted that the CDD provisions of the law are very basic. To complement these basic measures, the different financial supervisors (BCRA, CNV and SSN) have issued their own instruments (communications or resolutions) to detail more specific CDD and other preventive measures. As a consequence, those financial institutions that are designated by the AML law but are not further regulated or supervised, are not subject to any further requirements. This is the case for: (i) money remitters (where they are covered) and postal services that perform activities of transfers of funds, (ii) "capitalisation and saving companies", which perform banking activities, (iii) companies issuing traveller checks; and (iv) companies operating credit and purchase cards (when they are not banking institutions). This therefore considerably affects in practice the extent of the financial institutions subject to the AML law.

Law, regulations and other enforceable means

396. As already stated above, the preventive requirements in Law 25 246 are limited to general requirements for identifying customers, record keeping and unusual transactions reporting. The law does not contain any other CDD requirement, but provides that the FIU "shall lay down guidelines about manner, timing and limits on compliance with this obligation for each category of reporting party and type of activity". The FIU has therefore issued an extensive list of "resolutions". The main resolutions relevant for the financial sector are the following:

- Resolution 228/2007 for financial institutions under the provisions of Laws 21 526 and 18 924;
- Resolution 152/2008 for the capital market;
- Resolution 50/2008 for insurance companies and intermediaries;
- Resolution 230/2009 for companies rendering postal services, which carry out foreign currency transfer or remittances of different type of currency or notes;
- Resolution 231/2009 for the entities covered by article 9 of Law 22.315 (capitalisation and saving companies).

397. The FIU has thus issued a series of resolutions that are regularly amended, usually accompanied with an appendix describing what the CDD (Customer Due Diligence) measures should be and another appendix on the suspicious transaction reporting regime, as well as reporting form. The FIU resolutions recognise that the financial institutions should also apply the rules regarding CDD measures set out by the various supervisors (BCRA, SSN and CNV), which themselves recognise the validity of the resolutions of the FIU even if they do not supervise the financial institutions on the basis of the FIU's resolutions. Although these guidelines are mentioned by the law, they do not constitute regulations or secondary legislation as defined by the FATF: "*Law or regulation* refers to primary and secondary legislation, such as decrees, implementing regulations or other similar requirements issued or authorised by legislative body and which impose mandatory requirements with sanctions for non-compliance." The law contains sanctions only for non-reporting of STRs and for tipping off; there are no sanctions for non-compliance with CDD or the record-keeping provisions in the law, nor are there additional sanctions contained in the resolutions. In addition to the lack of sanction authority, the FIU has no supervisory powers granted to it by the law; therefore, the resolutions it issues cannot be considered as "other enforceable means" as defined by the FATF.

398. Financial institutions are subject to regulation and supervision of their respective supervisors, on the basis of the resolutions or communications (in the case of BCRA, the "communications" communicate resolutions made by the BCRA board) they issue. These communications generally focus on the nature of the CDD measures they are required to apply, and they contain provisions that are similar, or for some of them even more detailed than the ones set out in the FIU's resolutions. In practice, financial institutions focus on the implementation of the supervisors' communications/resolutions, rather than on the FIU's resolutions.

399. The assessment team first analysed whether or not these resolutions/communications issued by the three financial supervisors (BCRA, CNV and SSN) could constitute "regulation" as defined by the FATF, and it is of the view that none of these resolutions are regulations for the following reasons:

- These resolutions are established by the various financial supervisors, which is one aspect of the definition of OEM.
- These supervisors are not authorised by the AML Law 25 246 as such or by the laws founding these entities to issue resolutions/communications specifically related to AML/CFT. On the contrary, the AML Law only foresees that the FIU would adopt guidelines to further detail the measures provided by the Law.
- The supervisors, in particular the BCRA, amend the resolutions they issue very frequently, which undermines the original and necessary stability argument for the FATF to distinguish on the one hand laws and regulations and, on the other hand, other enforceable means.

400. Therefore, the assessment team next analysed whether these resolutions/communications issued by the BCRA, the CNV and the SSN represent "other enforceable means" (OEM) in line with the FATF definition. To this end, a number of specific criteria have been considered for each communication, as follows:

BCRA Communications

Does the BCRA have the statutory authority to issue such instruments, and if so, for what purpose?

401. Article 4 of the Central Bank Law 24 144 provides that the BCRA shall oversee the duly performance of financial market and apply the Financial Entities Act (Law 21 526) and other rules which may be laid down. In addition, article 4 of Law 21 526 provides that the BCRA may "lay down any necessary regulation for enforcement purposes; to such effect the BCRA shall establish different regulations and requirements that will depend on the class and legal nature of such entities…." This provision is interpreted by the BCRA as e a general power to issue communications in AML/CFT field, though this is not explicitly provided. The power of BCRA would deserve clarification in that matter. Law 21 526 also gives the BCRA supervisory powers over financial entities (banks, financial companies and credit unions).

402. The BCRA also regulates and supervises exchange houses, exchanges agencies and exchanges bureaus. According to article 51b of the Central Bank Law 24 144, the Central Bank shall issue regulations for the exchange regime and oversee the compliance thereof. As for the other financial entities regulated by the BCRA, this power is not specific to AML/CFT purpose; rather, it is general power.

Do the communications issued by the BCRA address the FATF standard in specific terms and is the language "mandatory"?

403. The BCRA has issued a series of communications (which communicate the Resolutions of the BCRA board on an ongoing basis) addressed to financial entities; these have been gathered in the "Compilation of amendments of the rules on prevention of money laundering and other illicit activities". This updated document contains detailed requirements regarding for example the identification of customers, due diligence to be applied regarding Politically Exposed Persons (PEPs), certain types of transactions, record keeping, internal policies and controls, etc. The BCRA has also issued a "Compilation of amendments of the rules on prevention of the financing of terrorism". These requirements have been issued specifically with the view to addressing the FATF standards. Moreover, each provision of the Compilation of amendments is drafted using mandatory language, such as "shall".

Are there clear links between non-compliance with specific provisions of the communications and resulting effective, proportionate and dissuasive sanctions?

404. The BCRA has the power to supervise financial entities and exchange institutions in order to ensure the implementation of the AML/CFT provisions contained in its own communications. As stated above, the BCRA does not supervise the implementation of the FIU's resolutions. However, most of the provisions of the FIU's resolutions have been included in the BCRA's communications.

405. The BCRA has at its disposal a range of sanctions to apply against a financial entity or an exchange institution that would fail to implement AML/CFT provisions. Article 41 of Law 21 526 for financial entities and articles 3 of Law 18 924 for Exchange Entities provide that any breach of these laws, the regulations thereof and communications issued by the BCRA within its powers, shall be subject to punishment. Penalties can be applied against natural or legal persons, or both, accountable for breaching the AML/CFT provisions, after the BCRA has proceeded to a prior summary of the institutions. The laws provide the BCRA with a wide range of sanctions, which concern legal and natural persons. In addition, the laws state that the application of fines should take into account the degree of seriousness of the breaches committed, as well as the benefit for the offender. As detailed in Recommendation 17, the BCRA has applied sanctions (cautions, warnings and fines) for failure to comply with the AML/CFT provisions of its communications. These sanctions have been addressed, either against the financial entities or against their management.

406. To conclude, taking into account all these elements, the assessment team is of the view that the communications issued by the BCRA for financial entities (banks, financial companies and credit unions) and for exchange entities do constitute "other enforceable means" as defined by the FATF.

The communications issued by the CNV

Does the CNV have the statutory authority to issue "Rules", and if so, for what purpose?

407. The CNV was created by the Public Offer Law 17 811 in 1968, in which article 6(e) provides that it has the function "to approve the rules and regulations of Exchanges relating to the public offering of securities and those of Securities Markets". This is therefore a general power to issue rules and is not specifically for AML/CFT purposes. Law 17 811 also gives the CNV the power to supervise compliance with applicable laws, rules and regulations in all matters within the scope of this law. The CNV has similar powers on financial trusts (Law 24 441) and on mutual funds (Law 24 083).

Do the rules issued by the CNV address the FATF standard in specific terms and is the language "mandatory"?

408. General Resolution 547/2009 (issued pursuant to CNV's authority from Law 17 811) on prevention of money laundering and terrorist financing is a compilation of the rules applicable to the financial institutions regulated by the CNV. This General Resolution does not contain direct AML/CFT

provisions, but rather states that financial entities regulated by the CNV shall comply with the provisions of the FIU's Resolutions 03/2002 and 152/2008 as amended, in general, and in particular in relation to the identification of customers, record keeping, suspicious transactions reporting, and policies and procedures to prevent ML/FT. The General Resolution also provides that the sector shall comply with other specific requirements contained in the FIU's resolutions, such as CDD measures regarding trusts and PEPs. Although this General Resolution does not contain by itself any specific AML/CFT requirement, it is the instrument on which the CNV bases its supervisory functions.

Are there clear links between non-compliance with specific provisions of the General Resolution of the CNV and resulting in effective, proportionate and dissuasive sanctions?

409. According to the Public Offer Law 17 811, the CNV has the power to "supervise compliance with applicable laws, rules and regulations in all matters within the scope of this law." However, it is worth noting that Law 17 811 does not specify which financial institutions fall within the scope of the CNV supervision. In addition, the law, adopted in 1968, does not give the CNV any specific power to supervise the securities sector for AML/CFT purposes. In practice, the CNV therefore supervises the compliance of the securities sector with the provisions of the rules it issues, in this case General Resolution 547/2009, which refers to the FIU's resolutions 03/2002 and 152/2008. Moreover, as further explained in section 3.10 of this report, the CNV has limited legal supervisory powers.

410. According to article 10 of Law 17 811, the CNV has at its disposal a range of sanctions available against financial entities and their management in case of failure to implement the law or its rules: censure, fine, suspension of activities of up to five years, and a prohibition to make public offering of negotiable securities. The law states that the CNV shall take into account various consequences of the failure to determine the appropriate level of sanctions.

411. The CNV has conducted a very low number of AML/CFT inspections, which does not seem to be an incentive for the securities sector to implement actively General Resolution 547/2009. Moreover, whereas the assessment team was advised of the very low level of compliance of the securities sector to the AML/CFT requirements, the CNV has never issued any sanction for AML/CFT against entities of the sector. Additionally, the CNV lacks sanctioning power against stock agents and brokers. This capacity lies within the Markets, which have not imposed any AML/CFT sanction either.

412. Therefore, taking into account the limited legal supervisory and sanctioning powers of the CNV, the very low number of inspections conducted and the lack of sanctions, the assessment team is of the view that CNV General Resolutions do not meet the criteria of "other enforceable means."

The resolutions issued by the SSN

Does the SSN have the statutory authority to issue resolutions, and if so, for what purpose?

413. Article 67 of the Insurance and its Control Law 20 091 gives the SSN the power to issue general orders as provided by the law and those necessary for its implementation. However, the law only focuses on prudential aspects of the insurance companies; it does not mention AML/CFT. The SSN therefore has no power to issue resolutions for AML/CFT purposes, although it has issued various resolutions in this regard.

414. Law 22 400 regulates insurance brokers and intermediaries; however, the law does not provide the SSN any authority to issue further rules for intermediaries. Therefore, the SSN resolutions adopted in relation to AML/CFT do not have a legal basis as far as they concern insurance intermediaries.

415. The SSN has issued two resolutions in relation to AML/CFT: Resolution 28 608/2002, which was amended by Resolution 30.581/2005. This resolution has been issued to supplement the AML Law 25 246, which, as indicated above, does not authorise the SSN to issue resolutions specifically for AML/CFT purposes.

Do the resolutions issued by the SSN address the FATF standard in specific terms, and is the language "mandatory"?

416. SSN Resolution 28 608/2002 does not contain any provision related to CDD measures that insurance companies and intermediaries should perform. It creates an AML Unit within the SSN, in particular to refer any current or proposal regulations on AML to the SSN, to liaise with the other relevant agencies (BCRA, CNV, AFIP) and to send STRs to the FIU. This resolution is therefore not relevant for preventive measures that insurance companies and intermediaries should implement.

417. The SSN has also established "Minimum Internal Guidelines to Detect and/or Prevent Illegal Money Laundering and Terrorist Financing in the Insurance Sector". This document refers to the FIU Resolutions 6/2002 and 8/2002 as amended and is aimed to provide the SNN staff "with a suitable instrument that may enable them to detect and prevent the crime of ML and TF in the insurance sector". This document is therefore not directly addressed to insurance companies and intermediaries.

Are there clear links between non-compliance with specific provisions of the resolution of the SSN and resulting effective, proportionate and dissuasive sanctions?

418. Article 64 of the Insurance Companies Law 20 091 provides that the supervision of all insurance entities is exercised by the Superintendence of Insurance (SSN). Article 67 further authorises the SSN to "monitor the behaviours of producers, agents, brokers, appraisers and liquidators not dependent of the insurer, in such manner and by such means as it deems appropriate, disclosed in the relevant complaints and punish violations". Once again, this law does not give the SSN any specific power to supervise the insurance sector for AML/CFT purpose, nor to supervise the implementation of AML Law 25 246 or the FIU's resolutions. The only document that states that the SSN exercises AML/CFT supervisory functions is the Minimum Internal Guidelines mentioned above, which is an internal document of the SSN addressed to its staff.

419. The range of sanctions available for the SSN is provided in article 59 of Law 20 091. The sanctions available constitute a range of sanctions. However, the assessment team has concerns about the authority of SSN to actually impose sanctions for failure to comply with AM/CFT provisions, since article 58 of Law 20 091 limits the SSN sanction power to failure to comply with prudential provisions. It is worth noting that the maximum level of fines that can be imposed does not appear to be dissuasive.

420. Despite the lack of clarity of the legal texts, the assessment team was told that the SSN conducts AML/CFT inspections on insurance companies. However, as further detailed in section 3.10 of this report, the assessment team was not provided with clear data on the nature and number of the inspections conducted by the SSN. In addition, despite the low level of compliance of the sector, the SSN has not issued any sanction for failure to comply with AML/CFT measures except warnings in 2009 for lack of having a manual in place, the SSN has only issued warnings without specifying that infringements were in relation to the preventive AML/CFT regime.

421. To conclude, taking into account on the one hand the lack of clarity of the legal basis for the SSN to issue rules and sanction for AML/CFT purpose and the lack of provisions related to CDD measures in the resolutions issued by the SSN, and on the other hand the low level of fines that can be imposed by the SSN, the lack of clarity on the nature and the number of controls conducted by the SSN and the lack of

sanctions already imposed, the assessment team is of the view that the SSN's resolutions do not meet the criteria of "other enforceable means" as defined by the FATF.

3.1 Risk of money laundering or terrorist financing

422. Argentina has decided to apply a uniform set of AML/CFT measures to the financial system. The authorities have not undertaken any risk assessment to decide whether particular sectors should not be included in the scope of the AML/CFT regime. However, the current AML/CFT framework provides for a risk-based approach to the application of preventive measures for financial institutions. The BCRA Compilation on Amendments identifies situations where enhanced CDD and monitoring measures are requested as well as those where simplified CDD measures are allowed. Moreover, the BCRA requests the implementation of a risk-based approach.

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

3.2.1 Description and Analysis

Recommendation 5

423. The extent of the preventive measures to be applied by financial institutions subject to the AML Law 25 246 is limited to the identification of customers, record keeping of such identification documents and suspicious transactions reporting. According to article 21 of Law 25 246, reporting entities shall "obtain from their customers, requesting or contributing parties, documents irrefutably evidencing their identity, legal status, domicile and other data to be specified in each case when carrying out any type of activity included in their purpose". It also provides that "when customers, requesting or contributing parties act on behalf of third parties, the necessary steps shall be taken in order to identify the persons on whose behalf they are acting". Decree 290/07, which develops Law 25 246 does not contain any additional provision concerning customer identification. Law 25 246 further specifies that the FIU shall establish guidelines on the information and the timing to obtain this information. As a consequence, many of the basic requirements of Recommendation 5 are not included in law or regulations, as required by FATF, but in the FIU's or Supervisors' communications and resolutions.

424. It is worth noting that before the adoption of the AML Law in 2000, the BCRA had already issued communications on the prevention of money laundering, providing for customer identification requirements. The FIU has thereafter issued AML resolutions as provided by Law 25 246, but there were then some differences between the KYC provisions of the BCRA communication and the FIU resolutions. These discrepancies were identified as a deficiency in the previous FATF mutual evaluation of Argentina (in 2004). Since then, most of the provisions have been harmonised. However, although the AML Law 25 246 does not give the financial supervisors the power to issue AML/CFT provisions, the supervisors claim that they have the authority to issue AML/CFT requirements, and that financial institutions under their supervision have to implement both FIU's and their respective supervisor's rules. Globally, the basic requirements are equivalent, but there are still minor differences between the various requirements, the BCRA and the CNV setting generally more stringent requirements.

Anonymous, fictitious and numbered accounts

425. There is no direct prohibition on opening anonymous accounts or accounts in fictitious names, but pursuant to article 21 of the AML Law 25 246 financial institutions must identify their customers when provided any type of activity. These identification requirements are further detailed by the Communications of the BCRA, in particular by the Circular on Deposit Transactions (OPASI-2).

426. Numbered accounts are not expressly prohibited. However, the customer identification requirements to be met by financial institutions at the time of opening an account pursuant to OPASI-2 do in fact constitute an implicit prohibition to open or maintain numbered accounts, since the titleholder of an account must be either a natural or a legal person. Therefore, accounts cannot be identified by numbers.

When CDD is required

427. Article 21 subsection a) of AML Law 25 246 provides that financial institutions shall obtain from their customers, requesting or contributing parties, documents evidencing their identity when carrying out any type of activity included in their purpose. "However, such obligation may be omitted when the amounts are lower than the minimum established in the pertinent circular letter."

428. Therefore, financial institutions are required to undertake customer due diligence measures for both regular and occasional customers, when they carry out any type of activity, including wire transfers. The threshold provided by the law raises some concerns. Although such a threshold has not been established by the FIU or a financial supervisor, the possibility does exist in the law and would apply to both regular and occasional customers. Currently, the CDD measures shall be applied for customers in every circumstance, even if it is not explicitly required by the Law 25 246: CDD shall be performed regarding both regular and occasional customers without any monetary thresholds, which implicitly covers the case of wire transfers above the USD 1 000 threshold and the cases where there is a suspicion of ML/TF, regardless of any exemptions or threshold. However, if the monetary threshold for both regular and occasional customers as allowed for in the law was created, there would be no requirement in the law to undertake CDD measures when: (i) carrying out occasional transaction above USD 15 000; (ii) carrying out occasional transactions that are wire transfers over USD 1 000; (iii) there is a suspicion of ML/TF, regardless of any exemptions or threshold. Beyond this, there is currently no requirement in law or regulation to conduct CDD measures when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.

429. Argentina should review article 21 of Law 25 246 in order to clarify that no threshold is applicable to apply CDD measures regarding regular customers, and in order to clarify as appropriate the other cases where CDD measures should be required (ex.: where there is ML/TF suspicion, etc.).

Identification and verification

430. Article 21 (a) of Law 25 246 requires financial institutions "to obtain from customers, requesting or contributing parties, documents irrefutably evidencing their identity, legal status, domicile and other data to be specified in each case".

431. Section 1.3 of the BCRA Compilation of AML measures[19] details the identification data that must be obtained by the banking and exchange sector. These identification data are the same as the ones provided for in FIU Resolution 228/2007, which is not other enforceable means. The BCRA Compilation of AML measures requires financial institutions under the supervision of the BCRA (banking sector and exchange institutions) to obtain from their regular customers who are natural persons the following data: full name and surname, place and date of birth, nationality, civil status, address and telephone number, profession or occupation to which the customer's main activity relates and Unique Code of Tax Identification (CUIT) or Unique Code of Labour Identification (CUIL) or Identification Code (CDI) if

[19] This document is a compilation of all the AML/CFT measures required for the banking sector and exchange institutions though numerous (approximately 30) Communications issued by the BCRA beginning in 1998 and is available on the BCRA website as a single text entitled "Compilation of amendments of the rules on prevention of money laundering and other illicit activities". This document meets the FATF criteria of other enforceable means.

applicable. The same requirements apply to attorneys, guardians, custodians and representatives of the customer. The identification data to be obtained from an occasional customer who is a natural person are limited to the full name and surname, the address and telephone number and the main activity (the latest only when the amount of the transaction exceeds ARS 1 000 (USD 260). In addition, the BCRA Compilation of AML measures provides that financial institutions shall verify this identification data on the basis of an original document, which type and number shall be collected.

432. The BCRA Compilation of AML measures requires the banking sector and the exchange institutions to identify their customers, which are legal persons (companies, associations, foundations and other organisations with or without legal status), by obtaining the following data: (i) the denomination or legal name; (ii) the date of contract or articles of incorporation as well as the copy of by-laws updated; (iii) its date and number and registration number; (iv) the Unique Code of Tax Identification (CUIT); (v) the address and telephone number of the company's headquarter; (vi) the main activity of the legal person. The information related to the date of contract or articles of incorporation shall be verified on the basis of the original documents. When the legal person is an occasional customer, financial institutions are not required to obtain the date of the contract or articles of incorporation. In addition to this information related to legal persons, financial institutions shall also obtain the identification data of the natural persons who exercise authority over the legal persons, of the legal representatives, attorneys and/or any persons authorised to enter into transactions with the entity in the name and stead of the legal person. The identification data and documents on such natural persons is the same information as that which is required for regular or occasional customers who are natural persons, respectively. Argentina advised that, although there is no definition of "authority", this notion is commonly understood as those persons who practice the representation of a legal person. However, this requirement still does not appear to be clear and would deserve further explanation. In addition, there is no requirement in law or regulation to verify that any person purporting to act on behalf of a customer that is a legal person is so authorised. The BCRA Compilation of AML measures only requests this for occasional customers that are legal persons. Even though it can be assumed that it would be a regular practice, the BCRA rules do not set out this requirement for regular customers that are legal persons.

433. The BCRA Compilation of AML measures only addresses, under the general identification rules, the case where the customer is a legal person — *i.e.*,a company, an association, a foundation or other organisation with or without legal status. Therefore, it does not explicitly address the case where the customer is a trust or another similar legal arrangement, while trusts are authorised to act in Argentina and can even been constituted. However, Argentinean authorities advised that trusts or similar legal arrangements should be understood as part of "organisation with or without legal status" and thus that the CDD measures required for legal persons are also applicable for this type of customer. However, as mentioned in paragraph 439, it is worth noting that the BCRA compilation of AML measures contains in its section on "Particular Cases" some identification provision for trusts, when they are used to avoid the process for identifying customers. In these cases, it is expressly required for banking and foreign exchange institutions to identify the settlers, trustees, and beneficiaries of the trusts.

434. According to General Resolution n° 547/2009 of the CNV, the securities sector should identify and verify the identity of their customer according to the measures set out in the FIU's resolutions 03/2002 and 152/2008. However, the General Resolution of the CNV and the FIU's resolutions do not meet the FATF criteria of other enforceable means. The FIU resolution 152/2008 provides that this sector shall obtain the full names and surname, date and place of birth, civil status of their regular customers who are natural persons. This identification data should be verified by means of an original identity document, whose number and type should be collected. The FIU resolution details which type of identity document should be used for this purpose: a National Identity Document (DNI), a Personal Identity Document for Women (LC), a Personal Identity Document for Men (LE), or a passport in force at the moment of the establishment of the business relationship. The Employee Identification Number (CUIL), a Tax

Identification Number (CUIT) or an Identification Code (CDI), the address, the phone number, and the profession or the main activity of the natural person should also be collected. Like for the banking sector, for regular customers being natural persons, securities institutions shall identify and verify the identity of the attorneys, guardians, custodians, and representatives. When the natural person is an occasional customer, his/her date and place of birth, civil status and CUIL, CUIT or CDI are not requested, but the date of birth and the marital status appear in the DNI, LE, LC or passport.

435. Regarding customers that are legal persons, FIU Resolution 152/2008 provides that the securities sector should obtain the name of the legal person, its date and registration number, its tax registration number, the date of its articles of incorporation and the updated copy of by-laws, its address, the phone number of its headquarters, and its main business activity. In addition, financial institutions should collect the identification data similar that requested in the case of a customer who is a natural person, related to the authorities (which are not defined) of the legal person, its legal representatives, attorneys-in-fact and/or individuals with authorised signature who carry out transactions on its behalf. The same deficiencies explained for the banking sector apply in what concerns the verification of the capacity of the representative to act on behalf of the customer. As for the banking sector, the case of customers that are trusts or other legal arrangements is not explicitly mentioned in the FIU's resolutions under the general customer identification rules. However, CNV's Resolution 547 requires identifying not only the settler, trustee and beneficiaries but also the managers, brokers or any natural or legal person with a direct or indirect participation in the trust, though it might not be entirely clear who these persons are in relation to a trust. However, this resolution does not meet the status of OEM.

436. Life insurance companies and intermediaries shall identify their customers as provided by FIU Resolution 50/2008. However, as detailed at the beginning of section 3, this resolution does not meet the FATF criteria for other enforceable means. The measures provided by this resolution, in particular the type of identification data and the nature of sources that can be used, differ from the ones set out for the other financial sectors. The nature of the identification data required for customers that are natural persons are quite similar, but the type of reliable sources is expanded. On the other hand, the data required in the case of customers that are legal persons are more limited, and insufficient. This information is: the name of the company, its taxpayer identification number (CUIT), its business address and phone number of the headquarters, and its main business activity. No information regarding the legal status of the company, its articles of incorporation, its registration number, its directors, and the provision to bind the legal persons (such as by-laws), is required as a general rule. When the annual premium exceeds ARS 30 000 (USD 7 800) a list of the members of the Board of Administration and of the shareholders controlling the company is required. The FIU Resolution also provides that insurance companies and intermediaries shall obtain and verify identification data of the attorneys-in-fact, guardians, curators or agents who act on behalf on customers (natural or legal person). However, there is no requirement to verify that such persons are authorised to act on behalf of a customer.

Identification of the beneficial owner

437. Section 21 of AML Law 25 246 requires that "when customers, requesting or contributing parties act on behalf of third parties, the necessary steps shall be taken in order to identify the persons on whose behalf they are acting". This provision addresses the issue of "acting on behalf of a third party", but there is no requirement in law or regulation to extend this identification to the natural persons who owns or controls a customer that is a legal person or arrangement, nor requirements related to the ultimate beneficial owner. In addition, AML Law 25 246 does not specify that financial institution shall take reasonable measures to verify the identity of the beneficial owner.

438. Section 1.3.4.2 of the BCRA Compilation of AML measures contains a provision on the "act performed purportedly in someone else's name", which requires banking and foreign exchange institutions

to "make their best efforts to identify the ultimate and/or actual account holder and/or clients […] where the institution assumes that a client is conducting a transaction in someone else's name (ultimate or actual holder/customer). In this case, the financial institution shall request information about the latter and make their best efforts to fulfil the same requirements as for the customers, which include the obtaining of documents verifying the identity of such person. The assessment team assumes that this provision refers to the FATF requirement to determine whether a customer is acting on behalf of another person. But this provision only requires banking and foreign exchange institutions to make their best efforts to identify the person on whose behalf a transaction is conducted, and it does not require taking reasonable step to verify the identity of that person.

439. The BCRA Compilation of AML measures does not provide for general rules to identify beneficial owners of all customers that are legal persons or arrangements. However, the Argentinean authorities consider that under the general rules (section 1.3.2.1.2) that apply for all legal persons, association, foundations and other organisation with or without legal status, this information on beneficial ownership can be obtained by banks and foreign exchange institutions through the deed of incorporation of companies or the deed of forms of trust or similar legal arrangement and the updated by-laws. But, in practice, regarding legal persons, these documents do not contain information on the persons who own or control a legal person, and even less the ultimate beneficial owners. Regarding trust and other similar legal arrangement, the Argentinean authorities advised that banks and foreign exchange institutions must obtain the deed form of the trust, document in which they should note the name of the settlers, the trustees and the beneficiaries, though this is not expressly required in section 1.3.2.1.2 of the BCRA Compilation of AML measures. There is no measure either to address the question of the ultimate beneficial owner of a trust, or the case where the trustee would not give the deed form. In any case, even if those documents are required, the BCRA Compilation of AML measures does not require banks and foreign exchange institutions to obtain information on beneficial ownership for all customers that are legal persons, trusts or legal arrangements. The explicit measures related to beneficial owners, as such, are contained in a section on "Particular cases", which provides that "additional measures shall be taken to insure the identification of the ultimate holder/client, among others, in the following cases:

- Trusts (*fideicomisos*): they may be used to avoid the process for identifying customers. In these cases, trustees, settlers and beneficiaries shall be identified.

- Vehicle companies (*empresas vehículos*): entities [banking and foreign exchange institutions] shall pay special attention to avoid legal persons to be used by natural persons for conducting transactions. Entities shall implement procedures that may allow to learn the company's structure, the source of funds and to identify the owners, beneficiaries and those who exert real control of the legal person.

440. The explicit measures of the BCRA related to beneficial owners are therefore limited (i) to customers that are trusts when they would be used to avoid the process for identifying customers; and (ii) to vehicle companies. In this case, there is no mention that this "ultimate holder/client" should be a natural person and the BCRA Compilation of AML measures does not explicitly require financial institutions to take reasonable measures to verify the identity of the beneficial owner of vehicle companies or trusts nor to obtain these information or data from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is. However, section 1.6 of the BCRA Compilation of AML measures provides for a general requirement that banks and foreign exchange institutions shall check, by the most effective means, the genuineness of the most relevant personal and commercial data. It has been advised that this encompasses information on beneficial owner.

441. Regarding the requirements related to companies, it is unclear which types of companies are covered by the concept of "vehicle companies" nor whether the requirements apply to all legal persons or

just to those that are suspected to being misused as corporate vehicle,. The BCRA and the representatives from the private sector who were interviewed during the on-site mission explained that this obligation is of general application to all customers being legal persons. However, not all supervisors shared this opinion and the reviewed guidance provided by associations from the banking industry did not clearly confirm this understanding. Moreover, the corresponding FIU resolution designates these companies whose beneficial owners should be identified as "shell companies/ vehicles companies". In addition, the BCRA does not detail who the owners to be identified are, nor who the beneficiaries of a company are. Lastly, the BCRA does not require banking and exchange institutions to identify the shareholders of a legal person and it does not require either financial institution to identify the natural persons who exert a control on the company, since the obligation is to identify the (natural or legal) "person exerting a real control of the vehicle companies".

442. On this matter, it should also be noted that there is a lack of a commonly understood definition of "the person exerting a real control". The BCRA advised that Communication A 2140 regarding the control of financial entities applies, although provisions on beneficial ownership make no reference to it. Communication A 2140 provides that a natural or legal person is controlling a company when it has direct or indirect control over 25% of the voting rights, when it has direct or indirect control over 50% of the votes in the election of the Board of Director or when its direct or indirect participation allows it to adopt a decision in the General Assembly or Board of Directors' meetings. This Communication focuses on the control of financial entities, not of general legal persons. It should also be noted that other supervisors have a different view of "control" and consider that a person exerts control over a legal person when its participation or voting rights exceed 50% or referred to the limits established for the different kinds of legal persons in the Commercial Code. Some representatives from the private sector argued that they considered that they were requested to identify any natural person behind the different layers of legal persons being shareholders of a customer, although they did not explain how this would be applied in practice. In any case, the lack of a common approach of the concept of control raises some concerns.

443. The requirements related to beneficial ownership of FIU Resolution 152/2008, which does not meet the FATF criteria of other enforceable means, present deficiencies that are similar to the ones contained in the BCRA Compilation of AML measures. When the financial institution has doubts about the customer acting on behalf of another person, it should take reasonable measures to identify the person on whose behalf the customer is acting, although there is no explicit provision to verify such identity. On this last issue, the Argentinean authorities advised that since the identification is made though specific identification document, the verification is implicit but effective. Furthermore, it provides that financial institutions, which fall under the supervision of the CNV, should prevent natural persons from using legal persons as shell companies to carry out their transactions. Financial institutions of the securities sector should therefore implement measures to understand the company structure and to identify the owners, beneficiaries and the persons who exert real control over the legal person. Regarding trusts, financial institutions shall identify the trustees, settlers and beneficiaries. In addition, CNV General Resolution 547/2009 provides that when the customer is a trust, the financial institutions should identify the trustees, settlers, organisers, underwriters, beneficiaries and any other natural or legal person that may participate in any way, either directly or indirectly, in the trust business. When the customer is a mutual fund, the identification requirements include the managing company, the depositary company and any natural or legal person participating directly or indirectly in any way in the business of the mutual investment fund.

444. Pursuant to the FIU Resolution 50/2008 for insurance companies and intermediaries, which is not other enforceable means according to the FATF, financial institutions should only obtain the list of the members of the management board and partners controlling customers that are legal persons when the single or annual premiums are equal to or over ARS 30 000 (USD 7 800). These requirements do not address the FATF standards on beneficial ownership. Concerning the beneficiary of an insurance policy, the FIU resolution provides that the insurance companies shall obtain the following information on the

beneficiary(ies) under a policy at the time of the payout: the name of the natural or legal person, its identification number (DNI or CUIT/CUIL/CDI), its address and telephone number, and its link with the policyholder, if any.

Purpose and nature of the business relationship

445. There is no requirement in AML Law 25 246 for financial institutions to obtain information on the nature and the purpose of the business relationship. Regarding the banking and foreign exchange institutions, the BCRA Compilation of AML measures does not contain any provision requiring these financial institutions to obtain the purpose and intended nature of the business relationship; rather, it refers to the provisions of FIU resolution 228/2007. This resolution provides that the banking and foreign exchange institutions should, at the beginning of the business relationship, determine the activity of the customer, the financial product he will use, his motivation for choosing those financial products/services, and the estimated volume of the operations to be conducted with the financial institutions.

446. The other sectoral FIU resolutions include the same provisions for the securities, insurance, money remitters and postal services engaged in transfers of funds. However, as already stated, these resolutions do not meet the FATF criteria for other enforceable means.

Ongoing due diligence

447. There is no requirement in law or regulation to conduct ongoing due diligence on the business relationships.

448. However, the BCRA Compilation of AML measures requires banking and foreign exchange institutions to monitor the transactions undertaken during the business relationship. This monitoring procedure starts by obtaining from regular customers a sworn statement on the legitimacy of the source of funds. When the banking or foreign exchange institution deems it necessary, evidencing documentation will be required. For regular customers being legal persons, a copy of the last certified balance sheet or alternative documentation establishing the financial situation of the company must be obtained. In the case of occasional customers (natural or legal person), the sworn statement must be required when individual transactions exceed ARS 30 000 (USD 7 800). When such transactions exceed ARS 200 000 (USD 52 000), customers should also provide supportive document/information evidencing the stated source of funds. With respect to foreign exchange transactions, financial institutions shall require a sworn statement on the legitimacy of the sources of funds with relevant backing documentation and/or information evidencing the stated source of funds when one or several interlinked transactions exceed ARS 30 000 per month and are conducted in cash.

449. In addition, according to the BCRA Compilation of AML measures, banking and foreign exchange institutions should implement monitoring procedures. This consists in segmenting financial products/services and customers according to the risk policy of the financial institution and to define the profile of the customer accordingly. Financial institutions shall then elaborate a risk matrix – transactions versus customer's profile – in order to detect any inconsistent transaction. A deeper analysis, including gathering additional documentation as previously detailed would confirm or not the original diagnosis of financial institutions. Entities are required to implement adequate information technology systems to facilitate the detection of inconsistent or unusual transactions.

450. There is no requirement in the BCRA Compilation of AML measures or in the FIU resolution to ensure that documents, data or information collected under the CDD process are regularly up-dated, but this is required on the basis of materiality of ML risks. Indeed, both BCRA Compilation of AML measures (section 1.6) and FIU resolutions introduce a requirement to update customer's information when

large or unusual transactions are detected or when the financial institution deems it convenient according to its risk policy.

451. Regarding the other financial sectors, the FIU resolutions provide for similar requirements, except for the insurance sector where the FIU resolution provide that CDD documents shall be updated as maximum every two years. However, they do not meet the FATF criteria for other enforceable means.

Enhanced due diligence

452. As already detailed above, the BCRA Compilation of AML measures and the FIU's Resolution 228/2007 request banking and foreign exchange institutions to gather an *affidavit* on the legitimacy of funds/certified balance sheet for regular natural/legal persons customers accompanied when necessary by supporting documentation on the source of funds. The affidavit is also requested for any occasional customer who perform transaction over ARS 30 000 (USD 7 800), accompanied by evidencing documentation if the transaction exceeds ARS 200 000 (USD 52 000). This also applies with respect to foreign exchange transactions over ARS 30 000 performed in cash.

453. As already mentioned in the paragraphs related to beneficial ownership, the BCRA Compilation of AML measures and the FIU resolutions consider that business relationships with customers acting on behalf of others or with trusts or corporate vehicles are higher-risk relationships for which financial entities shall apply enhanced CDD measures (*e.g.*, identifying the trustees, settlers and beneficiary of trusts). Pursuant to the FATF standards, these CDD measures are not enhanced measures, since they shall in any case be performed as normal CDD measures for legal persons and arrangements.

454. Argentina further advised the assessment team that specific measures are required when banking or foreign exchange institutions receive funds from a country or jurisdiction considered as being tax havens listed in Decree 1037/2000. In these particular cases, financial institutions are required to obtain a declaration from their foreign counterparts located in a designated jurisdiction[20] that they "fulfil the Know Your Customers principles". This measure does not actually constitute enhanced due diligence over higher risk transactions, since this requirement is only declaratory and since there is no other requirement for financial institutions to monitor more closely this type of transactions or business relationships involving transactions being conducted on a regular basis.

455. Section 1.3.4 of the BCRA Compilation of AML measures requires some special monitoring for:

- Cash deposits above ARS 30 000 (USD 7 800): in such cases, financial institutions shall identify the depositor by means of his identification document and record the name of the depositor. These financial institutions shall also assess whether the cash deposits are consistent with the risk profile of the account holder.

- Operations with money remitters (which are not supervised in Argentina) or with currency exchange brokers: banking and foreign exchange institutions must obtain from money remitters and foreign currency exchange brokers a declaration that they fulfil the requirements on prevention of money laundering and a copy of their internal policies or procedures in this field. However, there is no particular requirement to conduct enhanced CDD measures on the operations conducted with these types of financial institutions.

456. Other Communications from the BCRA, which are not specifically related to money laundering, establish limits to the access to the foreign exchange market by non-residents. For instance,

[20] The Decree 1037/2000 lists 88 territories, jurisdictions or countries as Tax Havens.

Communication A 4940/2009 provides for the authorisation of the BCRA to buy foreign currency to repatriate non-resident direct and portfolio investments. In order to get authorisation, the required documentation includes the identification of the non-resident partner, the certification of being up-date with tax payments and to prove the veracity of the disinvestment. In case of purchase or sale of securities by non-residents, the financial entities supervised by the BCRA must refrain from intervening in any triangulation of operations, where the non-resident customers or intermediaries do not meet the requirements established by the CNV.

457. FIU Resolution 152/2008 for the securities sector, which does not meet the FATF criteria of other enforceable means, also provides that entities should obtain from regular customers an affidavit on the legitimacy of funds (and supporting documentation if necessary) and a certified balance sheet or alternative document for legal persons. The affidavit is also required in case of transactions made by occasional customers above ARS 30 000, accompanied by evidencing documentation when the transaction exceeds ARS 200 000.

458. The requirements set out in FIU resolutions for other financial institutions, such as postal services engaged in transfers of funds and money remitters, are similar to those required to banking and foreign exchange institutions. For capitalisation and saving companies, additional documentation on the origin of finds shall also be requested for certain operations exceeding ARS 30 000.

459. Finally, FIU Resolution 50/2008 for the insurance sector provides for some additional CDD measures when the single or annual premiums are equal to or above ARS 30 000. In this case, life insurance companies shall obtain from customers, who are natural or legal persons, a sworn affidavit on the legality and the origin of the funds. The supporting documents to be requested may consist of: a statement made by a certified public accountant certifying the origin of the funds and/or a copy of balance sheet certified by a certified public accountant and the relevant Association of Certified Public Accountants and/or banking documentation proving the availability of sufficient funds to conduct the transaction.

Simplified due diligence

460. Argentina has not conducted an overall risk assessment, and AML Law 25 246 does not contain provisions on the basis of which financial institutions can apply reduced or simplified measures. However, article 20 of the AML law provides that the FIU shall lay down guidelines about the manner, timing and limits on compliance with the CDD obligations.

461. The BCRA Compilation of AML measures and FIU Resolution 228/2007 set out several situations where banking and foreign exchange institutions may apply simplified CDD measures. However, it should be noted that banking and foreign exchange institutions, and more broadly, almost all financial institutions in Argentina are required to obtain information or data on their customer, for AML/CFT purposes, which go much beyond the information required by the FATF Standards. As a consequence, in many cases, the exemptions relate to data or information not required by the FATF, such as information on the occupation of occasional customers conducting a transaction below ARS 1 000 (USD 265).

462. Banking and foreign exchange institutions are also allowed to apply reduced controls on the accounts related to payment of salaries, unemployment benefit payments in the building sector or social security payment, with monthly transactions not exceeding USD 7 800. In these cases, the information provided by employer and competent public bodies are sufficient, notwithstanding the obligation of the institution to analyse the possible inconsistency between the profile of the customer and the amounts or transactions' modalities.

463. In addition, section 1.3.6 of the BCRA Compilation of AML measures exempts banking and foreign exchange institutions from identifying and verifying of the identity of their customers (and beneficial owner where applicable) who:

- Are Public and financial sector account holders or their representatives, whenever the transactions are conducted in the course of their business;

- The holder of accounts credited with deposits related to court cases. In these cases, the accountholder is the Court, and deposits are made following the preventive or definitive measures adopted by the Court.

464. FIU Resolution 152/2008 also provides for exemption to conduct CDD measures in the securities sector, when the customers are: i) officials from the non-financial public sector or their agents when they carry out transactions in compliance with their functions; ii) legal persons from the financial sector or their agents, when they carry out transactions in compliance with their functions; iii) accounts credited with deposits related to court cases.

465. These provisions are not in line with the FATF Standards, which do not provide for an exemption of applying any CDD against low risk customers. Regarding customers that are financial sector account holders, the assessment team is of the view that this definition is far too broad, since it is not limited to financial institutions which are subject to requirements to combat money laundering and terrorist financing consistent with the FATF Recommendation and which are supervised for compliance with those requirements. Argentina advised that the financial sector is commonly understood as domestic financial entities (basically the banking sector). The domestic limitation would be based on the BCRA's balance sheet where financial sector item is under a "resident" section and separated from "non-resident". The same reasoning would apply to consider that the non-financial public sector provision is only applicable to the domestic public sector. However, the assessment team considers that in the absence of a definition in the AML/CFT texts, the financial sector and non-financial public sector exemptions can be interpreted in a wider sense, both in terms of institutions under the scope and the geographical application of the exemption.

466. Moreover, there is no requirement in the BCRA Compilation of AML measures to apply CDD for those customers, who fall under the exemption, when there is suspicion of ML/FT or when specific higher risks apply.

467. These last two deficiencies are also applicable for all the other financial institutions that are not banking or foreign exchange institutions. Even if the assessment team considers that the FIU resolutions for these sectors are not other enforceable means, the fact that they provide for exemptions encourages these financial institutions not to apply CDD measures to these types of customers.

468. Apart from the cases described above requiring enhanced or simplified CDD measures or exempting from applying CDD measures, the FIU resolutions (which are not other enforceable means) request each financial institution to segment their customers according to the risk analysis they have conducted and to apply CDD accordingly. Therefore, the FIU resolutions include an annex with a list of operations involving a potential risk of ML/FT links. These guidelines aim at providing examples to enable financial institutions to assess ML risks according to the type of business they carry out and/or the profile of their customers. However, the list focuses more on unusual or suspicions transactions than on customers that could be considered as potentially high-risk customers. The definition of high-risk customers is left to the discretion of each financial institution with no further guidance having been provided by the FIU or the different financial supervisors. The FIU resolutions and BCRA, CNV and SSN documents are silent on the type of additional identification and ongoing due diligence that should be

adopted by financial institutions when identifying higher risk transactions or customers. They refer to "extra precautions" without defining the nature of such additional measures. Financial institutions are therefore left with flexibility and a margin for discretion. For the sake of clarity and proper implementation, the evaluation team believes that financial institutions should be provided with more precise guidance on the types of enhanced due diligence that are expected to be implemented in these circumstances.

Timing of verification

469. Article 20 of AML Law 25 246 does not provide for when identification and verification of the identity of customers should be conducted. The BCRA Compilation of AML measures, as well as the FIU resolutions, do not explicitly indicate when the CDD measures shall be conducted or when this data shall be verified. They only set out that the KYC process shall begin by fulfilling the identification requirements defined by the financial institutions and require them to verify the most relevant personal and commercial data. However, during the on-site visit, the assessment team noted that the BCRA and the CNV have a common understanding that financial institutions are not allowed to perform any transaction or to establish any business relationship without the prior verification of the identity of the customer. The assessment team still has serious doubts on the effective implementation of this interpretation by the private sector, especially in the securities sector.

470. Regarding the insurance sector, FIU Resolution 50/2008 allows insurance companies and intermediaries to identify and verify the identity of the beneficiary of the life insurance policy, provided that it is not the policyholder, at the time of the payout. However, the failure to submit the information requested in the FIU resolution for identification purposes shall not prevent the insurance company to proceed to the payment of the benefits, if the insurance company has in its possession the necessary documentation required by the policy and the relevant insurance regulations. The extent of this last provision, which does not take into account the ML/FT risk of the business relationship, is unclear, since the assessment team was not provided with information on which documentation would then be considered as enough in the life insurance sector. This provision is therefore a source of concern. More generally, although the FIU Resolution is not other enforceable means as defined by the FATF, it does allow financial institutions to conduct CDD measures in a way which is not in compliance with the FATF Recommendations, and it should therefore be considered as a deficiency of the Argentinean AML/CFT regime.

471. To conclude on this issue of timing of verification, there is no explicit provision in the Argentinean law, regulation or other enforceable means on when the verification of identification data of the customers and beneficial owners should be conducted and when a provision allows to conduct it after the establishment of the business relationship, such as for the life insurance sector, it is not in compliance with the FATF Standards.

Failure to satisfactorily complete CDD measures

472. There is no provision in the Argentinean laws, regulations or other enforceable means to prohibit reporting parties to open an account, commence business relationships or perform transactions, when they are unable to carry out CDD measures on the customer and the beneficial owner. There is no requirement either to terminate an existing business relationship if CDD measures cannot be adequately conducted on existing customers or if the financial institution has doubts about the veracity or adequacy of the previously obtained information. In those cases, the various FIU resolutions, which are not other enforceable means, provide that financial institutions shall consider submitting a suspicious transaction reports.

Existing customers

473. There is no provision in law, regulation or other enforceable means applying to the securities and life insurance sectors, to require the application of CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. However, regarding the banking and foreign exchange institutions, the BCRA Compilation of AML/CFT measure in a one hand and the FIU resolutions which are not other enforceable means on the other hand, provide that CDD data should be updated when an unusual or large transaction is performed by a customer, when the pattern of the relationship changes substantially or when it is considered appropriate according to the risk policy of the financial institution. Therefore, banks and foreign exchange institutions are required to apply CDD requirements to existing customers on the basis of materiality and risk.

Recommendation 6

474. There is no general provision in the Argentinean legal framework to require financial institutions to conduct specific measures relating to foreign politically exposed persons (PEPs), as defined in the FATF Glossary. The FIU resolutions include provisions only regarding domestic PEPs, and provide for enhanced identification measures with customers who are domestic governmental officials performing the duties or holding the positions under section 5 of Law 25 188, Law of Ethics in the Public Sector.

475. However, the BCRA's requirements go beyond domestic PEPs and extend to foreign PEPs. Indeed, the BCRA Communication "A" 4835, in force since April 2009, extends the requirements of banking and foreign exchange institutions[21] to the application of enhanced identification and control procedures to foreign PEPs. This Communication, and Communication "A' 4895 amending it, have been incorporated in the BCRA Compilation of AML measures, under section 1.3.4.3, in the chapter related to "Particular Situations". The BCRA also mentions several websites where financial institutions can check if a customer is a foreign PEP. These BCRA's measures are further detailed below.

476. The CNV advised the assessment team that CNV has adopted BCRA's rules concerning foreign PEPs. However, section 6 of CNV General Resolution 547/2009, which does not meet the FATF criteria of other enforceable means, only establishes a general requirement for the securities sector, to increase their vigilance in relation to transactions with PEPs, both domestic and foreign, and refers to the same websites as the BCRA.

477. There is no requirement whatsoever for any other reporting parties concerning foreign PEPs. One of the objectives of the National Agenda to Fight Against Money Laundering and Terrorist Financing, enacted by Decree 1225/2007, is to amend the FIU resolutions to harmonise their provisions in this regard with the Communications issued by the BCRA. The FIU advised the assessment team that a draft resolution to bring requirements about foreign PEPs in line with the FATF Standards was well advanced, and that it is considering the creation of a common database to answer basic inquiries from reporting parties, which is one of the demands of the private sector.

478. The paragraphs below only focus on the provisions of the BCRA, since the texts applicable to other financial institutions are not enforceable means and are limited to domestic PEPs.

[21] Banks, financial companies, saving and loans associations for housing and other real estate purposes and credit institutions and foreign exchange entities.

Risk Management Systems

479. Section 1.3.4.3 of the BCRA Compilation of AML measures provides that special attention shall be paid to the identification of regular customers and occasional customers making monthly transactions over ARS 30 000 (USD 7 800) who are domestic or foreign PEPs. This provision does not encompass the situation where the beneficial owner of the business relationship would be a PEP.

480. The BCRA Compilation of AML measures defines the foreign PEPs as foreign people performing or having performed functions during the last two years prior to the date of analysis in any of the following positions:

- Head of States, Head of Government, governor, mayor, minister, secretary and under-secretary of State and other comparable governmental position.
- Members of Parliament / legislative power.
- Judges, member of superior court of justice and other judicial and administrative areas of the judiciary.
- Ambassadors, consuls and officials in permanent official mission abroad.
- High ranking officers of the Armed Forces and the public Security forces.
- Members of the governance and law enforcement bodies of State-owned companies.
- Directors, governors, councillors, controllers or equivalent authorities of central banks and other State regulatory and/or supervisory bodies.

481. This definition of PEPs applicable for banking and foreign exchanges institutions seems to be comprehensive and to cover the FATF definition of PEPs. In addition, the definition of PEPs of the BCRA Compilation of AML measures also encompasses:

- the "spouses or legally recognised live-in people and relatives in ascending, descending or collateral lines up to the second degree of consanguinity or second degree of affinity" of PEPs as defined above; and
- the persons controlled by a PEP or a family member pursuant to provisions of item 1 of Annex I to the Communication "A" 2140 on transactions with non-financial private sector natural or legal persons related to financial institutions. Although this Communication defined the persons who control financial institutions, Argentinean authorities advises this should be considered as encompassing in the definition of PEPs any legal person that is controlled by a PEP or a relative. According to this Communication, control would be exerted when the PEP directly or indirectly: (i) owns or controls 25% or more of the voting rights in the legal person; (ii) has 50% or more of the voting rights on the election of the managers of the legal person or (iii) when regardless of any threshold it has the necessary votes to adopt decisions on the Shareholders' assembly or Board of administrator meetings. Though the requirement lacks clarity, it seems to refer to the situation where a PEP or a family member would be the beneficial owner of another person.
- There is no mention in the BCRA Compilation of AML measures to the situation where a customer would be a close associate of a PEP.

482. The BCRA Compilation of AML measures further provides that banking and foreign exchange institutions shall determine whether their customers are PEPs by requiring for example from new customers the provision of a sworn statement and by requiring them to be informed of any further change in their situations within 30 days. Banking and foreign exchange institutions shall also conduct enhanced ongoing monitoring of the business relationship. They shall also search databases or other kinds of public sources on PEPs. The BCRA Communication "B" 9368/2008, which is guidance, indicates to banking and foreign exchange institutions three public and free databases where information on foreign PEPs can be found. Section 4 of the BCRA Communication "A' 4895 also provides that banking and foreign exchange institutions shall have completed before 1 January 2011 a review of their customers in order to identify any PEPs among them.

483. According to the BCRA Compilation of AML measures, banking and foreign exchange institutions shall also establish the information sources to be consulted as regard the determination of PEPs and they shall write down in their internal AML/CFT policies and procedures whether they exercise or not the sworn statement option.

Senior management approval

484. The BCRA Compilation of AML measures provides that, at least, the authorisation of the head officer of the branch office shall be required to enter into business relationship with a PEP. Each month, each institution shall report to its Committee for the monitoring and prevention of ML any acceptance of new customers who are PEPs. The Committee will then acknowledge the receipt of this information in the Minutes of its meeting. The head officer of the branch office being understood as the Head of the local branch (particular location of a bank), it does not correspond to the level of senior management provided by the FATF. In addition, while the information of the AML/CFT compliance unit appears to be a positive element, it should be noticed that its advices are not sought nor taken into consideration.

485. The BCRA Compilation of AML measures only addresses the case of new customers being PEPs, but it does not require senior management approval when existing customers become PEPs, although Argentina claims that it would be part of the institution's normal risk management procedures. In addition, although customers fulfilling the sworn declaration are requested to inform financial institutions if they become a PEP, there is no specific requirement to periodically check this change of condition. In practice, the representatives of the private sector met during the onsite visit stated that customers' portfolios are periodically checked with private databases.

Source of funds and source of wealth

486. There is no specific provision in the BCRA Compilation of AML/CFT measures to require banking and foreign exchange institutions to take reasonable measures to establish the source of wealth or source of funds of customers and beneficial owners identified as PEPs. However, the BCRA provides for a general requirement to obtain, from all regular customers, a sworn statement of the legitimacy and source of funds, as well as, if deemed convenient, relevant banking documentation and/or information evidencing the stated source of funds. The same requirements apply to occasional customers performing transactions that do not have apparent economic or legal justification or above a monetary threshold. This monetary threshold is ARS 30 000 (USD 7 800) for foreign exchange operations. For other types of transactions, the sworn statement must be required above that threshold accompanied by documentary evidence if it exceeds ARS 200 000 (USD 52 000).

Ongoing monitoring

487. The BCRA Compilation of AML measures provides that banking and foreign exchange institutions shall apply enhanced monitoring policies and procedures for customers identified as PEPs in order to "adopt any necessary measure in connection with the transactions they may conduct, bearing in mind their reasonability, as well as their economic and legal justification". These enhanced procedures shall be established pursuant to section 1.6 of the BCRA Compilation of AML measures related to control and prevention procedures, which provides that banking and foreign exchange institutions shall design patterns for each kind of customers, including PEPs. Where the behaviour of such customers deviate or become inconsistent with their profile, financial institutions shall then analyse these transactions and obtain additional information ratifying or rectifying the unusualness or inconsistency of the transaction.

Additional elements – domestic PEPs

488. Regarding the banking and foreign exchange institutions, the BCRA's provision in relation to foreign PEPs are also applicable for domestic PEPs, including the provincial and municipal government officers, as well as those from the Autonomous City of Buenos Aires. The definition of domestic PEPs encompasses their relatives up to second degree and legal persons controlled by them. The BCRA Communication "B" 8803/2006 informs entities supervised by the BCRA of the existence of "Listing of Officers of the Public Administration" available on the BCRA's website. The list contains domestic PEPs subject to asset declaration obligations provided by Law 25 188 as well as a list of people who ceased to be considered as PEPs and are not longer obliged to present their asset declarations.

489. Finally, Argentina signed the United Nations Convention against Corruption on 10 December 2003. The Convention was incorporated into the Argentinean legislation by Law 26 097 in May 2006, and entered into force in September 2006.

Effectiveness

490. From the meetings with the BCRA, the CNV and representatives of the private sector, it seems that most entities have systems in place to ascertain if a potential customer is a PEP and to conduct enhanced CDD measures and ongoing monitoring on the business relationships. Some PEPs have henceforth been identified amongst their customers, although the PEPs identified are mainly domestic ones or employees of foreign Embassies in Argentina. According to the FIU, since 2006, 18 STRs on PEPs were received, and 4 of them have been disclosed to the Attorney's General Office. All these reports concerned domestic PEPs. Since the coverage of domestic PEPs is very wide and taking into account the fact that corruption is perceived as a major concern in Argentina, these figures seem quite low and raised some concerns about how the procedures in place in financial institutions are being effectively implemented.

Recommendation 7

491. There is no requirement in law, regulation or other enforceable means in Argentina in relation to correspondent banking business relationships.

492. During the onsite visit, the assessment team was provided with a BCRA draft Communication to regulate this type of business relationship, but the draft was not adopted during the two month period after the on-site visit.

Recommendation 8

493. There is no provision in AML Law 25 246 related to the prevention of misuse of technological developments in ML/TF schemes, or to risks associated with non-face to face relationships or transactions.

Prevention of the misuse of technological development in ML/TF schemes

494. Further to the requirement to have ML/TF prevention and controls procedures, there is no provision in the BCRA Compilation of AML measures or in the various sets of FIU's resolutions to require financial institutions to have policies in place or to take appropriate measures to prevent the misuse of technological developments in ML/TF schemes. Moreover, it should be noted that, although credit and purchase cards operators are subject to AML obligations pursuant to article 21 of the AML Law 25 246, no FIU resolution providing guidance on AML/CTF preventive measures had been adopted at the time of the on-site visit for these institutions, and that they are not supervised for AML/CFT purposes. Equally, objective 16 of the National Agenda for the fight against ML/TF includes the promotion of regulation and supervision of Internet payment system dealers. However, no progress had been made on this objective as at the time of the on-site visit[22].

Non-face to face business relationships and transactions

495. The various FIU resolutions, which are not other enforceable means, request financial entities to adopt any specific measures they may deem adequate in order to mitigate higher-risk situations arising from the establishment of non-face-to-face business relationships or transactions. Except for the insurance sector, the FIU resolutions do not specify what kind of measures should be taken nor has it issued any guidance on this matter.

496. The BCRA Compilation of AML measures and the CNV General Resolution 547/2009 quote the FIU requirements, without providing any further details or guidance on the specific measures to be implemented by banking and foreign exchange institutions.

497. FIU resolution 50/2008 for the insurance sector is the only resolution that specifies these measures. However, as previously detailed, this resolution does not meet the FATF criteria for other enforceable means, but it constitutes guidance. FIU resolution 50/2008 provides that insurance companies and intermediaries shall adopt specific and appropriate measures to compensate the higher ML/TF risks associated with business relationships and transactions, which are established or carried out with customers who are not physically present to be identified. The FIU resolution further provides for examples of additional information which could then be requested from the customers: i) additional supporting documents (bills to evidence the address, banking or professional references, enquiries to companies providing commercial information; ii) verification and / or certification of documents supplied, or; iii) obligation to carry out the first transaction through an account opened in the name of the customer.

498. Despite this range of legal provisions, Argentinean financial supervisors claim that the requirement applies only for non-face-to-face transactions, since under the sectoral prudential rules it is not possible to open accounts without the physical presence of the customer for identification purposes. These rules are in the OPASI-2 "Circular Letter on Deposit Transactions" for the banking sector and the General Rules for Transparency of the CNV. The reasons provided by the authorities relate mainly to the requirement to exchange signed contractual documents between the financial institution and the customer. The existence of these contradictory provisions raise some concerns, but the interviewed representatives of

[22] Communication "A" 5093 on cross-border correspondent banking was approved on 29 June 2010.

the private sector confirmed that in practice the establishment of business relationship was always conducted face-to-face.

499. BCRA Communication "A" 4609 addresses non-face-to-face transactions (ATM, home banking, phone banking, use of PDA devises and in general any other types of products under electronic banking). The Communication directs financial institutions to analyse and mitigate the risks presented by each of these channels, and among other measures, to have procedures in place to ascertain the identity of the customers (though ID Pins and similar systems), and protect the integrity and confidentiality of the transactions. The Board of Directors of the financial entities is primarily responsible for the establishment of these procedures.[23]

3.2.2 Recommendations and Comments

Recommendation 5:

500. Argentina should take substantive actions in two main areas: i) the structure and the content of the legal framework requiring CDD measures, and ii) the need to ensure the enforceability of the texts issued by the FIU and the financial regulators (CNV and SSN).

501. Regarding the structure of the legal framework, it must be mentioned firstly that article 21 of AML Law 25 246 provides for very general and incomplete provisions on customer identification, which have not been further developed in Decree 290/07. Instead, Law 25 246 empowers the FIU to set out the detailed CDD requirements for each of the sectors covered by AML Law. Although the FIU has introduced quite high standards in some areas such as customer identification and on-going scrutiny of transactions, there are still sectors for which the FIU has not issued the corresponding resolutions. In some other areas (see table in R.25), the Resolutions have been issued only in 2009, nine years after the AML Law was passed. At the same time, the supervisors of financial institutions, mostly the BCRA, have issued a large number of rules in the past years. While some of them set out new rules which are not contained in the sectoral FIU resolutions, other simply refers to the relevant FIU resolutions. This creates a source of instability of the AML/CFT preventive regime, as well as a lack of clarity for the financial institutions on the types of the CDD measures they shall implement. In addition, as previously set out, the FIU resolutions, as well as the texts issued by the CNV and the SSN do not meet the FATF criteria of "other enforceable means".

502. The following basic CDD obligations should be included in the AML Law or in a Decree, in order to give them a character of stability and to make them directly applicable for all financial institutions:

- Argentina should first revise the scope of financial institutions subject to AML/CFT requirements as defined by Law 25 246, by adding *mutuales*, *cooperativas*, the stock exchange market and the stock exchange without market. It should also clarify the coverage of the remittance companies.

- Regarding the specific requirements on when to conduct CDD measures, Argentina should ensure that the possibility foreseen on article 21 of AML Law 25 246 to establish a monetary threshold below which identification and verification of the identification data of the customers would be exempted complies with Recommendation 5. Argentina should therefore explicitly abrogate the possibility of this exemption for regular customers. Argentina should also consider establishing a

[23] CNV Resolution 543 allows remote access to the securities markets. The Resolution includes a requirement for the markets and intermediaries to have procedures in place to mitigate the associated risks, and specifically those related to ML, and mechanisms to verify the identity of the customer. However, this resolution was approved in June 2010, after the 2 months period after the onsite visit.

monetary threshold for occasional customers in order to avoid requiring identification data for low ML risked transactions. Argentina should also foresee that no threshold or exemption from CDD measures would be acceptable when there are suspicious of ML or TF. Equally, it should also be specifically required to conduct CDD measures when a financial institution has doubts about the veracity of previous identification data.

- Although art. 21 of the AML law requires reporting parties to identify and verify the identity of any person purporting to act on behalf of the customer, a specific requirement should be added to verify that this person is so authorised.

- The only reference in the AML Law 25 246 concerning the identification of the beneficial owners is an indirect one, which does not cover all the aspects of the FATF definition of beneficial owners: "when the customer is acting on behalf of another person, obliged entities should identify this other person". Argentina should introduce in the AML Law or in a Decree specific requirements on the identification and verification of the beneficial ownership reflecting the contents and subtleties of Recommendation 5, part of which are currently in the FIU Resolutions. The notion of the natural person exercising ultimate ownership and control over a legal person should be clearly defined to ensure a proper implementation by the reporting parties. Equally it should be clarified that in case of legal persons this identification is part of the normal CDD procedures to be systemically performed and that this is not part of enhanced measure to be taken in particular situations. For practical reasons, Argentina could clarify that it is not necessary to identify and verify the identity of the shareholders controlling a company when the company is subject to other regulatory disclosure requirements.

- Provisions concerning on-going due diligence are currently set out in the FIU Resolutions. Argentina should include a requirement in the Law or Decree to conduct on-going due diligence on the business relationship.

503. Apart from the mentioned basic obligations that should be reflected in the Law or Decree, Argentina should also reorganise its secondary rules and clearly set out which agency has AML/CFT regulatory competences. Indeed, there is currently duplicity of agencies which issue AML/CFT measures. The three financial supervisors (BCRA, CNV, SSN) consider that they are empowered to issue their own AML/CFT circulars, while the AML Law 25 246 has designated the FIU for this task. As a consequence, most of the financial institutions should comply with regulations issued by two different bodies (FIU, and either BCRA, CNV, or SNN), dealing with the same basic requirements, but sometimes in different ways.

504. Although a harmonisation process has taken place since the last mutual evaluation of Argentina, where the issue was also raised, and both BCRA and CNV rules provide that financial institutions should comply with their rules, but also with the FIU's ones, the fact is that there are still some differences between the requirements issued by the different regulators. For example, whilst the FIU requires to obtain an affidavit on the source of funds of regular customers being natural persons and copy of the last balance for legal persons, the BCRA excludes foreign exchange institutions from this obligation since it links it to the opening of an account; BCRA provides for some extra precautions for cash deposits or operations with money remittance companies that are not included in the FIU resolution; there are the substantially different requirements in terms of PEPs mentioned under Recommendation 6. For its part, CNV identification requirements on trusts are wider than those requested by the FIU for trusts and CNV has enlarged the scope of entities subject to FIU provisions.

505. Whilst the fact that the financial supervisors issue rules for the sectors under their responsibility can bring benefits in terms of agility and adequacy of the rules to the specific sectors, an intense coordination effort would be needed in order to allow obliged entities to have a text of reference with all

the obligations they are requested to fulfil by the both the FIU and the respective sectoral regulators. It would thus be preferable for Argentina to clearly define which agency has AML/CFT regulatory powers and ensure that financial institutions are effectively supervised on the basis of one set of rules. Whichever these agencies would be, the following deficiencies should be remedied in law, regulation or other enforceable means:

- Argentina should streamline the nature of the identification data to be requested of customers. The country indeed faces a low level of access to the banking services of Argentineans, which can be aggravated by the impressive identification data required in Argentina to open a banking account.

- The preventive measures related to beneficial owners should be clearly set out in law, regulation or other enforceable means. Financial institutions should be required to verify the legal status of legal persons or legal arrangement, to identify the directors of legal persons, to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owners using reliable source. Financial institutions should also be required to understand the ownership and control of legal persons and determine who the natural persons that ultimately own or control the customer are. To this end, Argentinean authorities should also give guidance to financial institutions to help them to determine who the person(s) exerting actual control over companies are, since this notion is not universally understood by the private sector.

- Except for the banks and foreign exchange institutions, Argentina is urged to require by regulation or OEM financial institutions to apply enhanced CDD measures for higher risk business and to provide them with guidance on the types of enhanced CDD measures they should apply.

- The provisions concerning low-risk situations should be revised in order to effectively allow for simplified CDD measures and not for the exemption that currently applies to non-financial public sector and financial sector. It should also be clearly established if the provided exemptions are applicable to customers resident in another countries, i.e., foreign financial institutions. Finally, there should be a direct prohibition to implement reduced CDD measures when there is suspicion of money laundering, terrorist financing or specific higher-risk scenario apply.

- Although from a wide interpretation it could follow that the moment to verify the identification of the customer and beneficial owner is before or shortly after the establishing of a business relationship, a direct indication on the timing of verification would be advisable.

- Financial institutions should not be permitted to open an account, commence business relations or perform transactions when adequate CDD has not been conducted. Equally, institutions should be requested to terminate the business relationship when they fail to satisfactorily complete CDD measures. Clear and direct requirements should be adopted in this regard.

- Argentina should adopt rules governing the CDD treatment of existing customers at the time detailed CDD requirements were brought into force.

506. Lastly, Argentina authorities should ensure that the AML/CFT measures are effectively implemented by financial institutions, by ensuring an appropriate monitoring of the compliance of financial institutions with the Argentinean AML/CFT measures and by imposing sanctions for failure to comply with these measures.

Recommendation 6

507. The requirement to conduct enhanced CDD measures on clients being foreign PEPS should be extended to all reporting parties. The framework set out by the BCRA is generally in line with FATF

provisions, although BCRA should clarify what constitutes senior management approval, make an explicit requirement to obtain the approval of senior management to continue the business relationship and require to take reasonable measures to establish the source of wealth of customers identified by PEPs (and not only the source of funds).

508. Comments about duplication of rules are also relevant in this area. Whilst the FIU resolution only sets a very general requirement for national PEPs, BCRA requests are further detailed, the definition of PEPs is wider than the one provided by the FIU, and the increased CDD requirement is extended to foreign PEPs. Argentina authorities are encouraged to promote harmonisation of FIU provisions with those issued by the BCRA, taking into account the above recommendations. The same recommendations made on Recommendation 5 on proper monitoring and sanctioning system also apply.

Recommendation 7

509. Recommendation 7 has not been implemented. There is a need to legislate specifically for correspondent banking relationships obligations. BCRA is encouraged to urgently approve the draft project that was being discussed at the time of the on-site visit, ensuring that all elements of Recommendation 7 are incorporated[24].

Recommendation 8

510. Argentina financial institutions should be required to have policies in place to prevent the misuse of technological developments in ML/TF schemes. Moreover, it should be clarified of it is allowed to establish a business relationship without the physical presence of the customer, and if so, authorities should provide some rules on the nature of enhanced CDD that should be taken. By reinforcing supervising and sanctioning mechanisms, Argentina authorities should make sure that requests to implement enhanced CDD measures for non-face-to-face transactions apply not only to the banking and foreign exchange sectors but also to the rest of reporting parties.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	• 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 traveller 's cheques and credit and purchase card operators are not subject to any AML/CFT measures other than the very basic ones provided by the law. • 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. • 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. • 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 other. For all financial sectors, there is no requirement to verify that the person is so authorised. • There is no requirement in law or regulation applicable to all financial institutions to identify

[24] This Communication was approved on 28 June 2010.

	Rating	Summary of factors underlying rating
		and verify the identity of beneficial owners. • There is no requirement for banking and foreign exchange institutions to understand the ownership and control structure of all customers that are legal persons. • 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). • The BCRA Compilation of AML measures only requires to identify the settlers, trustees and beneficiaries of trusts or other legal arrangements when they are used to avoid the process of identifying clients. • 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. • 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. • 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 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. • 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. • 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. • The effective implementation of the requirements that exist is undermined by factors such as: o 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) o 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. o The very frequent modifications of the rules issued by the BCRA.
R.6	PC	• There is no requirement in law, regulation or other enforceable means for financial institutions of the securities and insurance sector to identify and apply enhanced CDD for foreign PEPs. • The approval by the Head of the branch office (local branch) to establish a business relationship with a PEP does not constitute approval by senior management level. In addition, there is no requirement to require such approval when an existing customer becomes a PEP. • Banking and foreign exchange institutions are not required to take reasonable measures to establish the source of wealth of customers or beneficial owners identified as PEPs. • The absence of STRs related to foreign PEPs and the low number of STRs submitted on domestic PEPs suggest a lack of effectiveness of the system in place.
R.7	NC	• There are no AML/CFT requirements vis-à-vis cross-border correspondent banking.
R.8	PC	• There is no requirement for financial institutions to take any measures to prevent the misuse of technological developments in ML/TF schemes. • There are contradictory provisions concerning the possibility to establish non-face-to-face business relationships between, the FIU and BCRA rules, and there is no guidance on the enhanced CDD measures to be undertaken (except in the insurance sector). However, the impact of this deficiency seems to be limited given the practice of the private sector to

	Rating	Summary of factors underlying rating
		always require the physical presence of the customer to establish a business relationship. • Requirements for the insurance and sector are not in OEM, but they constitute guidance.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

Recommendation 9

3.3.1 Description and Analysis

511. There is no provision in AML Law 25 246, in Decree 290/2007 or in the FIU resolutions dealing with the issue of reliance on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business. However, in practice, some financial institutions do rely on other to perform CDD measures, such as life insurance companies relying on insurance intermediaries, or entities in the securities sector with other third parties.

512. As for the banking and foreign exchange institutions, the BCRA Compilation of AML measures does not address either the issue of reliance on intermediaries or other third persons. However, the CREFI rules issued by the BCRA on Creation, Operation and Opening of Branches of Financial Entities, allows the outsourcing of administrative or non-operational activities (not involving contact with the customer) in Argentina or abroad. However, the CREFI does not mention specifically that the conducting of CDD requirements may be outsourced.

3.3.2 Recommendations and Comments

513. Taking into account that it is acknowledged that some financial institutions do rely on intermediaries or other third parties to perform some elements of the CDD process, Argentina is urged to introduce in law, regulation or OEM the requirements set out in the FATF Recommendation 9, regulating the obligations that must be met by the third parties and the financial institution to allow such reliance.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	• Whilst in practice financial institutions do rely on third parties to perform some CDD measures, there is no requirement in law, regulation or OEM to regulate the conditions of this reliance.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

514. The last Mutual Evaluation Report of Argentina already underlined the obstacles caused by financial secrecy laws on the FIU's ability to conduct proper and comprehensive investigations. This has also been divulgated to the assessment team in the course of the on-site visit. Indeed financial institutions secrecy law continue to hamper the effective application of article 14 of Law 25 246, which requires all public institutions and public or private natural or legal persons to provide the FIU with any information it may request.

515. Article 1 of Law 26 087 enacted in April 2006 amended article 14 of the AML Law 25 246 by adding: "*Reporting parties under Section 20 shall not be entitled to invoke banking, securities and professional secrecy nor legal or contractual confidentiality agreements against the FIU where a suspicious transaction report is under analysis".* This provision is a significant progress since the last mutual evaluation of Argentina, but there are still some concerns on how financial secrecy law can affect the work of the FIU and other financial institutions supervisors.

516. Firstly, the lifting of financial secrecy only reaches the reporting parties. In the securities sector, the Caja de Valores, which is the depository and registry institution, is not subject to AML Law 25 246. Moreover, section 6 of the Decree 2 280/80, which deals with the protection of the activity and documentation of the Caja de Valores, only provides for the following exception to secrecy:

- judges in lawsuits, under the safeguards provided by the relevant laws;
- the CNV in the exercise of its duties;
- the national, provincial or municipal tax-collection agencies under the following conditions:
  - the information has to refer to a certain liable party;
  - a tax inspection regarding such liable party shall be ongoing, and
  - such information shall have to be formally and previously requested;

517. As the FIU is not included in the list of agencies which can have access to information maintained by the *Caja de Valores*, it cannot have direct access to essential information for investigating suspicious operations unless counting with a specific judicial authorisation. Alternatively, the FIU could obtain that information through the CNV but, according to Law 17 811 the CNV is also subject to secrecy provisions concerning the information gathered in the exercise of its duties. The CNV is a reporting party, and therefore, cannot oppose the securities secrecy to the FIU. However, whilst it seems clear that the CNV would be obliged to provide any information already in its power, it would be violating the secrecy of it requested the information to the Caja de Valores or the stock exchanges to be provided to the FIU, at the FIU's request. This process may prevent the FIU from obtaining the necessary information to conduct its functions and would be, in the best case scenario, very time consuming.

518. International cooperation is also negatively affected by secrecy provisions. The AML Law 25 246 permits the FIU to enter into international agreements to share information on a reciprocal basis. However, the financial and security secrecy is not lifted when the demand of information comes from a foreign FIU, since it has not been originated in a domestic STR. Therefore, if the FIU does not already have with the required information, judicial approval would be necessary to obtain it from the reporting party and to exchange it with the foreign FIU. The elimination of the confidentiality legal restrictions to increase the exchange of information with foreign FIUs is one of the objectives of the National Agenda. The assessment team was provided with a draft bill to amend AML Law 25 246, empowering the FIU with the capacity to request and gather information upon request of a foreign FIU, provided that it will be submitted in the framework of a money laundering or terrorist financing suspicious transaction report. Under these circumstances the reporting parties could invoke financial, securities or professional secrecy for the FIU's request. No information was provided on the expected date of approval of this amendment.

519. Similarly, MOUs signed by the BCRA with foreign counterparts are limited by the secrecy imposed by section 40 of Law 21 526 that provides that the information on deposit operations obtained by

the BCRA in the exercise of its functions is strictly confidential. In order to exchange information with foreign authorities, a judicial approval would be also requested.

520. Article 22 of AML Law 25 246 also imposes confidentiality duties on FIU and the rest of reporting parties, which preclude the provision of feedback by the FIU to reporting parties, including to FSAs, or the exchange of information between national authorities. On the other hand, the BCRA indicated that the information that the FIU could have from STRs could be useful when having to license new operators, or approve the authorities of a financial institution. Argentina informed that the project to amend the AML law included a provision to eliminate the obstacles for the exchange of information between the FIU and the financial institutions' supervisors/regulators.

521. Finally, according to Article 14 of the AML law, tax secrecy is stricter than financial secrecy. It can only be lifted when the STR has been submitted by the AFIP itself and in relation to the persons directly involved in the reported transaction. For the rest of the cases, it is necessary to obtain the approval of the judge, who has to take his decision within 30 days. According to the FIU, since 2006, when the current wording of Article 14 was introduced, the request to lift the fiscal secrecy has been requested on approximately 100 occasions, with all of them having favourable results within the established timeframe. According to this wording, the FIU could eventually obtain tax information on reported subjects, but the need to obtain a judicial approval brings further delay to its investigation tasks.522.

3.4.2 Recommendations and Comments

523. Article 14 of AML Law 25 246 should be clarified. Currently, it requires all private and public institutions to meet the information requirements from the FIU, except in the cases where financial, securities, professional or tax secrecy applies. The lifting of such secrecy only affects the reporting parties and exclusively in the framework of an STR. The current system has a negative impact on the effectiveness of the Argentina's AML/CFT system by impeding the FIU's access to relevant information, in particular for the securities sector, and to a lesser extent for the banking sector. Argentina should amend Article 14 of AML Law 25 246 in order to guarantee that no private or public institution can invoke secrecy rules to the FIU in the exercise of its functions, and include the exchange market and stock exchange without market within the reporting parties of Article 20 of the AML Law. The case of the *Caja de Valores* is critical, since being the depository and registry institution, it has comprehensive information of the operations conducted and assets owned by the investors. Direct provisions should also be introduced in order to clarify that, upon request of the FIU, CNV can demand information to all entities under its supervisory and regulatory powers and provide it to the FIU without violating secrecy rules, or alternatively, incorporate the FIU to the entities to which Caja de Valores cannot oppose the secrecy.

524. Argentina is encouraged to introduce the draft amendments into the AML Law to eliminate the current restrictions on information exchange between the FIU, BCRA, CNV and their foreign counterparts. Provisions allowing for a wider exchange of information amongst domestic agencies should also be incorporated[25].

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	• 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

[25] The assessment team was provided with a draft to amend Law 17 811 on Public Offers that amends secrecy provisions in the security sector. However, this text has not been approved yet.

	Rating	Summary of factors underlying rating
		without a judicial approval. This further limits, or at least delays, access by the FIU to necessary information to analyse the STRs. • 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. • 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.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

525. Article 21 of AML Law 25 246 provides that reporting parties should record all the information gathered to prove the identity of the customers, for the duration and in the ways established by the FIU. The law does not require reporting parties to keep records of transactions, either domestic or international.

526. On this basis, the various FIU resolutions, which are not OEM, provide that financial institutions should keep records of the following information:

- Customer identification: the documents evidencing the compliance with the KYC policy and any additional information requested by financial institutions should be kept for five years from the end of the business relationship with the customer.

- Original or certified copies of transactions should be kept for five years following the completion of the transaction. The FIU resolutions further provide that the documents should serve as probative element in any ML/TF investigation, but the resolutions are silent on the kind of information transactions records should contain.

527. Section 1.4 of the BCRA Compilation of AML measures and section 2.4 of the BCRA Compilation of CFT Measures provide respectively that records of transactions shall be kept recorded for the duration and according to the conditions set out in the rules on Keeping and Reproduction of documents. These rules, covered in Communication "A" 3035 of the BCRA, provide that instead of the original, entities can keep digital copies of the transaction documents, which authenticity must be certified. In addition, pursuant to article 67 of the Code of Commerce, these digital copies shall be kept recorded for a period of ten years. This article was referred to by the CNV and the SSN and also by private sector representatives during the on-site visit to reflect the practice of financial institutions.

528. The said sections of the BCRA Compilations of AML and CFT measures also provide that banking and foreign exchange institutions shall keep recorded the information on transactions in a way to permit their reconstruction. They also provide that this recorded documentation shall be available for competent authorities, though these authorities are not defined.

529. The system described above does not fully meet the FATF Standards, since relevant provisions such as the requirement to keep adequate records of transactions and the period during which this and identity information should be recorded are not included in the AML Law or in regulation, but in lower status rules, that except for the banking and foreign exchange sector, do not meet the status of other

enforceable means. However, it must be taken into account that the AML/CFT provisions in this issue are complemented by other legal requirements.

530. Section 67 of the Code of Commerce requires that Trade Books be kept recorded for 10 years. The Trade book includes the Daily book (section 44), where all transactions must be registered daily as well as proving documentation. In addition, section 48 of Regulatory Decree 1397/79, for Law 11 683 on Tax Procedures, requires all taxpayers to keep documentations proving their transactions for a period of 5 years after the prescription of their tax duties, which in practice means a minimum period of 10 years. Still, the provisions of the Code of Commerce or AFIP rules do not require that records of commercial correspondence are kept, or that the supporting documentation of transactions contain all the elements to reconstruct them for AML/CFT purposes. As said before, this is required by BCRA's rules and requested by the FIU's resolutions, although without detailing what those elements are, except for some databases.

531. Section 1.7 of the BCRA Compilation of AML measures also requires banking and foreign exchange institutions to maintain several databases on a wide range of operations that individually or through a series of related transactions exceed ARS 30 000 (USD 7 800), including transactions related to cash deposits, purchase of sale of foreign currency, deposits of securities, depositions of negotiable instruments, etc. The database must include the transactions made in the last five years and must be at the disposal of the BCRA within 48 hours.

532. Some FIU resolutions, which are not OEM, also provide that financial institutions should maintain electronic databases. For example, pursuant to FIU Resolution 50/2008, insurance companies and intermediaries shall maintain a database containing information on the customers, on transactions equal or over ARS 30 000 – USD 7 800 (premiums, supplementary contributions, partial or total withdrawals, payment of claims, cancellation of policies). Upon request, this information shall be made available to the FIU within 48 hours.

533. Apart from financial institutions, BCRA, CNV and SSN, which are also subject to suspicious transaction reporting obligations to the FIU, are also requested, under their respective FIU Resolutions to keep complete databases of all the suspicious transactions detected during the course of their inspections of financial institutions. Their databases should be at disposal of the FIU within 48 hours. Additionally, the supervisors should keep for five years the proving documentation of those transactions. 534.

535. Except for the databases, there is no specific requirement in the Argentinean legal system that all documentation evidencing customer information and transactions should be available on a timely basis to the FIU or other authorities (except the more general provisions on the reporting parties' duty to provide the FIU, within the requested timeframe, with all the documents it might need to perform its functions (section 14 of the AML Law)). The law or FIU Resolutions are also silent on the way financial institutions should store relevant documents.

536. However, overall, supervised financial entities are aware of the requirement to keep the necessary records and that the FIU has no problem in accessing them, provided it is in the framework of a STR. And although the requirements to keep records on transactions are not set out in the AML law or regulation, financial institution in practice seem to keep effectively records of this information.

Special Recommendation VII

537. In Argentina, banking institutions, foreign exchange houses, postal services and money remitters provide wire transfers services. Although the assessment team was not provided with statistics on the relative market share of these institutions, it was told by foreign exchange institutions that remitters, which are not subject to BCRA regulation and supervision, represent a large part of the market. The measures

described below in relation to wire transfers are only related to banks and foreign exchange institutions. For money remitters and postal services, there is only a general provision in FIU Resolution 230/2009, which is not other enforceable means, to incorporate complete and accurate information on the originator of the transfer, but without defining such information.

Originator information

538. There is no specific measure in the Argentinean AML/CFT laws in relation to wire transfers. However, article 21 of AML Law 25 246 requires financial institutions to identify all their customers, including all their occasional customers, since the monetary threshold for regular and occasional customers provided by the AML law has not yet been established by the FIU. Therefore, financial institutions subject to the AML law are required to obtain from customers, among other things, documents irrefutably evidencing their identity and their address. This requirement is also valuable when the transaction performed is a wire transfer of USD 1 000 or more. However, there is no general obligation to obtain and maintain the originator's account number or a unique reference number, when the customer is an occasional customer.

Full originator information in the message or payment form accompanying the cross-border wire transfer

539. In addition, BCRA Communication "A" 4965, in force since August 2009, regulates cross-border wire transfers conducted by banks and exchange houses. It provides that all cross-border wire transfers and their related messages shall contain full information on the originator of the wire transfer, at least the following information: the full name of the customer, his address or national identification number and the customer identification number established by the financial institution. Batch transfers are prohibited in Argentina, except for wire transfers made by public or private organisms to pay pension funds or superannuations.

Domestic wire transfers

540. Communication "A" 4695 does not apply to domestic wire transfers. However, in order to be able to participate in the national system of clearance of means of payments, ordering financial entities are required by the BCRA Compilation of Measures on the National Payment System to accompany the wire transfers with a file containing the name of the originator, CIUT or DNI and the Uniform Banking Code given by the entity to the customer account. The system does not accept any transfer where such information is missing. The beneficiary financial institution must provide its customer with the full originator information.

541. However, the system presents some scope limitations. Firstly, it only applies to domestic wire transfers made from bank accounts, and secondly not to wire transfers made by occasional customers without an account in the ordering banking institution.

Transmission of originator information and intermediaries and beneficiary institutions

542. There is no requirement for each intermediary or beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

Risk-based procedures for beneficiary institutions

543. Section 2 of BCRA Communication "A" 4965 provides that beneficiary financial institutions shall have procedures in place to detect cross-border wire transfers that are not accompanied with full information on the originator. These procedures are not risk-based, since they are intended to apply to all

wire transfer received without the appropriate information on the originator. In such cases, the settlement of payment would be kept pending until the detected omissions are solved. If any missing information is not forwarded within 20 working days from the reception of the wire transfer, the funds shall be returned to the issuer. Banks and exchange houses are also required to pay special attention to these wire transfers missing full information on the originator to determine whether these transactions should be reported to the FIU. However, there is no further requirement for banks and exchange institutions to consider restricting or terminating the business relationships with financial institutions that regularly fail to meet SR.VII standards.

544. For domestic wire transfers, failure to include full originator information will cause the rejection of the wire transfer by the system. The beneficiary entity then receives from the Chamber the details of all compensated movements, and only can the funds be deposited into the recipient's account.

Monitoring compliance

545. Both banks and foreign exchange institutions are licensed by the BCRA, which within its supervisory functions must monitor the compliance of these entities with the requirements set out by in Communication "A" 4965 and sanction failures to comply with these requirements according to the general sanctions powers of the BCRA provided by section 41 if the Law 21 526 on Financial Entities. However, the assessment team was unable to assess the extent of the effective monitoring and implementation of the requirements of Communication "A" 4965, since it entered into force only 2 months before the on-site visit.

546. It should be noted that in practice, banks and foreign exchange institutions are the only financial institutions subject to real requirements relating to SR.VII, since they are supervised by the BCRA, and subject to the AML/CFT preventive measures it establishes. On the contrary, money remittance companies and postal services rendering funds transfers are not subject to any requirement in relation to wire transfers, either domestic or cross-border, nor to any supervision. In the case of money remittance companies, BCRA Communication "A" 5004 recommends them to incorporate the full originator information when they transfer funds, but it is not a requirement, and this is not associated with sanctions for non-compliance. Indirectly, it requests banks and foreign exchange institutions operating for money remitters to have procedures in place to verify their compliance with BCRA's AML/CFT rules, including this particular one. To this end, among other things, banks and foreign exchange institutions must check that the internal procedures of the money remitters provide for the incorporation of the full originator information in their wire transfers. This Communication was adopted during the on-visit and entered into force on 4 January 2010. It was thus not possible to assess the effective implementation of these requirements, and in any case, there are still no direct requirements for remitters, and they are not obliged to send wire transfers through the channel of banks or foreign exchanges institutions.

Additional elements

547. Since Argentina does not apply any threshold for wire transfers, all incoming and outgoing cross-border wire transfers through banking and exchange entities should contain information on the originator.

548. To conclude, the requirements on wire transfers present several deficiencies. Banks and foreign exchange institutions are the only ones subject to the BCRA Communications, whilst money remittance companies and postal services are not subject to any requirement relating to SRVII. There are no requirements concerning occasional domestic wire transfers made by banks. The procedures to handle incomplete information are not risk-based, which could encourage the use of non-regulated channels. Nor is there is no provision to terminate or restrict the business relationship with entities not complying with

FATF standards. Finally, the monitoring of the effective implementation of the BCRA Communication "A" 4965 was not possible to assess due to the novelty of the measure.

3.5.2 Recommendations and Comments

549. *Recommendation 10:* Record keeping requirements in AML Law 25 246 are very general. Even though there are relevant provisions in the general Commercial and Tax Legislation, for clarity sake, Argentina should include in article 21 of the AML law, or through a Decree, an express requirement to keep records, not only of the customer identification data, but also of all conducted transactions and business correspondence. An explicit mention to the fact that all records should be kept for at least five years should also be introduced in the law or decree, instead of leaving it to the discretion of the FIU.

550. The fact that, outside of the general provisions in the AML and the provisions of the Code of Commerce, the more detailed record-keeping requirements in the AML/CFT legal provisions are mainly set out in the FIU Resolutions is especially concerning given that they do not have the status of other enforceable means, be it because there is no designated authority to supervise compliance or because there are concerns about the supervisory measures to enforce it, the exception being the BCRA. Whilst at least there seems to be a general awareness among the supervised entities of the obligation to keep records of identification and transaction information, it is uncertain that sectors such as money remitters, postal services and capitalisation and saving companies are taking any precaution in this regard, since they are not supervised. Recommendations and comments made in other sections about the need to ensure a proper supervision and ensuring compliance also apply here.

551. *Special Recommendation VII:* Argentina should ensure that occasional domestic wire transfers made by banks are subject to SR.VII requirements and equally cover domestic wire transfers conducted by foreign exchange houses. The system would also benefit from a clearer requirement for intermediary institutions to maintain the full originator information in the payment chain. BCRA should also consider that the procedures that banks and foreign exchange institutions should apply to detect wire transfer without the full information on the originators and the remedial measures to be taken in such cases should be risk-based.

552. But above all, Argentina is urged to regulate and supervise money remittance companies and postal services rendering transfers of funds. The current lack of AML/CFT measures on these entities creates an unlevel playing field with banks and foreign exchange institutions, which find it difficult to accept the level of AML/CFT requirements they are subject to, and it creates a substantial loophole in the Argentinean AML/CFT regime.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	• The AML Law does not require keeping records of transactions, though other laws contain some related provisions. • 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. • 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. • There is no requirement to keep record of business correspondence for 5 years.
SR.VII	PC	• There are no requirements for money remittance companies and postal services rendering transfer of funds. • There are no requirements applicable for occasional wire transfers made by the banking sector. • There is no requirement for banks and foreign exchange institutions to adopt a risk-based

	Rating	Summary of factors underlying rating
		approach to handle wire transfer without the full information on the originator, which might encourage the use of non-regulated systems. • Financial institutions are not required to restrict or terminate business relationship with financial institutions not complying with SR. VII requirements. • Lack of proven effectiveness of the measures related to cross-border wire transfers due to the very recent introduction of the requirements on cross-border wire transfers performed by banks and exchange institutions.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

Recommendation 11

553. Article 21 of AML Law 25 246 provides that financial institutions shall report to the FIU any suspicious event or transaction, which are defined as those transactions, which according to uses and customs related to the field involved, as well as to the experience and competence of the financial institutions, are unusual, have no economic or legal justification or are unusually or unjustifiably complex, whether conducted on a single occasion or repeatedly. Hence, financial institutions are required to pay special attention and examine such unusual or complex transactions as a former stage for suspicious transaction reporting, which is confirmed by FIU's resolutions.

554. FIU Resolution 228/2007 requests banks and foreign exchange institutions to conduct a deeper analysis of the transactions which are inconsistent with the profile of the customer or if they are linked to a change in its pattern of operations, whether considering their value, nature, characteristics or frequency. Neither the FIU resolution, nor the BCRA Compilation of AML measure require financial institutions, in particular banks and foreign exchange institutions, to establish their findings in writing, and therefore to keep the results available for competent authorities and auditors for at least five years. Argentinean authorities advised that, in practice, it is commonly understood that such results should be kept recorded in order to demonstrate the compliance of the financial institutions with the rules and to protect themselves against possible sanctions. However, the assessment team was not convinced by the interpretation. In the absence of an express requirement, it is uncertain whether competent authorities have access to background information on those transactions that do not reach the threshold of being considered suspicious and therefore do not result in a report being made to the FIU. The BCRA did not provide the assessment team with any case, and the dissuasive effect is also not so clear, taking into account that no sanction had been imposed at the time of the onsite visit for lack of reporting.

555. In addition, in order to facilitate the detection of unusual transactions, most banks and foreign exchange institutions use an IT system, as provided by the FIU. The BCRA advised that most of the supervised financial institutions have this computerised procedures, and that the smallest financial institutions are in the process of implementing them.

556. The various FIU resolutions for the rest of the financial sectors contain similar provisions as the ones described above, although as described above they do not meet the FATF criteria of other enforceable means.

Recommendation 21

557. There are no provisions in law, regulation or other enforceable means to require financial institutions to give special attention to business relationships with persons or entities from or in a country which does not or insufficiently applies the FATF Recommendations. However, the FIU has established

guidelines for each financial sector with a list of criteria to facilitate the identification of unusual or potentially suspicious transactions, such as frequent transfers of funds or payments from or to tax havens or countries considered by the FATF as non-cooperative countries and customers introduced by financial institutions established in those jurisdictions, or other transactions with those jurisdictions. However, taking into account that this list of FATF non-cooperative jurisdictions no longer exists and that this indicative list of criteria for suspicious transactions is not accompanied with requirements to conduct specific analysis, these FIU resolutions have a limited effect.

558. Decree 1037/2000 identifies what Argentina considers to be about 80 low or zero tax jurisdictions. When financial institutions receive funds from these jurisdictions, FIU Resolutions and the BCRA Compilation of AML measures require banks, foreign exchange institutions, and postal services to obtain from their counterparts an express mention that they fulfil KYC principles. Similar measures should be taken for countries designated by the FATF as non-cooperative countries and territories. However, these measures are not relevant for Recommendation 21, which requires to systematically paying special attention to business relationships and transactions from countries which do not or insufficiently apply the FATF Recommendations.

559. Nevertheless, the BCRA informs banks and foreign exchanges institutions of the public statements issued by the FATF or FSRBs (such as MONEYVAL) on jurisdictions insufficiently applying the FATF Standards. This information is made through Communications "B", which are considered as guidance. The other financial supervisors do not warn the entities they supervise about the FATF statements, although the lists of countries subject to such statements are published on the FIU website, along with the list of "tax havens". The Argentinean authorities do not inform the Argentinean financial sector of any other potential countries with weak AML/CFT regimes.

560. The information from the BCRA is however not accompanied with requirements for banks and foreign exchange institutions to conduct enhanced CDD or to monitor such transactions. Therefore, the general rules apply to analyse any transaction with no apparent economic or visible lawful purpose. As explained under Recommendation 11, there is no direct requirement to establish the findings in writing and to make them available to competent authorities and auditors.

561. In addition, there is no mention in AML Law 25 246, in the FIU Resolutions or in the rules issued by the BCRA, CNV and SSN on the possibility of applying countermeasures to countries which do not apply or insufficiently apply the FATF Recommendations. The BCRA advised the assessment team that it would not give a licence to operate to financial institutions established in a country without adequate AML/CFT system. But this is not foreseen in the CREFI 2 regarding the establishment of financial institutions.

562. CNV Resolution 554/2009 prohibits entities under its authority to carry out transactions with customers from designated "tax havens" or from jurisdictions where securities regulators have not signed MOUs with the CNV. However, this Resolution does not meet the criteria for OEM, and the assessment team could not assess its effective implementation. In addition, it focuses on tax havens rather than on countries that do not fulfil FATF requirements.

3.6.2 Recommendations and Comments

563. *Recommendation 11*: Argentina should introduce a direct requirement for all financial institutions to keep in writing the results of the analysis of unusual or complex transactions, and to make them available to competent authorities and auditors for at least five years. As already stated in this report, Argentina is urged to introduce appropriate and effective supervision for all financial institutions.

564. *Recommendation 21*: Argentina should introduce in law, regulation or other enforceable means provisions to directly require financial institutions to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. If these transactions have no apparent economic or lawful purpose, they should be examined and written finding should be available to competent authorities and auditors. Argentina is also urged to develop a set of counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	• There is no requirement for financial institutions to examine as far as possible the background and purpose of unusual transactions and to establish their findings in writing • There is no requirement for financial institutions to keep such findings available for competent authorities and auditors for at least five years. • The lack of effective supervision undermines the effectiveness.
R.21	NC	• Financial institutions are not required to give special attention to business relationships and transaction with persons from or in countries which do not or insufficiently apply the FATF requirements. • Although financial institutions are informed by the BCRA and the FIU of the statements issued by the FATF, they are not required to apply enhanced CDD measures in such cases. • There is no explicit requirement to set out in writing the results of the analysis conducted by financial institutions on transactions from or to these countries that have no apparent economic or visible lawful purpose and to keep this results available to competent authorities and auditors. • There is no measure in place to allow the Argentinean authorities to apply appropriate counter-measures when countries continue not to apply or insufficiently apply the FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13

Reporting obligations

565. Article 21 of AML Law 25 246 provides that reporting entities subject to the law as detailed in Section 3 of this report shall report to the FIU "any suspicious event or transaction regardless their amount". This reporting obligation does not apply to *mutuales*, *cooperativas*, stock exchange market and stock exchange without market, and the coverage of the remittance companies by the AML law is unclear (see "Scope Issues" at the beginning of section 3 of this report.). In addition, it should be noted that the three financial supervisors (BCRA, CNV and SSN) are also reporting parties to the FIU. According to FIU Resolutions 15/2003, 281/2008 and 266/2009, they must report unusual and suspicious transactions of which they become aware through their inspections of financial institutions they supervise or by whatever other means. They are also requested to maintain for five years a database with all such transactions, which shall be made available to the FIU upon request. Lastly, article 14.2 of AML Law 25 246 provides for the possibility for the FIU to also receive voluntary STRs from parties not subject to the AML law. From January to October 2009, the FIU received 23 voluntary STRs.

566. Article 21 of the AML law defines suspicious transactions as transactions which, according to the uses and customs related to the field involved, as well as the experience and competences of the financial

institutions, are unusual, have no economic or legal justification or are unusually or unjustifiably complex. The various FIU resolutions supplement the definition of suspicious transactions by providing that they can be based on the volume, value, characteristics, frequency and nature of the transactions. In addition, in the banking and foreign exchange institutions, statistics from the FIU shows that in practice the most common reasons to report STRs are as follows:

- Increase of the funds operated by the customer: 56.69%
- Purchase or sale of foreign currency: 20.68%
- Cash deposits: 8.15%
- Others: 14.48%

567. The Argentinean definition of suspicious transaction report is not in line with the FATF definition, which provides that the requirement to report should be a subjective or objective test of suspicion (*i.e.*, the reporting entity suspects that a transaction involved a criminal activity). The Argentinean reporting system being on unusual transactions (unusual, no economic or legal justification or unusually or unjustifiably complex), this may not capture all ML/TF cases.

568. Article 21 also empowers the FIU to define for each reporting party the ways and limits to comply with the reporting obligations. As said in sections above, the FIU has issued Resolutions addressed to all obliged financial sectors, except for issuers of traveller cheques and credit or purchase cards operators. It is also unclear that the Resolution covering postal services also applies to money remittance companies since, although claimed so by the FIU, it does not specifically mention them.

569. The extent of this suspicious reporting obligation is unclear. First, section 21 of AML Law 25 246 only mentions suspicious or unusual transactions, without mentioning that they shall be suspicious for ML/TF reasons. Secondly, it is unclear whether the obligation to report suspicious transactions, defined as unusual ones, covers all transactions where funds are suspected to be the proceeds of all predicate offences required by the FATF. Indeed, market manipulation and insider trading are not predicate offences for ML under the Penal Code and self-laundering is not criminalised (See Recommendation 1). Moreover, section 6 of AML Law 25 246 only empowers the FIU to investigate ML of proceeds of a limited number of predicate offences, while all offences in the Criminal Code are predicate offences for ML (See Recommendation 26, paragraphs 208 and 209), as well as TF cases. Therefore, it seems that the AML law only requires reporting parties to report to the FIU suspicious transactions involving proceeds from a limited number of predicate offences (6 categories of predicate offences), which the FIU is empowered to investigate, but which do not fully cover the FATF list of designated offences. The FIU advised the assessment team that, since it is difficult for financial institutions to determine the nature of the predicate offence, they should report all unusual transactions regardless of the scope of the FIU. However, in practice, there may be cases where financial institutions have a reasonable knowledge of which predicate offences the assets involved in a transaction are the proceeds of. In cases where it would not be a predicate offence falling under the scope of the FIU, they could reasonably decide not to report.

570. As detailed above, article 21 of the AML law requires reporting parties to report to the FIU suspicious or unusual transactions. However, article 21 does not explicitly require that a STR should be submitted when a reporting party has reasonable ground to suspect or suspects that funds are related to terrorism, terrorist acts, terrorist organisation or those who finance terrorism. But, since article 6 of the AML law empowers the FIU to investigate ML of proceeds from TF, as well as the terrorist financing offence itself, the assessment team considered, as for ML, that the reporting obligations implicitly extends

to TF cases. However, it should be noted that the way suspicious transactions are defined – unusual, complex, etc.– would not capture all TF related transactions. In addition, this legal requirement has been further detailed by both FIU resolutions and communication of the BCRA (see SR.IV and the deficiencies described below, which also have an important impact on R.13).

Suspicious transaction reporting should occur regardless of the amount of the transaction

571. Article 21 of AML Law 25 246 requires reporting parties to report any suspicious events or transactions regardless of their value. It is unclear in the law whether attempted suspicious transactions shall also be reported to the FIU. However, the Argentinean authorities advised that since reporting entities are required to report operations or facts, it should be understood as covering attempted transactions. In addition, the FIU resolutions list attempted transactions among the examples of suspicious transactions it publishes.

STR should apply regardless of whether tax matters may be involved

572. There is no provision in law, regulation or other enforceable means to prevent reporting entities from reporting suspicious transactions on the basis that they would involve tax matters. Tax crime is a predicate offence for ML in Argentina, although the FIU is not empowered to investigate cases of ML of proceeds from tax crimes.

573. It should be noted, that on 24 December 2008, Argentina brought into force Law 26 476, which provided for a tax amnesty period expiring in August 2009. People benefiting from this law were exempted from disclosing to AFIP the date of acquisition of undeclared assets and the source of the funds. This exemption could not be opposed to the rest of the reporting parties, which were expressly reminded that they should still comply with the AML Law. FIU Resolution 137/2009 issued in May 2009 and addressed to all reporting parties, further details the KYC principles and reporting obligations in the circumstances covered by the Tax Amnesty Law 26 476. According to the FIU, it had received 212 STRs in connection with the Tax Amnesty Law, involving around ARS 203 million (USD 53 million) at the time of the on-site visit.

Special Recommendation IV

574. When introduced in 2000, Law 25 246 focused solely on combating money laundering. It was amended in 2007 by the TF Law 26 268, which created the TF offence and extended the powers of the FIU to also investigate TF related cases. However, the TF Law 26 268 did not amend article 21 of AML Law 25 246 related to the suspicious transaction reporting obligations. There is thus no explicit requirement in law or regulation for reporting entities to report to the FIU transactions when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. In addition, the way suspicious transactions are defined by the AML law 25 246 - unusual, complex, etc. – would not capture many TF-related transactions.

575. However, since the FIU's powers have been extended to TF and suspicious transactions are reported to the FIU, it could be inferred that the legal reporting obligations implicitly encompass TF cases. Moreover, in May 2009, the FIU issued the Resolution 125/2009 on the reporting obligation of transactions suspected to be linked to terrorist financing. According to this Resolution, all reporting parties should immediately report to the FIU:

- Operations involving persons designated by the United Nations Security Council Resolutions or involving funds or other assets owned or directly or indirectly controlled by them.

- All transactions that may constitute acts of financing of terrorism, as defined by article 213 quarter of the Penal Code.

576. This resolution has been issued to cover the gaps of the law. However, the deficiencies remain, since the FIU resolution is not other enforceable means (since the compliance with its provisions is not subject to sanction or supervision), and since one should also take into account the deficiencies identified in section 2 of this report in relation to SR. II.

577. It should also be noted that the provisions of BCRA Communication A 4273 on the prevention of the financing of terrorism slightly differs from the provisions provided by the FIU Resolution 125/2009 on the scope of TF reporting obligations. BCRA Communication A 4273 provides that banks and foreign exchange institutions should report to the FIU whenever they suspect or have sufficient reasons to suspect the existence of proceeds related or linked to terrorism, terrorist actions or organisation or whenever there are signals that proceeds will be used by criminal organisations. Therefore, it does not limit TF reporting obligations to cases defined by the Penal Code. The discrepancies between the reporting provisions in the AML law, the FIU resolution, and the BCRA Communication raises serious concerns regarding the different reporting expectations causing confusion for the reporting parties and inhibiting effective CFT implementation.

Effectiveness of the suspicious transaction reporting regime

578. Due to the lack of detailed statistics, it is difficult for the assessment team to assess the effectiveness of the Argentinean reporting regime. However, the assessment team has an overall concern about the lack of effectiveness of the suspicious transactions reporting regime in Argentina, for the various reasons set out below.

579. First, it should be noted that the Argentinean FIU has never received any STR related to TF. All the statistics detailed below are related to suspicions of ML cases. Most of the suspicious transactions reported to the FIU are related to an increase of the volume of the transactions conducted by a customer or are transactions involving the purchase or sale of foreign exchange. More than 60% of the STRs are sent by reporting entities located in the City and in the Province of Buenos Aires, where the concentration of financial institutions and where the economic activities are the most important. STRs from the Province of Misiones, where the Tri-Border Area is, which is considered a higher ML risk region, represents only 2.35% of the STRs (131 STR from 2004 to October 2009).

Number of STRs received from each Province from 2004 to October 2009

Province	Number of STRs	Percentage	Province	Number of STRs	Percentage
City of BA	2 441	43.76%	Chubut	39	0.70%
Province of BA	1 036	18.61%	Rio Negro	36	0.65%
Salta	415	7.45%	Entre Rios	34	0.61%
Cordoba	349	6.27%	Jujuy	33	0.59%
Santa Fe	314	5.64%	Formosa	33	0.59%
Misiones	131	2.35%	San Juan	32	0.57%
Mendoza	115	2.07%	Tierra del Fuego	29	0.52%
Santiago de Estero	109	1.96%	La Pampa	29	0.52%
Tucuman	101	1.81%	Chaco	27	0.49%
Neuquen	89	1.63%	Santa Cruz	22	0.40%
Corrientes	86	1.60%	San Luis	21	0.38%
La Rioja	41	0.74%	Catamarca	5	0.09%
TOTAL		**5 567**		**100%**	

Source: Argentinean FIU

580. The assessment team has overall concerns on the effectiveness of the reporting regime. Although the number of STRs submitted by financial institutions has increased over the last years, this number remains especially low for the size of the Argentinean financial sector and by comparison with other FATF member countries. On the overall number of STRs, it is worth referring to a study conducted by the IMF and used in a recent FATF mutual evaluation[26]. Analytical work by the IMF suggests that the FATF criticises the lack of effectiveness of reporting regimes when the range of STR received is less than 15 to 50 per billion of GPD[27], or less than 40 to 200 STRs per 100 000 of the population. In 2009, the number of STRs received by the Argentinean FIU is 3.7 STRs per billion of GDP and 28.5 STRs per 100 000 of the population.

581. In assessing the effectiveness of the reporting regime, it is also worth mentioning, as indicated in the table below, that banks send 90% of the STRs. Most of the STRs received from the banking sector are reported by a small number of banks: *e.g.*, in 2009, 3 banks (two private banks and one public bank) sent 50% of the STRs received by the FIU and many financial institutions have never sent any STR. Moreover, while money remitters and foreign exchange entities (which conducted foreign exchange transactions and wire transfers) are generally considered as higher risk sectors in FATF jurisdictions and usually report a significant number of STRs to FIUs, these financial institutions only reported 1.3% of the STRs to the Argentinean FIU in 2009 (16 STRs in total).

582. It should also be mentioned that the BCRA is the second reporting entity by number of STRs. This fact, although positive from the point of view of the effectiveness of the supervision conducted by the BCRA, also indicate a lack of effectiveness of the Argentinean reporting regime, since it means that there is an important number of suspicious transactions that are not detected by banks and foreign exchange institutions. This can also indicate a lack of awareness of the reporting regime by financial institutions. In addition, this can be due to the lack of sanctions for failure to report STRs.

Number of STRs submitted by reporting entities of the financial sector from 2007 to 2009

Reporting entities	2007	2008	2009*
Private Banks	482	827	739
Public Banks	140	157	350
Financial Companies	147	16	40
Foreign Exchange entities	15	4	4
Cooperative entities	0	3	1
Money remitters	12	11	12
Insurance sectors	4	0	0
Stock brokerage firms	4	2	5
Credit and/or Purchase Card Operators	1	2	10
Total Financial institutions	805	1 022	1 161
BCRA	69	74	58
CNV	3	1	6
SSN	2	0	2
TOTAL FINANCIAL SECTOR and supervisors	**879**	**1 097**	**1 227**

[26] This study has not yet been published, but it has been explained and used in the Mutual Evaluation Report of Germany (see paragraph 717).

[27] These wide ranges (15 to 50) and (40 to 200) varies also according to the size and complexity of the financial sector, the model of FIU.

583. There are also concerns about the quality of the STRs. The assessment team detected that there was no unanimity within the private sector about the transactions to be reported, whether only suspicious/ unjustified unusual transactions or any unusual transaction. This can impact negatively the quality of reports, by loading the FIU with reports with no real basis behind it. The FIU is no longer publishing statistics on the quality of received STRs but according to FIU statistics dated on 31 August 2006, only 22.5% of the received STRs contained the complete information requested in the STR declaration form. The FIU evaluated that only in 9% of the cases the quality of received information was good, it was fair in 57.4% of the cases and poor in 33.3% of the cases[28]. During the on-site visit the FIU expressed its view that the quality of the reports had increased over the years but as, an indirect indicator, from the 586 STRs submitted by the FIU to UFILAVDIN between 2006 and 2009, barely 8% were elevated to the Court on a ML suspect basis.

584. Moreover, financial institutions are not required to report suspicious transaction in a timely manner. According to the FIU resolutions set out for the various financial sectors, financial institutions should report to the FIU within 48 hours after the decision to report to the FIU is taken. However, financial institutions are given a 6 months period from the date of the transaction to analyse it and take its decision. According to the FIU, this provision, which was introduced in 2007, aims at reducing the delay with which the STRs were received and at allowing the FIU to sanction entities for not reporting. Statistics show that from mid-2007 the delay of submission of STRs has decreased considerably, but there are still roughly 25% of STRs received with more than six months delay with regards to date of the transaction and the FIU has not imposed any sanction for lack of reporting or late reporting. In any case, the six-month period to analyse a transaction is excessive and affects negatively the traceability of the transactions, especially taking into account the considerable delay with which the FIU conducts its own analyses.

585. Section 24 of the AML law empowers the FIU to sanction failure to report suspicious transactions with a penalty between one and ten times of the total value of the non-reported assets or transactions, or with a penalty from ARS 10 000 to 100 000 (USD 2 640 to 26 360) when the real value of the assets cannot be established. Both the physical and the legal person for which the offender is working can be fined. However, the FIU does not have general supervisory powers and, at the time of the on-site visit, it had never imposed any sanction[29]. Therefore, it is doubtful that financial institutions regard the reporting obligation as enforceable considering that no sanction has been imposed for lack of reporting since the FIU became operational in 2002. Although the FIU Resolutions regarding the BCRA, CNV and SSN request them not only to report the suspicious transactions they might detect but also to ensure the compliance of the private sector with the obligations set out in the AML Law, it seems that the FIU is not getting or not using the information obtained by the financial supervisors on obliged parties which are not reporting. However, at the time of the on-site visit, the FIU had opened several files for possible sanctioning. These were based on the FIU analysis of received STRs, for which it has been detected that there were other financial institutions involved that did not report.

586. In addition, the fact that there are some sectors such as money remitters or postal services that are not being supervised also affects negatively the effective implementation of the legal requirements. Actually the number of STRs submitted by money remittance companies seems quite low and according to the FIU statistics postal services has not submitted any STR. Additionally, there are some financial institutions, such as cooperatives and mutual funds that are not covered by the AML law and therefore are not subject to the reporting requirements.

[28] Report by CIPCE- Centro de Investigación y Prevención de la Criminalidad Económica. November 2008

[29] Although the FIU has no supervisory powers, it issued its first sanction for failure to report suspicious transaction in February 2010, after the two months period after the onsite visit.

Recommendation 14

Protection of liability where reporting suspicions in good faith

587. Article 18 of AML Law 25 246 provides that "compliance in good faith with the obligation to report [suspicious transactions] shall give rise to no civil, commercial, labour, criminal, administrative or any other kind of liability whatsoever." This article does not explicitly detail to which person(s) it addresses, and the scope of the protection of liability. However, since the responsibility to report suspicious transactions falls on the reporting parties pursuant to article 21, it can be inferred that it is addressed to the financial institutions. In addition, since the list of exemption of liability also covers the labour liability, it can be inferred that it also addressed to directors, officers and employees of the financial institution. In addition, AML Law 25 246 does not detail that this protection should be available even if financial institutions, their directors, officers and employees (permanent and temporary) did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. Article 18 providing a safe harbour provision should therefore benefit from being more precisely drafted to address explicitly the various situations it is meant to address. It should be noted that some representatives from the private sector indicated during the on-site visit that they were apprehensive of reporting suspicious transactions.

Prohibition from tipping-off

588. Article 21 of AML Law 25 246 sets out the obligation for reporting entities to "abstain from revealing to customers or to third parties the actions which are being carried out in compliance with this law". Since this provision is located in the same article as the suspicious transaction reporting obligation, and it also refers more broadly to the requirements set out by the AML law, it does address the issue of tipping-off. However, the requirement to abstain from tipping-off is imposed solely on reporting entities, and not to their directors, officers and employees. Moreover, there is no sanction available against reporting entities, which would fail to respect this prohibition from tipping-off.

589. Article 22 of AML Law 25 246 provides that civil servant and contractual employees of the FIU shall be bound to keep secret all the information received in the context of their positions, as well as any task of intelligence developed by the FIU. The same duty applies to reporting parties. Failure to comply with this prohibition to disclose information is punishable by six months to three years of imprisonment.

Additional elements

590. Article 17 of AML Law 25 246 provides that the FIU shall not disclose the identity of the reporting parties. However, confidentiality duty ceases when a report is disclosed to the Attorney General's Office.

Recommendation 25 (only feedback and guidance related to STRs)

591. Article 14 of AML Law 25 246 authorises the FIU "to issue guidelines and instructions to be complied with and implemented by reporting parties". Article 21 of the same law also provides that the FIU shall lay down guidelines about the manners, timing and limits on compliance with the reporting obligation for each category of reporting entity and type of activity. Therefore, the FIU has issued the following resolutions:

Number of the Resolution	Reporting entity covered
2/2002	Financial and Exchange System
3/2002	Capital Market

Number of the Resolution	Reporting entity covered
4/2002	Insurance sector
6/2003	National Securities Commission
7/2003	Federal Bureau of Public Revenue (AFIP
8/2003	National Insurance Superintendence
9/2003	Fund Remittance Agencies
10/2003	Summary proceedings
11/2003	Works of art, antiques, philatelic, numismatic, jewellery or precious metal or stone goods
15/2003	BCRA
17/2003	Games of chance
18/2003	Amendment of Resolutions 2-3 and 4/02
3/2004	Accountants
10/2004	Public notaries
4/2005	Cancellation of the minimum threshold to report STs
6/2005	Insurances – Modification of Resolution 04/2002
2/2007	Financial and Exchange System
228/2007	Financial and Exchange System
50/2008	Insurance sector
152/2008	Capital market
281/2008	National Securities Commission
282/2008	Private Pension Fund Operators
125/2009	Financing of terrorism
127/2009	FIU as plaintiff
137/2009	Supplementary Guideline for Tax regularization
230/2009	Postal services conducting transfers of funds
231/2009	Entities comprised in section 9 of the Law 22.315
237/2009	ICG - Supervisory authorities for legal entities
263/2009	Armored transportation services companies
266/2009	National Insurance Superintendence

592. FIU Resolutions addressed to a particular reporting entity generally contain in annex 2 a list of criteria, which are meant to assist reporting entity to detect suspicious transactions which should be reported (*e.g.*, unusual significant cash deposits and/or withdrawals made by natural or legal persons when they usually use cheques or other financial instruments and/or their stated activity is not normally associated with that type or volume of transactions; several small-amounted cash deposits that in the aggregate are significant; significant cash deposits at out of hours, thus avoiding direct contact with the financial institution's staff; different accounts in the name of the same customer when the total amount deposited is highly significant and keeps no relation to his stated business activity, etc…).

593. The FIU also provides general feedback to reporting entities though its website (www.uif.gov.ar), which contains general statistics on the number of STR received, the number of cases under analysis, the number of cases disclosed to the Attorney General's Office. This information is updated monthly. However, statistics on the number of STRs received by type of financial institutions, as well as trends over the last years are not publicly communicated. Regarding information on current techniques, methods and trends, the FIU has created a link on its website to the FATF website and to the Egmont website where a compilation of 100 sanitised cases is available. However, the Argentinean FIU does not product typologies cases, which would be better tailored to assist the Argentinean reporting entities.

594. The FIU does not provide reporting entities with specific feedback, which would be very helpful, considering the low quality of the STRs as admitted itself by the FIU.

Recommendation 19

595. Argentina has considered the feasibility of implementing a systematic reporting system for transactions above a fixed amount, including transaction in currency which was one of the objectives of "The National Agenda for the Fight against ML and FT" (Decree 1255/07). The assessment team was provided with the minutes of two meetings between the FIU, AFIP, BCRA, CNV and SSN where this point was discussed, the latest on November 2008. The conclusion was that implementation by the FIU of a systematic reporting system for transactions above a certain threshold implied the amendments to the law to allow access by the FIU to that information outside the framework of a STR.

596. The different financial supervisors are considering or have taken some measures related to systematic reporting:

Financial institutions under the supervision of the BCRA should keep at disposal of the BCRA a database with cash and other transactions equalling or exceeding ARS 30 000 (USD 7 800). Additionally, foreign exchange transactions should be reported daily to the BCRA. The FIU has access to that information in the framework of a STR. The BCRA is analysing the feasibility of using the information in the entities' databases to create its own.

Institutions under the supervision of the SSN must keep a database with the operations equal or above ARS 30 000. Information is at the disposal of the FIU upon request. The SSN has created a database (ALSEP) with the information provided periodically by reporting entities when such transactions concern life and retirement policies. In November 2008, the SSN committed to analyse the access by the FUI to the ALSEP system.

597. Some reporting parties are already subject to systematic reporting. Pursuant to FIU Resolution 230/2009 postal services (and money remittance companies, although it is not explicitly stated that they are covered by that resolution) should report monthly to the FIU all transactions, whether individual or fractioned, over ARS 10 000 (approximately USD 2 635). Customers receiving or ordering more than 10 transfers of funds monthly should also be reported, regardless of the amount. Additionally, entities should annually report all individual or fractioned transactions over ARS 60 000 (approximately USD 15 815), and cases where a customer has received or ordered more than 60 transfers during the year, regardless of the amount. It is not possible to assess how effectively entities are fulfilling the systematic reporting obligation since no competent authority has been empowered to supervise the compliance with these rules.

3.7.2 Recommendations and Comments

598. Recommendation 13: Argentina should ensure that all financial institutions conducting financial activities as defined by the FATF are subject to suspicious transaction reporting obligations. In addition, Argentina is asked to urgently revise the scope of the reporting obligations in order to ensure that reporting entities are required to report when they suspect or have reasonable grounds to suspect that funds are the proceeds of all offences which are required to be included as predicate offence under Recommendation 1. As a consequence, Argentina should also empower the FIU to receive and analyse all cases of ML from proceeds of all predicate offences. In addition, Argentina is called to increase the awareness of reporting entities of their obligations and impose sanctions for failure to report STRs.

599. Special Recommendation IV: Argentina should urgently require in law or regulation reporting entities to report all transactions suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisation or those who finance terrorism.

600. Recommendation 14: Argentina should consider defining more precisely who the persons benefiting from the safe harbour provision are. It should also amend the AML Law to ensure that directors, officers and employees of reporting parties are subject to the prohibition from tipping-off and foresee sanctions for disclosure of confidential information.

601. Recommendation 25: The FIU should consider producing typology cases to assist the Argentinean reporting entities to detect suspicious transactions. It should also consider providing specific feedback to reporting parties.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	• Mutual associations and cooperatives, stock exchange market and stock exchange without market are not subject to reporting obligations. • 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 predicates offences, it appears that the current requirements cover 6 categories of the predicate offences. • 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. • Effectiveness: o 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. o 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. o There is a low number of STRs, which are mostly sent by a very small number of banks and foreign exchange institutions. o 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. o The FIU has not issued any resolution for issuers of traveller's cheques and credit and purchase card operators. o 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.
R.14	PC	• The scope of the persons benefiting from the safe harbor provision is not clearly defined. • The prohibition from tipping-off does not cover directors, officers and employees of reporting parties. • There is no sanction available where a reporting entity does not comply with the prohibition of tipping-off.
R.19	C	• The Recommendation is fully met
R.25	PC	• The FIU does not inform reporting entities on the current techniques, methods and trends by providing them typologies which would be tailored for the Argentinean context. • The FIU does not provide reporting entities with specific feedback.
SR.IV	NC	• 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 characteristics of suspicious transactions (unusual, complex, no economic justification) are not broad enough to satisfactorily capture TF cases. • The scope issues of R.13 also apply to SR.IV.

	Rating	Summary of factors underlying rating
		• The provisions of the FIU Resolutions 125/2009 and the BCRA Communication A 4273 are inconsistent and negatively impact effective reporting. • Lack or insufficient supervision and of imposed sanctions and lack of awareness of TF threats negatively affect the effectiveness of the system. • The FIU has never received any STR related to terrorist financing, which demonstrates the lack of effectiveness of the regime.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

Recommendation 15

Procedures, policies and controls

602. There is no provision in AML Law 25 246 or in the various laws which regulate specific financial sectors to require financial institutions to establish and maintain internal procedures, policies and controls to prevent ML and TF.

Banking and foreign exchange institutions:

603. According to section 1.1.1 of the BCRA Compilation of AML measures, which meets the FATF criteria for other enforceable means, banking and foreign exchange institutions shall implement the applicable regulatory rules issued by the FIU. Chapter VI of FIU Resolution 228/2007 relates to "policies and procedures to prevent ML and TF". It provides that the executive board of banking and foreign exchange institutions shall formally adopt written policies in compliance with laws, rules and regulations to prevent ML and TF, as well as an audit function to test the system. The procedures to be adopted by banking and foreign exchange institutions shall at least include:

- Internal control procedures, with appropriate structures, procedures and electronic systems;
- A compliance officer.

604. FIU Resolution 228/2007 does not specify that these internal procedures and control should cover issues such as CDD measures, record keeping requirements, and detection of suspicious transactions and reporting obligations. The purpose of these policies is defined very broadly, since they should cover any requirements provided by law, regulation or rules. In addition, the FIU resolution does not provide that these policies should be made available to the employees, since it only requires making them available to the BCRA and the FIU.

605. Along with this FIU resolution, section 1.5 of the BCRA Compilation of AML measures requires the board of directors, managing council and head of foreign financial institution branches located in Argentina to adopt AML policies. In addition, section 2.5 of BCRA Communication "A" 4273 provides that "entities must also develop written policies on transactions related to the financing of terrorism including, as a minimum, design internal procedures and controls, and ongoing plan for staff training as well as an internal audit function for the verification of the compliance of such policies, taking into account the seize and the activity of the entity." As for the FIU resolution, the BCRA Communications do not detail the extent of the AML/CFT measures that should be included in internal policies and controls; however, the requirements seem broad enough to cover all the aspects of AML/CFT preventive measures.

Compliance management

606. Argentinean banking and foreign exchange institutions are required to develop appropriate compliance management arrangements and to designate an AML/CFT compliance officer at the management level. Indeed, section 1.5 of the BCRA Compilation of AML measures, in combination with Chapter VI of the FIU Resolution 228/2007 provides that institutions shall have compliance management arrangement that should include a Committee for Controlling and Preventing Money Laundering (ML Committee) and a compliance officer.

607. FIU Resolution 228/2007 mentions only that the compliance officer should be a "senior officer". Consequently, it does not state that the compliance officer should be placed at management level. At first sight the wording of section 1.5.2 of Communication "A" 4535 is not clear as to the seniority of this person: the first paragraph of section 1.5.2 requires "a competent officer" to perform certain activities, namely to "be in charge of implementing any policy adopted by the board (…), ensure that they are fulfilled and exercising any follow-up or internal control as he may deem fit". The second paragraph of section 1.5.2 requires that a member of the Board of Directors or Governance Body should be appointed for conducting anti money laundering activities. However, from the wording of section 1.5.1 regarding the setting up of a ML Committee, it can be concluded that the compliance officer is meant to be one of the members of the Board of Directors, since this section states that this committee "should made up of at least a member of the Board of Directors or governance counsel, as the case may be, the official referred to under 1.5.2 (*i.e.*,the compliance officer). Moreover, BCRA Communication "A" 4607 on "Minimum Requirements Internal Audit" reiterates that compliance officer shall be part of the management of financial institutions. This was also confirmed by the BCRA, which advised that compliance officers are at the level of the Board of Directors.

608. FIU Resolution 228/2007 and BCRA Communication "A" 4535 do not provide that the compliance officer and other appropriate staff shall have timely access to customer identification data and other CDD information, transaction records, and other relevant information. In certain cases, such as when a customer is a PEP, the BCRA Compilation of AML measures only provides that it should be monthly reported to the compliance officer that the management of the entity has approved a PEP to become a new customer, and the compliance officer unit can only acknowledge the receipt of this information. Therefore, the compliance officer's timely access to CDD information is relative, and this example also raises concerns on the effective powers of compliance officers.

Independent audit function

609. Pursuant to both FIU Resolution 228/2007 and BCRA Communications "A" 4535 and "A"4607 / "A"4606, banking and foreign exchange institutions shall carry out at least once a year an audit on the existence and operations provided by internal procedures of financial institutions. An audit report should include both suggestion for correcting the weaknesses detected by the audit, and the opinion of the entity itself on the issues that have been raised. The report is to be issued only after an external auditor has performed surveys and has taken samples on the internal audit controls. These surveys and sample testing refer to, for example, the adequacy of the audit staff training programme.

610. There are no formal requirements as to the competencies and the number of staff in place but the assessment team was informed that BCRA takes into consideration the size and risk profile of the entity while judging the adequacy of the audit staff in place.

611. From the interviews with the banking sector the assessment team learned that the BCRA carries out inspections on the audit function of the banks approximately every two years in order to determine the scope of AML/CFT controls for the next years.

Employee training and employee screening

612. Both the FIU Resolution (Chapter VI) and BCRA Communication "A" 4535 (section 1.5.4) require banking and foreign exchange institutions to train their employees on a permanent basis and to provide them with updated information. These obligations however do not further detail the content of these training programmes. Some of the financial institutions met during the on-site visit advised that they have in place training programs for new employees as well as, on an annual basis, for more experienced staff. According to Chapter VI of FIU Resolution 228/2007, one of the most important functions of the compliance officer is to propose training programmes.

613. Finally, section 1.5 of BCRA Communication "A" 4535 requires financial institutions "to establish appropriate systems to make a preliminary selection of personnel in order to assure strict rules for hiring employees". BCRA leaves it up to each entity to design pre-selection measures which are to be reviewed in the course on an inspection to determine whether they are reasonable in terms of the characteristics of each entity.

Other financial sectors

614. Although the FIU resolutions for the securities and insurance sectors also provide that these financial institutions adopt written policies to comply with the applicable AML/CFT requirements, these FIU resolutions do not meet the FATF criteria of other enforceable means as detailed in section 3.1 of this report. Equally, the rules adopted by the SSN and the CNV are not other enforceable means, and in any case they do not address this issue specifically.

Recommendation 22

615. Below is an overview of the number of branches, subsidiaries and representative offices of Argentinean banks abroad. Regarding the insurance sector, Argentina advised that one insurance company has a branch abroad (Uruguay). CNV informed the assessment team that within the securities sector, there are no branches or subsidiaries abroad. However, it is worth mentioning that there is no requirement to inform CNV from opening such branches or subsidiaries abroad.

Number of branches, subsidiaries and representative offices of Argentinean banks located abroad

Country	Branches	Subsidiaries	Representative offices
United States	3		
Spain	1		1
Uruguay	2	2	
Chile	1		2
Brazil	3		1
Bolivia	1		
Panama	2		1
Paraguay	4		
Venezuela			1
Cayman Island	5	1	
Bahamas		2	
Total	**22**	**5**	**6**

616. Since January 2009, section 5.2.3 of the BCRA Compilation of amendment on supervision AML/CFT measures (Communication A 4835/2009) provides that "the rules on the prevention of money laundering and terrorist financing also apply to branches and subsidiaries of Argentinean banks, to the

extent that the host country's laws and regulations permits". The requirements are then limited to require these branches and subsidiaries to have AML/CFT policies and procedures in writing in line with international standards, a compliance officer, a procedure for reporting suspicious transactions, internal audits to assess the prevention programmes and controls, training programmes. Argentinean banks should gather information about the compliance of their branches and subsidiaries with these provisions.

617. Such measures are not required for financial institutions of the securities and insurance sectors. Concerning the information according to which financial institutions of the securities sector would not have branches and subsidiaries abroad, it is worth mentioning that in any way, if they effectively had such branches or subsidiaries, they are not required to inform the CNV.

618. There are no additional measures in the Argentinean regime: financial institutions are not required to pay particular attention that the principles, according to which their foreign branches and subsidiaries observe AML/CFT measure consistent with Argentinean requirements and the FATF Recommendations, is observed with respect to their branches and subsidiaries located in countries which do not or insufficiently apply the FATF Recommendations. In addition, where minimum AML/CFT requirements in host countries differ from the Argentinean ones, branches and subsidiaries abroad are not required to apply the higher standard. Lastly, financial institutions are not required to inform their supervisor (in this case, BCRA) that their branch(es) or subsidiary(ies) are unable to observe appropriate AML/CFT measures because of the local rules.

619. Overall, the assessment team was unable to assess the effectiveness of this measure, since Argentina did not provide any further information.

3.8.2 Recommendations and Comments

620. Recommendation 15: Argentina should require in law, regulation or other enforceable means financial institutions of the securities and insurance sector to adopt internal policies and procedures to prevent ML and TF, to have in place compliance management functions and to operate audit of these procedures. These financial institutions should also be required to train and screen their employees. In addition, banking and foreign exchange institutions should be required to communicate those policies and procedures to their employees and compliance officers should explicitly have access on a timely manner to relevant information.

621. Recommendation 22: Argentina should require all financial institutions to ensure that their branches and subsidiaries abroad apply AML/CFT measures consistent with the international standards, when the local rules allow for it. In the event where a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local rules, those financial institutions should be required to inform Argentinean authorities. Financial institutions should also be required to pay particular attention that the principle is also observed when branches and subsidiaries are located in countries which do not or insufficiently apply the FATF recommendations.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	• There is no measure in law, regulation or other enforceable means to require financial institutions of the securities and insurance sector and other financial institutions not supervised to adopt policies and controls to prevent ML and TF, to set up compliance management arrangements and to train and screen employees. • Banking and foreign exchanges institutions are not required to communicate the policies and procedures against ML/TF in place to their staff. • For banking and foreign exchanges institutions, there is no requirement to give to the compliance officer and other appropriate staff timely access to customer identification data

	Rating	Summary of factors underlying rating
		and other CDD information, transaction records and other relevant information.
R.22	NC	• There is no requirement for financial institutions of the securities and insurance sector to ensure that their branches and subsidiaries abroad observe AML/CFT measures consistent with Argentinean or FATF requirements. • No financial institution is required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. • Where the minimum AML/CFT requirements of Argentinean and host countries differ, branches and subsidiaries in host countries are not required to apply the higher standard. • Financial institutions are not required to inform their supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local rules.

3.9 Shell banks (R.18)

Recommendation 18

3.8.1 Description and Analysis

622. A shell bank is defined in the FATF glossary as "a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial service group that is subject to effective consolidated supervision." Physical presence means meaningful mind and management located within the country. The existence simply of a local agent or low level staff does not constitute physical presence.

623. During the on-site visit, the BCRA issued a new Communication "A" 5006 dated 19 November 2009 in which it establishes that the applicant of a license or an acquiring party of the shares of a bank is not a "shell bank". The BCRA Communication does not define shell banks. It requires the applicant for a banking license in Argentina to submit a certificate of the Supervisory authority from the origin country showing that they do business within the jurisdiction where they have been authorised to conduct financial transactions, keep the records of their transactions at their registered offices, are subject to the supervision of the relevant authority as regards financial business and have hired their staff to work at their offices in a permanent manner.

624. The assessment team is of the view that this Communication is not yet entirely sufficient to protect Argentina from the operation of foreign shell banks on its territory. Firstly, the requirement regarding physical presence does not properly reflect the aspect of "meaningful mind and management" of the FATF definition, since it only requires "staff to work at their offices". This is not sufficient according the FATF Glossary and Methodology, since this staff could be lower staff only. Secondly, the applicant is not required to be affiliated to a regulated financial service group that is subject to effective consolidated supervision. The single reference to "supervision" is not entirely sufficient in this respect. Hence, the foreign mother company itself could be under supervision but without the requirement of "effective consolidated supervision", its branches and subsidiaries may still suffer from a lack of control. Finally, Communication "A" 5006 does not contain any provision regarding financial institutions that have already been granted licenses in an earlier stage. In the absence of an explicit power to withdraw such license, the BCRA legal framework does not meet the requirement that "continued operation should not be approved".

625. At this point, it remains unclear whether on the basis of Law 21 526 (Financial Entities Act) or another rule, such as CREFI II, a financial institution licensed primarily in Argentina must: i) have "meaningful mind and management" in the country (*i.e.*,there is no requirement that one or more directors

be resident in Argentina); and if ii) they are to perform their transactions primarily in Argentina. However, section 1.4.3 of CREFI-2 does require "attendance to the public" within 12 months on penalty of licence revocation.

626. Despite these deficiencies, it is worth mentioning that the assessors were not aware of any shell bank operating in Argentina.

627. Moreover, there are no provisions in law, regulation or other enforceable means to prohibit financial institutions from entering into or to continuing correspondent banking relationships with a shell bank. The assessment team has been provided with a draft of a BCRA Communication on Correspondent Banks, which seem to address only partially this concern. However, this Communication was not yet adopted at the time of the on-site visit or immediately thereafter.

628. There is also no provision in law, regulation or other enforceable means that obliges Argentinean banks to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. The draft BCRA Communication as referred to above, does not cover this issue.

3.8.2. Recommendations and Comments

629. BCRA should address several deficiencies identified in Communication "A" 5006, in particular in relation to the concept of meaningful mind and management. In addition, BCRA should have the authority to withdraw a licence, in the event a bank already established prior to the introduction of the Communication "A' 5006 would appear to operate as a shell bank. Argentina should also prohibit its financial institutions from entering into, or continuing, correspondent banking relationships with shell banks and require financial institutions to satisfy themselves that respondent foreign institutions in a foreign country do not permit their accounts to be used by shell banks.

3.8.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	• There are not sufficient statutory provisions preventing shell banks in domestic law. • The legal framework preventing foreign shell banks operate in Argentina is not sufficient. • There is no prohibition on financial institutions from entering into or continuing correspondent banking relationships with shell banks. • Financial institutions are not required to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

630. Supervisory and oversight systems are in place for AML/CFT matters in the banking and foreign exchange, insurance and securities sectors. These sectors are supervised by the *Banco Central de la República Argentina* (BCRA), the *Superintendencia de los Seguros de la Nación* (SSN) and the *Comisión Nacional de Valores* (CNV), respectively.

631. The BCRA is responsible for the supervision of financial entities (*i.e.*,commercial banks, investment banks, mortgage banks, financial companies, savings and loan associations for housing or any other kind of real estate, credit associations) and exchange entities (exchange houses, agencies and bureau

de change). Pursuant to article 4 of Central Bank Law 24 144, the BCRA "shall oversee the duly performance of financial market and apply the Financial Entities Act (Law 21 526) (FEA) and other rules which may be laid down". The BCRA issues its rules and guidance mainly through "Communications" which communicate the resolutions of the BCRA Board. Those designated with an "A" deal with regulatory issues of a permanent nature; those with "B" refer to dispositive aspects of a provisional, circumstantial or regulatory nature; those with "C" are for information or correction purposes. "P" designations are for press releases for information purposes.

632. As a result, BCRA supervises the compliance of financial entities with the obligations set out by the sectoral law, the Financial Entities Act, Law 21 526, and more specifically the compliance of financial entities with AML/CFT obligations set out in Communication "A" 4353, Compilation of Amendments of the rules on prevention of money laundering and other illicit activities[30] as well as the rules set out in FIU Resolution 228/2007, since section 1.1.1 of the BCRA Compilation of AML measures provides that these institutions shall also comply with any applicable rules issued by the FIU. Similarly, exchange entities are supervised on the basis of the sectoral Law 18 924, the Executive Decree 62/1971 and more specifically for AML/CFT purposes, on the basis of BCRA Compilation of AML measures (Communication "A" 4353) and FIU Resolution 228/2007.

633. Pursuant to article 6 (f) of Public Offer Law 17 811, the CNV shall supervise the compliance with applicable laws, rules and regulations in all matters within the scope of this law. More particularly, the CNV shall supervise the following institutions:

- Securities issuers, which are the issuers or firms or companies that are either exclusively or partly engaged in the trading of securities by any means of public communication;
- Mercantile exchanges and markets, which ensures the genuineness of transactions and the accuracy of the registrations and publications;
- Registered stock exchanges and securities markets, which authorise, suspend and cancel the listing of corporate securities, and which are also self regulatory bodies for stockbrokers.

634. In addition, the CNV also supervises investment funds according to article 32 of the Law 24 083 on Mutual Funds, as well as financial trusts according to article 19 of the Law 24 441 on Housing and Construction Financing.

635. The CNV supervises the compliance of securities institutions with the provisions set out by CNV General Resolution 547/2001, which itself refers to the FIU Resolutions 03/2002 and 152/2008. However, the scope of the supervisory powers of the CNV for AML/CFT purposes is narrower than the general supervisory scope, since on the basis of CNV General Resolution n°547/2001 the CNV does not supervise for AML/CFT purposes the following entities:

- stock exchanges with markets attached; and
- over-the counter market agents.

[30] Communication A 4353 was first issued in April 2005, although it replaced AML/CFT rules dating back to 1998. This now also includes changes and compiles the amendments to AML/CFT rules through new Communications. This compilation has been amended and updated approximately 30 times since 1998. Is referred to throughout the MER as "BCRA Compilation of AML measures".

636. The Superintendence of Insurance (SSN) supervises insurance companies according to article 64 of the Insurance Companies Law 20 091. The supervisory powers of the SSN are not clearly established regarding insurance intermediaries, since Law 22 400 regulating insurance brokers and intermediaries does not designate any supervisor, but rather only mentions in article 13 that breaches of Law 22 400 are punishable with sanctions provided by article 59 of the Law 20 091.

637. The following entities are not being supervised though carrying out activities that are subject to AML Law 25 246 and FIU resolutions:

- The activity of transfers of funds is supervised by the BCRA if performed by banks and exchanges houses, but not if performed by money remittance companies (see section 3.11 of this report).
- When transfers of funds are performed by Postal services, they are also not subject to supervision, although this activity is subject to the AML Law 25 246 and to FIU Resolutions 9/2003 and 230/2009.
- Companies, other than banks, issuing travellers cheques or operating with credit or purchase cards, although they are subject to the AML Law 25 246.
- Entities included in section 9 of Law 22 315.

638. Pursuant to articles 14 (8) and 24 of AML Law 25 246, the FIU has the power to sanction the non-compliance of reporting entities with the reporting obligations set out in the law. In practice, the FIU confirmed to the assessment team that this sanction power is to be used against reporting entities, which would fail to report suspicious transactions. At the time of the on-site visit, the FIU had never imposed such sanction. This is due to the fact that the FIU has no supervisory powers over reporting entities, in particular over financial institutions[31]. These financial institutions are actually supervised for AML/CFT purposes by their primary supervisors, as set out above. In practice, the supervisory powers of the BCRA, the CNV and the SSN are focused on the compliance of financial institutions with the CDD measures, but not on the compliance with their reporting obligations. However, as described on section 3.7 of this report, the effectiveness of the reporting obligations of financial institutions is low. When, in the course of an inspection, a financial supervisor discovers suspicious transactions which should have been reported to the FIU, it becomes responsible for the reporting since financial supervisors are designated as reporting entities by article 20 of AML Law 25 246. In practice, financial supervisors are among the entities which report the largest number of suspicious transactions, which demonstrates the low level of compliance of financial institutions with their reporting obligation. Nevertheless, these institutions are not sanctioned, either by their supervisors or by the FIU.

639. At the time of the on-site visit, the FIU was considering sanctioning four financial institutions for breach of their reporting obligations. However, due to the complete change of the management of the FIU just after the on-site visit, such sanctions have not been taken in the two months period that followed the on-site visit[32].

[31] With the elements provided to the evaluation team at the time of the on-site visit or immediately thereafter, it is concluded that the FIU does not have the ability to conduct supervision. However, Argentina advised that the FIU is now interpreting Law 25 246 differently.

[32] In February 2010, the FIU took its first sanction against a bank for failure to comply with reporting obligation. This sanction is currently being appealed.

640. The compliance of the FIU with the Recommendations 23, 29 and 30 (as far as resources, etc. for supervisors) will not be further detailed in this report, since the FIU has no supervisory power, despite its sanctions powers (which are limited).

Authorities/SROs roles, duties, structures and resources R. 23, 30

AML/CFT regulation and supervision of financial institutions

641. Supervision by the BCRA: BCRA as the prudential supervisor is primarily concerned with the due performance of the financial sector and the application of the Financial Entities Act (Law 21 526) and other rules which may be laid down as a result thereof. The BCRA is therefore charged with liquidity, solvency and operational risk supervision. It is within this scope of "duly performance of the financial markets" that the BCRA is also empowered to address AML/CFT regulation and supervision (article 4 of Law 21 526 and article 41 of the BCRA Charter). The BCRA Communication "A" 4535 details the measures that financial institutions should apply to conduct Customer due diligence and to report suspicious transactions to the FIU, as well as the nature of internal control that should be implemented. The BCRA monitors compliance of banking and foreign exchange entities, both as part of its prudential supervision and within a specific unit that has been set up for AML/CFT purpose. Supervision of financial institutions and exchange entities is, after licensing, conducted through on-site inspections and off-site reviews. BCRA is also empowered to act against illegal financial entities in Argentina.

642. Supervision by CNV: The supervisory role of the CNV is focussed on duly public offerings, observing transparency of capital markets and proper pricing, as well as the protection of investments. More specifically, according to article 6 of Law 17 811, CNV should: a) authorise public offerings; b) advise the Federal Executive Branch with regards to the petitions for authorisations to operate a stock exchange; c) keep a record of all stockbrokers registered with the Stock Markets; d) keep a register of all legal persons authorised to make public offerings and securities and prescribe rules that are to be observed in that respect; e) approve the rules and regulations of exchanges relating to the public offering of securities and those of Securities Markets; f) supervise compliance with applicable laws, rules and regulations; and g) request the National Executive Branch to revoke the registration of Stock Exchanges and Securities markets whenever these fail to comply with the functions assigned to them. It is within the scope of this general supervisory goal that CNV has issued General Resolution 547 regarding AML/CFT obligations. This General Resolution basically requires securities institutions to apply the provisions regarding to AML/CFT CDD measures provided by the FIU resolutions 03/2002 and 152/2008. AML supervision of this sector is mainly focused on investment companies (mutual funds and financial trusts) and agents. Since 2008, this is conducted through on-site inspections and off-site reviews.

643. Supervision by SSN: According to article 64 of Insurance Companies Law 20 091, the Superintendence of Insurance (SSN) is responsible for supervision of (life) insurance companies. It supervises compliance of those (legal) persons with the 20 091with the duties established by the Law. However, since Law 20 091 concentrates on prudential matters, but never refers to AML/CFT prevention, the SSN does not have any explicit power to supervise insurance companies for AML/CFT purpose. Moreover, the SSN has issued Resolution 28 608/2002 which deals with ML/TF issues, without any legal basis. It therefore appears that, although the SSN does not have any legal powers to supervise insurance companies for AML/CFT purposes, it does so in practice. Regarding life insurance intermediaries, Law 22 400 regulating brokers and intermediaries does not explicitly designate a supervisor. However, it comprises a section on sanctions which provides that breaches of the provisions of the law should be sanctioned by the sanctions set up in the Law 20 091 on insurance companies. Therefore, the Argentinean authorities advised that the SSN has the power to supervise and sanction life insurance intermediaries. However, as for insurance companies, the sanctions provided by Law 20 091 only concern a list of breaches to prudential rules and it does not mention sanctions for breaches with AML/CFT rules.

Authorities, Structure and resources, Recommendations 23 and 30

Central Bank of Argentina (BCRA)

Structure, funding, staffing, and resources

644. BCRA was established on 28 May 1935 as a self-administered institution governed by its Charter Law 24 144. The BCRA is domiciled in Buenos Aires and according to its Charter, Article 2, it is entitled to set up agencies and license correspondent banks to work within the country and abroad. However, such decentralised agencies have never been established.

645. The main organ of the BCRA is the Board of Directors, composed of a President, a vice-President and eight directors. Each of its members is appointed by the National Executive Power in agreement with the Senate of the Nation. The vice-president and other directors hold office for six years and may be reappointed.

646. The BCRA is carrying out supervision through the "Superintendence of Financial and Exchange Entities". This body (SEFyC) within the BCRA is managed by a superintendent, a vice-superintendent and deputy general managers for the relevant areas. According to Chapter XI of the Charter Law 24 144, the SEFyC is separate from the Central Bank, though it directly reports to the President of the BCRA, it is dependent for its budget on the BCRA and it is also subject to audit by the BCRA. The management of the SEFyC is nominated by the Government, upon proposal of the President of the Central Bank.

647. The budget of the SEFyC is funded by the BCRA and originates from the income of the BCRA. The SEFyC sets its own budget and divides this budget between the four main divisions (*Subgerencias generales*). 350 inspectors are working in the *Subgerencia* Supervision. These inspectors are mainly carrying out prudential tasks but the BCRA advised that they also control the AML/CFT systems of the financial and exchange institutions under their supervision. Though, the assessment team was unable to verify this fact, since BCRA was not in the position to provide statistics on their workload related to AML/CFT supervision.

648. In 2004, the BCRA decided to create a *Subgerencia* Supervision dedicated to AML/CFT supervision of banking and foreign exchange institutions (GAPSOE), for which 17 inspectors are currently working full time and on permanent contract. During the interviews, representatives of GAPSOE expressed their desire to have more staff to be able to carry out the work that in their opinion should be done. The missions of the GAPSOE are as follows:

- To enforce established policies and inform the competent areas on news about the subject;
- To supervise the compliance of financial and exchange entities with AML/CFT-rules; and
- To gather unusual or suspicious transactions and to report them to the FIU.

649. AML/CFT supervision is carried out following the rules set out in a work programme ("*Manual de Inspección de Prevención de Lavado de Dinero y Financiamiento del Terrorismo*"), specifically designed for AML/CFT purposes.

Professional standards

650. With regard to the background of the BCRA-GAPSOE staff, all employees are accountants or lawyers. Upon entrance into the unit, these employees are required to present an official document on criminal antecedents and to sign off confidentiality rules. Any breach of such secrecy rules is sanctioned

pursuant to articles 51 and 157 of the Criminal Code, which set forth imprisonment from 1 month to 2 years and a special prohibition to perform any public functions. In addition, pursuant to article 40 of the Financial Entities Act (Law 21 526) and article 53 of the BCRA Charter, the (ex)officers and (ex)employees of the BCRA are obliged to keep secret all information that they have obtained in the exercise of their supervisory powers. They are only authorised to disclose such information upon express authorisation of the Superintendent. The BCRA also applies an ongoing screening of its employees, by checking their performance.

Training

651. BCRA: The training programme of the BCRA includes an obligatory basic course for all staff of BCRA and SEFyC and annually optional updated practical cases workshops organised by GAPSOE, in collaboration with the FIU, SSN, etc. For example, in November 2009, this workshop was about practical aspects to carrying out on-site inspections for AML/CFT. From 2006 to 2009, 813 staff members have attended the obligatory basic course, and 217 staff members have attended the practical cases workshops. In addition to these internal training sessions, the supervisory staff of the BCRA regularly attends external workshops and training on AML/CFT. These training sessions are mainly organised by international bodies like FSI-Basel, regional bodies, such as GAFISUD, foreign countries like the US (O.C.C., Federal Reserve) and Germany (Deutsche Bundesbank) and private organisations.

National Securities Commission -- Commission National de Valores (CNV)

Structure, funding, staffing, and resources

652. The CNV was created in 1968. It is an independent entity with jurisdiction throughout the country. Its functions are carried out by a Board of directors consisting of five members appointed by the Executive Branch, *i.e.*,the Ministry of Economy and Labour. Board members remain in office for a seven-year term, and they may be re-elected. The Ministry of Economy and Labour is also appointing the Chairman and the Vice Chairman of the Board. The Chairman has a casting vote in the event of a tie.

653. Pursuant to section 5 of Public Offer Law 17 811, the budget solely depends on the National Budget. However, section 47 of Title IV of Executive order N° 677/01 provides that the expenses incurred to fund the CNV shall be partially paid with the income resulting from control rates and authorisation fees. During the on-site visit the assessment team was informed that the budget depends half on the National Budget and half on the fees from supervised entities.

654. 170 persons are currently working for the CNV, including 12 to 15 general inspectors, whose involvement in AML/CFT supervision solely consists in asking entities to provide their internal manuel to the Money Laundering Prevention Unit (CNV AML Unit), for which only three persons (including management) are working. Since 2008, the CNV AML Unit is carrying out on-site inspections, based on a work programme (manual) issued in 2008. In addition, if inspectors discover failures regarding AML/CFT rules during their general or prudential controls, they must inform the CNV AML Unit.

655. During the interview, CNV expressed concern regarding the very limited staff dedicated to the AML/CFT supervision. The CNV explained these resource constraints by the financial crisis and consequently by the decreased revenues received from supervised entities[33].

[33] Argentinean authorities advised that the President of CNV has submitted a request for additional funds to the Budget Deputy Secretary of the Ministry of Finance. If granted, a portion of these additional funds should be allocated to hire additional professional staff for the AML Unit.

Professional standards

656. Pursuant to section 9 of Law 17 811, the Board and staff of CNV are obliged to maintain the secrecy of any information obtained in performing their functions. Breach of such secrecy is punishable by articles 51 and 157 of the Criminal Code, which set forth imprisonment sanctions from one month to two years, and a special prohibition to perform public functions. In the event an employee or officer of the CNV was aware of any breach of secrecy committed by another employee, he/she should file a criminal report to the competent authorities. In addition, the CNV can also start administrative proceeding that would be completed with administrative sanctions, if appropriate. The assessment team was not provided with any information on the type and nature of measures the CNV would apply to ensure the high professional standards and high integrity elements its staff would be subject to. However, it should be noted that the head of the CNV AML Unit had a high understanding of the international standards and AML/CFT compliance issues.

Training

657. The training programme for the staff of the CNV still needs to be improved. General inspectors can participate in the training programme organised by BCRA, but no further information was provided on this issue.

The Superintendence of Insurance (SSN)

Structure, funding, staffing, and resources

658. The SSN was established in 1937. SSN is an autonomous entity with financial autonomy, under the Ministry of Treasury and Economy. The President of the SSN (the Superintendent) is nominated by Presidential Decree and the Minister of Treasury and Economy approves the annual budget of the SSN. However, SSN is partly subsidised by annual fees from the insurance companies and brokers. Pursuant to Article 77 of Law 20 091 on insurance companies, the Superintendent is assisted by an advisory board consisting of five insurance directors. This Advisory Board has a set of duties, *i.e.*,to render opinions on draft resolutions, general policies, amounts of fees and all other general issues that may arise (Article 79 of Law 20 091).

659. Pursuant to section 5 of SSN Resolution 28 608/2002, a special Unit dedicated to AML/CFT supervision was created in 2002. This unit is called the SSN Anti Money Laundering Unit, which shall: i) make, collect, receive, request and examine any report on the enforcement of the AML/CFT legal framework and ii) to send unusual or suspicious transactions to the FIU.

660. Within the SSN there are currently working 288 people. According to section 5 of the Resolution 28 608/2002 there will be staffing of 8 persons within the UASSN, but according to section 5 of this same Resolution 28 608/2002, those persons are not exclusively dedicating to AML/CFT work. It appears that SSN faces resource constraints for AML/CFT purpose.

661. SSN inspectors are performing their AML/CFT controls according to a very basic work programme ("Minimum internal guidelines to detect and/or prevent illegal money laundering and terrorist financing in the insurance sector").

Professional standards

662. Article 66 of Law 20 091 provides that the Superintendence shall be equipped with the necessary staff to carry out its duties. Its staff should preferably have an academic degree in economics or law. More specifically, according to section 5, under d) of Resolution 28608/2002, the UASSN should be composed

of two lawyers and six accountants, but these persons are actually not fully dedicated to AML/CFT issues. According to Article 74 of Law 20 091, employees of the SSN are required to keep secret "the performance of their duties". Regarding the integrity of the staff, article 66 of the Law 20 091 provides that no officers or employee may have interest in an insurance company, or hold position in such a company, except if provided by law or where they are assured of quality. They are also forbidden to have direct or indirect interest in activities or remuneration from producers, agents, brokers, appraisers and insurance adjusters. The breach to secrecy rules are sanctioned by articles 51 and 157 of the Criminal Code, as detailed above with respect BCRA and CNV.

Training

663. There is no permanent staff training proposed to SSN staff. The UASSN itself has been trained only occasionally, during one week last year by US authorities, and in 2008 UASSN staff was provided with training on AML/CFT to general inspectors. In addition, since the SSN is also a reporting entity to the FIU, training to detect suspicious transactions has also been provided. The assessment team was though unable to assess the quality and depth of these courses.

Authorities Powers and Sanctions – R. 29 and 17

Powers to monitor compliance

664. FIU: As described above, Articles 14 and 24 of the AML Law 25 246 empowers the FIU to impose penalties for failure to comply with the reporting obligations in the law. However, the FIU has no powers to monitor the compliance of reporting entities with the provisions of AML Law 25 246 and the guidelines and instructions (*i.e.*,Resolutions) it has issued. The FIU has no power to conduct inspections over reporting entities. Consequently, the FIU can only identify failures to comply with reporting obligations through indirect ways, by analysing the information received, and discovering that a suspicious transactions involved financial institutions which have not reported any suspicion. Apart from this method, the FIU fully depends on the designated authorities to monitor whether the financial entities are in compliance with their reporting obligations. However, in such cases, the financial supervisor reports the suspicious transaction to the FIU instead of the financial institution, but this is not followed by any sanctions. This lack of supervisory power of the FIU, while having a sanction power, is a very significant deficiency of the Argentinean AML/CFT regime, particularly since several financial entities (*e.g.*, remitters, postal services…) are not subject to any other supervision. Moreover, there is not effective structural cooperation or agreement between the FIU and the various supervisors.

665. BCRA: The Financial Entities Act (FEA), Law 21 526, regulates the supervisory powers of the BCRA. Article 4 of the FEA establishes that the BCRA is empowered "herein and by virtue of its charter to enforce this Act and lay down any necessary regulation for enforcement purposes". With referral to section 4, under a) of the Charter, the BCRA considers itself empowered to issue the necessary directives on ML and TF, to monitor the compliance with the standards laid down therein and to sanction (on the basis of the FEA) in case of non-compliance, although this power is not explicit.

666. It is also in the context of prudential supervision, that article 37 of the FEA requires financial entities to make available to the BCRA "their accountancy books, mail, documents and papers". Therefore, it is not entirely clear on the basis of the FEA whether the BCRA can obtain and use information such as that related to specific accounts or transactions. However, the Charter may provide some more legal basis for this purpose. Article 51 of the Charter establishes that the Superintendence may require financial entities to make their books and documents available, to furnish all information and documents related to the transactions they have carried out or to which they have been part. The FEA is also not clear as to the sanctions that may be taken by the BCRA when cooperation is refused. Hence, it is

only with regard to unlicensed persons that article 38 of the FEA explicitly provides for enforcement means to BCRA in case of non-cooperation. Also at this point the Charter may be of any assistance to the BCRA, since the same Article 51 states that the BCRA may order "the seizure of such documents and other papers related to such transaction".

667. There is no provision in the FEA or in the Charter for the BCRA to conduct on-site inspections, since these laws does not provide for explicit authorisation to enter the premises of a supervised entity. When addressing this issue during the onsite visit, BCRA referred to Article 54 of the Charter. This Article would implicitly empower the BCRA to enter the premises of the financial entities, since it empowers the Superintendent to call for assistance from law enforcement forces when it will be refrained or hindered from fulfilling its supervisory duties and/or to request the competent courts to issue any necessary warrants.

668. Notwithstanding the aforementioned, the assessment team was informed that the BCRA is actually carrying out on-site inspections. To determine which institutions shall be visited an annual plan is drawn up by GAPSOE.

669. The key tool in supporting this planning process is a risk model included in the "*Manual de Inspección*" (Inspection Manual) based on information gleaned from a number of resources, including:

- Antecedents that were encountered through previously executed (general) supervisory actions.
- The general risk profile of the financial entity built upon the Risk Matrix ("*Matriz the Riesgo*"). The BCRA is utilising five criteria to define the risk profile of an entity. The volume of transactions carried out by the entity determines for 50% the category the entity is in. The other criteria are: 1) the origin of the capital, 2) in which geographic zones of Argentina the entity is operating, 2) the fact that whether or not an entity is affiliated to a group located in offshore countries, tax havens or non-cooperative countries, 3) the number of suspicious transactions the entity failed to report over the last two years.
- Desk based work in relation to examining manuals, information on the control environment (including the findings from other departments of the Superintendence, such as *Gerencia de Control de Auditores* and *Gerencia de Auditoria Externo de sistemas*), including information on compliance controls.

670. The yearly plan is then discussed with the prudential supervisors. However, it remains to the discretion/planning of the prudential supervisors whether specific on site-visits can actually take place. This practice could undermine the effectiveness of the AML/CFT supervision, since prudential supervisors do not necessarily have the same priorities as AML/CFT supervisors.

671. If the yearly plan is agreed upon by the prudential supervisors, the inspections are carried out either by the GAPSOE depending on its capacity constraints or by the prudential supervisors among their general programme. This determination is made depending on the risk of the institution, determined on the basis of the size of the transactions generally operated, its localisation, and background information. Each supervision team is directed by a general inspector. Before any on-site inspection, accordingly with the manual of inspection, inspectors control the internal control system, the manuals that are used to monitor the operations and for example the training programme that has been designed. During the on site-visits, the inspectors are taking samples of files and they check for example the alarms established by the monitoring system.

On-site inspections carried out by the BCRA in 2006-2009 for general purpose

	Schedule 2006-2007		Schedule 2008-2009	
	Ongoing inspections	Completed inspections	Ongoing inspections	Completed inspections
Public Banks	0	12	4	8
Private Banks (including financial companies)	0	74	21	52
Total	**86**		**85**	

General inspection programme of currency exchange entities (2008-2009)

	2008	2009
Currency exchange entities	14	9

Specific AML/CFT inspection programme (2008-2009)

	Total number of entities in Argentina	2008		2009	
		Ongoing inspections	Completed inspections	Ongoing inspections	Completed inspections
Public Banks	12	0	0	0	1
Private Banks (including financial companies)	72	3	2	2	2
Currency exchange entities	90	1	0	2	2
Total	**174**	**6**		**9**	

Duration of on-site inspections carried out by the BCRA for 2008-2009 for AML/CFT purpose

Type of entity	Duration	Staff involved	Quantity
Large Universal Bank	12 weeks	4	4
Medium Universal Bank	11 weeks	2	1
Public Bank	10 weeks	4	1
Specialised Banks	8 weeks	3	1
Finance Company	8 weeks	3	1
Exchange House	5 weeks	3	4
Exchange Agency	4 weeks	3	1
Representative office	2 days	2	2
Total			**15**

672. The numbers of specific AML/CFT on-site inspections appear to be low: upon 84 banks and financial companies registered in Argentina, only 10 inspections were carried out in 2 years time. Banks are therefore supposed to be subject to AML/CFT on-site inspection only once each 16,5 years. In addition, the general on-site inspections must also contain an AML/CFT component, but the assessment team was not provided with more data on the average duration of such a component.

673. CNV: The Public Offering Law 17 811 does not provide any specific AML/CFT supervisory powers to the CNV, and thus uses its general prudential powers provided by section 7 of the law. However, this section 7 is not specific as regards these supervisory powers. Firstly, it only makes a very general reference as to the entities CNV is actually empowered to supervise. It may indeed, according to

the first part of section 7, establish rules that "natural or legal persons involved in any capacity in the public offering of securities must observe". But regarding CNV's supervisory powers, this Article does not make any such of reference to the parties that are subject to its control.

674. Moreover, the power to compel production of documents and to conduct on site inspections lacks clarity. The law only provides that the CNV "in its exercise of its functions may: a) "require reports and carry out inspections and investigations (…)"; but it is not clear whether CNV can actually enter the premises and whether it could actually act when entrance is refused. It is only very generally established that the CNV can "request the aid of law enforcement agencies".

675. Notwithstanding these legal deficiencies, CNV has recently started to carry out on-site inspections. In 2008 the CNV AML Unit carried out 9 on-site inspections. In 2009 (until November), the Unit had carried out 19 inspections (out of the 30 prospected inspections). Entities are selected on a risk-based approach, depending on the volume of their transactions. So far, the CNV has focussed its inspections on agents/brokers, though it does not have any sanction powers on them. The CNV considers the agents as a high risk, since despite their legal obligations, they are not yet engaged in the fight against ML/TF and they are not aware or not willing to be aware of their ML/TF risks. CNV is also focussing on certain specified markets but for reasons that go beyond AML/CFT that deal also with other compliance issues. The inspection teams generally consist of a lawyer and an accountant, and it can be accompanied by the head of the AML Unit. The length of such inspections is generally short and is carried out in conformity with a manual. The guidelines of this manual are limited. It lacks in-depth guidance on the testing of the requirements related to *e.g.*, the adequacy of the policies and procedures in place, and it does not contain any practical cases. The assessment team was informed that the manual will most likely be modified with the technical assistance of the Department of Treasury of the US. During the visit, the CNV asks for documents on transactions. From those transactions they randomly pick a few clients and ask for the files. Compared with the total number of agents operating on the Argentinean market (about 500), the number of on-site inspection is still very low, partially due to the resources constraints faced by the AML Unit.

676. SSN: The scope of regulation and supervisory powers by the SSN is very general. Article 1 of Law 20 091 states that "the practice of insurance and reinsurance business activity anywhere in the territory of the Nation is subject to the regime of this law and control of the authority created by it". It is within this broad scope of Article 1 in conjunction with Article 67 (b) and Article 70 of Law 20 091 that the SSN considers itself as being competent to regulate insurance companies and independent agents, brokers, appraisers and liquidators and to issue orders and directives related to AML/CFT issues. Additionally, it is within this scope of Article 1 in conjunction with Article 70 of Law 20 091 that the SSN claims to have the supervisory power to examine all elements pertaining to the operations of insurers, "especially require reporting of books and supplementary documents and their correspondence; and it may carry out the examination, audit and verification of documents in general". Moreover, Article 69 of Law 20 091 makes it possible for the SSN to require any information (apart from the regular) that it deems necessary to perform their duties and the insurer will have to keep these documents available. However, having considered all these elements, there are doubts about the solidity of the SNN's legal basis to conduct AML/CFT on-site inspections. In fact, article 72 of the Law 20 091 only provides for the possibility of "general meetings the superintendent may attend".

677. SSN did not provide any usable detailed statistics on AML/CFT inspections carried out on insurance companies. The only information provided concerned prudential supervision, for which legal basis to carrying out inspection is clear. For that purpose, SSN advised that an insurance company is controlled on average every 2 years, through "routine" inspections. During these "routine" inspections, only in limited occasions and particularly when it concerns life insurance-businesses, inspectors may address some questions on ML and TF to the insurance company, such as checking the existence of

AML/CFT internal policies. This is done in conformity with the manual ("Internal Guidelines"). This manual contains very limited guidance for inspectors carrying out onsite visits (only 10 very basic recommendations). SSN has never conducted on-site visits on brokers or intermediaries. It is worth mentioning that around 23 500 brokers are registered in Argentina, while the AML Unit of the SSN and more generally the inspection teams for prudential matters are very limited.

Recommendation 17

Legal framework

678. The sanction powers of the various financial supervisors are established by the various sectoral laws. More specifically, BCRA shall take measures under the general supervisory regime of the Law 21 526 (financial entities) and Law 18 924 (exchange entities). The CNV is to take measures on the basis of the Public Offer Law (issuers, markets and stockbrokers). SSN may take measures under the general supervisory regime of Law 20 091 (against insurance companies and brokers).

679. Additionally, pursuant to sections 14 and 24 of Law 25 246, the FIU has the power to sanction reporting entities mentioned in section 20 of Law 25 246 for failure to report suspicious transactions. Moreover, section 23 of Law 25 246 establishes that the FIU could impose penalties to legal persons in the context of a crime committed in accordance with Section 278, subsection 1 of the Criminal Code or section 213 *quarter* of the Criminal Code. Finally, pursuant to Resolution 127/2009 the FIU may file a criminal complaint. But since the FIU lacks any kind of supervisory power on reporting entities, the assessment team is of the view that the sanctions available are not effective and dissuasive. Although the assessment was informed in November 2009 that (already since February 2009) there are a couple of cases currently pending in summary proceedings, no effective sanctions have actually been applied.

BCRA

680. With regard to financial institutions and exchange entities, the BCRA is entitled to address non-compliance with mainly the AML/CFT provisions in the BCRA compilation of AML measures (Communication "A 4353") through the sanction regime provided by article 41 of the FEA in conjunction with article 4 of the Executive Decree 62/1971 (for exchange entities). When a financial entity is in breach of the FEA, the regulations thereof and resolutions thereon issued by the BCRA", the BCRA can impose one or several of these sanctions:

- A warning (1st level of sanction).
- A caution
- A fine.
- A temporary or permanent disqualification to dispose of a banking current account.
- A temporary or permanent disqualification to act as promoters, founders, directors, administrators, members of surveillance committees, controllers, liquidators, managers, auditors, partners or shareholders of entities under the FEA.
- The revocation of the license; and
- When a crime has been evidenced during summary proceedings, BCRA shall file a criminal action (jointly with Attorney General).

681. According to Article 41, the sanctions are applied to legal and/or natural persons "accountable for breaching the legal framework". Assessors understood during the interview that the sanctions may therefore apply to a broad range of natural persons, including the compliance officer.

682. With regard to the fines that may be imposed on financial entities, Article 41 of the FEA states that the BCRA shall regulate its application, taking into account the following aspects: the seriousness of the breaches, the potential damages caused to third parties, the benefit for the offender and the entities' minimum capital. The maximum amount of fine, which can be imposed by the BCRA, is not determined by the law, but by a resolution of the BCRA Board of Directors. This decision has never been made available to supervised entities, which affects the dissuasiveness of the sanction. The assessment team was provided this information: financial entities are punishable with a fine from ARS 10 000 (USD 2 500) to ARS 200 000 (USD 25 000). The level of the fine that the BCRA can impose on banking and foreign exchange institutions is very low, in particular considering the size of certain Argentinean banks. In addition, it is worth noting that entities supervised by the BCRA are only punishable after repeated failure. The BCRA not being allowed to publish / disclose supervisory sanctions, it also undermines their dissuasiveness.

683. From 2006 to 2009, the BCRA has imposed 144 sanctions for AML/CFT: 27 on financial institutions (2 banks, 8 exchange agencies, 16 exchange houses, 1 cooperative), and 117 sanctions against natural persons in charge of these financial institutions. In total, the BCRA has imposed 60 warnings or cautions, 83 fines (15 against financial institutions and 68 against natural persons) and 1 dismissal. The majority of these sanctions have been imposed for lack of documentation on CDD and lack of control of the business relationships.

Number of sanctions imposed by BCRA for AML/CFT purpose

Period	Number of financial and exchange entities sanctioned	Number of sanctions imposed	Type of sanctions imposed
2006	9	49	9 Warnings 40 Fines
2007	6	34	1 Dismissal 10 Cautions 11 Warnings 12 Fines
2008	10	48	6 Cautions 24 Warnings 18 Fines
2009	Information not provided	13	13 Fines (11 against natural persons and 2 against financial institutions).

684. In conclusion, the sanctions imposed by the BCRA seem to be proportionate considering the broad range of sanctions available, and have been applied in practice; however, there is a lack of dissuasiveness and effectiveness of the overall sanction regime.

CNV

685. CNV is entitled to address non-compliance of issuers and (commodities) markets through the sanctioning regime of Article 10 of Law 17 811. CNV may take the following measures, against natural or legal persons:

- Censure
- Fine of ARS 1 000 to ARS 1 500 000 (USD 260 to 389 500),that may be raised to up to five times the amount of the obtained benefit or the damage suffered due to the breaches is higher than this maximum amount of fine.
- Suspension of up to five years from performing their functions as directors, managers, auditors, members of the supervisory council, members of the qualification council, accountants giving their opinion or external auditors or managers of issuers authorized to make the public offering, or to act as such in investment or depository companies of mutual funds, in rating agencies or in companies developing the activity of financial trustees, or to act as intermediaries in the public offering or in any other manner which may be under the control of the CNV.
- Suspension of up to two years to make public offerings or, in its case, of the authorisation to act in the public offering. In the case of mutual funds, only joint administration acts may be performed and requests may be approved for the redemption of quotas, being able to sell for that purpose the property in the portfolio controlled by the CNV;
- Prohibition to make public offerings of negotiable securities or, in its case, to authorize to act in the public offering of negotiable securities or forward contracts, futures or options of any nature whatsoever.

686. In addition, it is worth mentioning that the sanctions imposed by the CNV are published on its website.

687. Article 10 of Law 17 811 furthermore establishes that for the purposes of establishing the various measures mentioned above, the CNV shall especially take into account:

- The damage to the confidence in the capital market.
- The scope of the violation.
- The generated benefits or the damages caused by the defaulting party.
- The operating volume of the defaulting party.
- The individual performance of the members of the administration and control bodies and their relation with the control group, especially, the nature of independent or external member(s) of said bodies; and
- The circumstance of having been punished in the six previous years by the application of Law 17 811.

688. The sanctions available for the CNV apply to both legal and natural persons. If a decision of the directors, the administrators, the auditors or the members of the supervisory board has been determining in

the behaviour of the legal person, which breached the rules, these natural persons should also be subject to sanctions.

689. According to article 10 bis of Law 17 811, CNV shall keep a public register of the imposed penalties, where the successive resolutions until the last legal instance shall appear as well as the data of the responsible parties and the measures adopted regarding that matter.

690. It should however be noted that the CNV does not have any sanction power against agents and brokers, which constitute a large part of the securities sector. Indeed, these professionals can only be sanctioned by the Securities Markets, which is a self-regulatory organisation in Argentina. Article 59 of Law 17 811 provides that securities markets have disciplinary authority over stockbrokers, and that these securities markets act upon their own initiative, upon the request of the CNV or at the request of interested parties. The securities markets may apply a series of sanctions: censure, suspension or revocation. This range of sanctions is therefore less broad than the one that can be imposed by the CNV, and it does not apply to natural persons. In practice, the CNV carries out controls over agents and brokers, which have established the very low level of compliance of these professionals with AML/CFT requirements. The CNV reports back to the individual agents, and it asks to Securities Markets to take actions, but so far, securities markets have never imposed any sanction. Moreover, it is worth noting that the FATF standards do not provide for the possibility for a financial institution to be supervised and sanctioned by a SRO, as this possibility only applies for DNFBPs.

691. Apart from this substantive deficiency regarding the total lack of effectiveness of the sanction regime for agents and brokers, the sanctions that can be imposed by the CNV seem to be proportionate and dissuasive. However, at the time of the on-site visit and despite the very low compliance of the sector with AML/CFT provision as admitted by the CNV, no sanction for AML/CFT purpose had yet been imposed by the CNV. Indeed, at that time, the CNV was only starting to organise its first on-site inspections over the entities for which it also has sanction power, but it had not yet completed one. Therefore, the sanction regime available for the CNV, although proportionate and dissuasive in writing, lacks effectiveness.

SSN

692. SSN is entitled to address non-compliance of insurance companies and intermediaries through the prudential sanction regime established by section 58 of Law 20 091. SSN may take the following measures against insurance companies:

- Caution (1st level of sanction).
- Warning.
- Fines ranging from 0.01% to 0.1 % of the total amount of premiums and surcharges – less cancellations – corresponding to the previous fiscal year; this amount not being less than 0.5% of the minimum required capital of the company (subsection replaced by section 155 of Law 24 241, published by the Official Gazette, 18 October 1993).
- Suspension of up to three months to operate in one or more authorised insurance specialties or the total cancellation of the permit to operate as insurance company, in the cases of abnormal performance of the insurance activity or a decrease in the economic-financial capacity of the company.

693. Section 58 of Law 20 091 states that the level of the sanction applied shall be reasonably graduated according to the behaviour of the insurance company, the seriousness of the breach and recidivism.

694. Article 59 of Law 20 091 details the range of sanctions that can be applied to insurance intermediaries. The SSN can apply the following sanctions, having considered the function of the entity, the seriousness of the failure and the possible recidivist behaviour:

- A call for care, or caution.
- A warning.
- A fine of up to ARS 5 000 (USD 1 300)
- A disqualification to operate for up to 5 years.

695. Article 87 states that the sanctions applied on the basis of articles 58 and 59 will be published in the Official Gazette. However, the assessment team has concerns about the authority of SSN to actually impose sanctions for failure to comply with AML/CFT provisions, since article 58 of Law 20 091 limits the SSN sanction power to failure to comply with prudential provisions. Indeed, article 58 states that SSN may take the above sanctions only when an insurance company violates the provisions of Law 20 091 or the regulations thereof, or fails to comply with the measures taken by the control authority under the law, "and this may result in an abnormal performance of the insurance activity or a decrease in the economic-financial capacity of the insurance company or constitutes a real barrier against its control". Law 20 091 adopted in 1973 only focuses on prudential aspects of the insurance sector, and article 67 explicitly limits the competences of the SSN to the "general orders issued by this act". As the SSN has no specific power to issue resolutions for AML/CFT purposes, it also has no solid basis for applying sanctions for AML/CFT breaches.

696. Moreover, the range of sanctions available for the SSN does not seem to be dissuasive, in particularly regarding the level of the fines. Indeed, the maximum amount of fine that the SSN can imposed is from 0.01% to 0.1% of the total amount of premiums and fees earned, (less the cancellations). Although the said amount should not be less than 0.5 % of the minimum required capital of the company, this remains low, as admitted by representatives of the insurance sector. As for the maximum fine that can be imposed against intermediaries (USD 1 300), this is also not dissuasive. In addition, there seems to be no sanction available against natural person. Lastly, despite the low level of compliance of the insurance sector with the AML/CFT provisions, the SSN has so far only imposed warnings against insurance companies (8 in 2008 and 10 in 2009[34]) for not having a manual in place. No sanction have been imposed against intermediaries, since no supervisory action have been taken.

Market Entry – R.23

BCRA

697. The market entry provisions are set up for financial entities supervised by the BCRA in Financial Entities Act (Law 21 526), the exchange entities Law 18 924, and in the BCRA Circular CREFI-2.

Licensing

698. The procedure for granting authorisation to a financial institution to operate is laid down in the Financial Entities Act (Law 21 526) and further explained in the Circular Letter CREFI-2. Article 7 of Law 21 526 established that entities conducting financial activities listed in the law shall not start business

[34] Despite repeated requests from the assessment team, no consistent information on sanctions has been received from SSN.

without being licensed by the BCRA. The transfer of commercial funds, as well as the merging of financial entities shall also be subject to the prior authorisation of the BCRA. A merger shall also be subject to the BCRA's prior authorisation.

699. Article 8 of Law 21 526 establishes that, before granting a licence, the BCRA shall assess the suitability of the application made, the general and particular market conditions, and the applicant's background, creditworthiness and experience in the financial field.

700. Pursuant to Communication "A" 2940, the applicant should provide the BCRA with the following information:

- The denomination and the type of the entity.
- Its prospective address
- The capital contributed by each shareholder and the proof of their creditworthiness.
- The address and nationality of each shareholder.
- When a shareholder is a legal person, it should also provides its statutes and registration number at the Chamber of Commerce, its balance sheets, the personal data of its directors, managers and members of its supervisory board, and a certificate of antecedents for each of this persons, and the name and nationality of each shareholder and their individual share or participation in the legal persons, as well as their individual voting rights.
- When a shareholder is a stock company, the list of the shareholders who attended the last two General Meetings should be provided.
- The envisaged statutes and organic charter.
- Information regarding the responsibility and experience in the financial field of the shareholders, directors, and managers of the applicants.
- The shareholders, directors and managers of the applicants shall also provide a certificate of antecedents, and a declaration that they have not been involved in bankruptcy over the past 5 years (article 10 of the Financial Entities Act).

701. CREFI-2 further details the minimum requirements to be granted a license. In particular, it provides that, regarding fitness checking of directors and counsellors (in case of a cooperative association), they shall be suitably qualified on the basis of their background in connection with financial activity and/or their professional profile. At least 80% of the directors and counsellors shall prove their experience in the financial field.

702. The general managers, branches' managers and other managers (officers empowered to take decisions) shall also prove their qualification and experience, having regard to their technical positions.

703. Article 1.1.2 of CREFI-2 ("*Valoración de antecedentes*") indicates a list of reasons why promoters, founders, directors, administrators, members of the surveillance committee, controllers, liquidators, or managers of an applicant entity shall not be eligible to their position. This list is mainly designed to address expertise aspects, but not integrity aspects.

704. To conclude, BCRA requires a substantive number of documents and information to grant a license to a financial institution (commercial, investment or mortgage banks, financial institutions, thrift and lending companies for housing and other real assets), in particular to check the expertise of the directors and managers. However, BCRA does not sufficiently check the validity and veracity of the information provided prior granting a licence. The assessment team was informed that inspectors will check afterwards, during onsite inspections, whether the management has sufficient expertise. In addition, regarding the fitness and properness of beneficial owners, it is unclear to what extent the BCRA effectively checks their expertise and integrity since it does not make any distinction between shareholders and beneficial owners, which are the persons who ultimately owns or controls a financial institutions. It would seem more efficient to institute a threshold (on capital/voting rights) and examine whether there is or are person(s) who exercise significant influence over the management. In addition, while requesting certificates of antecedents, the BCRA does not have the formal capacity to refuse to grant a licence if it considers that directors, senior managements or shareholders of a financial institution are criminals. BCRA does not check either if directors, senior management or beneficial owners are associated to criminals. Overall, it appears that BCRA seeks to control the expertise and integrity of too many levels of management and all shareholders, but that it should rather focus on senior management and beneficial owners, who can effectively impact the decisions of the financial institution, and apply more stringent fit and proper test against these persons.

705. The BCRA also grants licenses for foreign exchange companies, which are exchange houses, exchanges agencies and exchanges bureaus – but not remittance companies, which are neither regulated nor supervised in Argentina. These financial entities can buy and sell foreign coins and banknotes, gold, traveller checks. In addition, the exchange houses can also conduct transfers of funds involving foreign exchange. Article 4 of the Law 18 924 only list the reasons why a person shall not be eligible to hold office as promoters, founders, owners, directors, administrators, trustees, liquidators, managers, attorneys of any foreign exchange institutions, *e.g.*:

- Persons already punished for serious breaches of the exchange regime.
- Persons convicted for crimes against property, public administration or legal authority;
- Persons convicted for common crimes, except those committed by negligence
- Persons involved in a negligent or fraudulent bankruptcy
- Financial entities' delinquent debtors; etc.

706. This financial activity not being subject to Core Principles, the FATF standards do not provide for an obligation to conduct fit and proper tests on their directors, senior managements and beneficial owners, but just to be licensed or registered, which is the case in Argentina.

Ongoing fit and proper tests

707. There is no explicit legal reference as to whether new management of financial entities should be submitted to fit and proper testing. Argentina refers to article 8 of Law 21 526 and states that making use of its regulatory powers, "it has been determined that the requirements for the establishment of a financial institution must be observed on a permanent basis". Thus, financial institutions shall submit for BCRA consideration the background of the new members of the board of directors or administrative council.

708. Pursuant to Article 15 of the FEA, the entity should report any share transaction or other circumstance that "may cause a change in the entities rating or alter the structure of the shareholders group". The BCRA shall consider the opportunity and suitability of such modification and is empowered

to reject an approval and to revoke an authorisation whenever the essential conditions taken into account to grant such authorisations have changed. An entity's licence may be revoked whenever the basic conditions that have been taken into account to grant a license change dramatically. This is not sufficient to accept that BCRA is empowered to revoke a licence on the sole ground that directors, senior management or beneficial owners would be criminals. Finally, the BCRA does not seem to conduct independent checks on an on-going basis.

CNV

709. There are no legal or regulatory measures, which can be taken by the CNV, to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in entities of the securities sector. Equally, 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. Section XV 9(e) of the CNV's rules applied to financial trusts sets forth that, in order to register a financial trust, it should be submitted, among other requisites, a list of the members of the board of directors, along with their personal data and a certificate of criminal records.

SSN

710. Article 2 of Law 20 091 provides that insurance companies need to have prior authorisation from the SSN before starting business in Argentina. Article 7 sets forth the requirements and conditions that a company must meet to be granted a license. Resolution 32582/2007 details the information to be provided to the SSN to apply for a licence. In particular, it provides that individual shareholders who have or reach at least 5% of the capital should fill out the requirements specified in the Licensing Form, which was not provided to the assessment team. The veracity of the content of this application should be sworn before a notary. If the shareholder is a legal entity, it should also provide:

- A copy of the by-laws or memorandum of incorporation and copy of registration at the Public Registry of companies
- The annual report and financial statements of the last two fiscal years.
- An overview of the management.
- An overview of shareholders of the company.

711. The assessment team was not provided with additional information of what constitutes an overview of the management and the shareholders of the company. But as far as these elements can be assessed, it seems that SSN does not have legal or regulatory measures at its disposal to adequately prevent criminals from being beneficial owners of the projected new insurance entity, since the legal framework does not allow the SSN to track back to the beneficial owner, to identify this person properly and to require this person to provide for example a certificate of antecedents. It is especially noted that the qualifying definition of the individual to submit additional information is too narrow since it does not take into account that there might be persons who have direct/or indirect participations that make it possible to influence significantly the management (*i.e.*,by voting rights).

712. According to Article 7.1.2 of Resolution 32582/2007, the SSN also requires the envisaged members of the board of directors, supervisory board, management and agents to submit the information in the Licensing Form. Upon considering the application for licensing, the SSN shall evaluate the responsibility and experience in the insurance sector of shareholders, members of the Board, supervisory board, managers and agents. According to article 7.5 of Resolution 32582/2007, a person may not become

a shareholder or member of the Board of Directors or Supervisors who are or have been *i.e.*,subject to forced liquidation in the last 10 years as from the date of the court decision ordering the institution of liquidation proceedings

713. In case of stock transfer or capitalisation of irrevocable contributions, the entity and/or involved parties should seek prior authorisation from the SSN (Article 7.2. of Resolution 32582/2007). In this respect, the SSN should be provided with the same information in the License Form of each individual or legal entity making contributions or obtaining stock. In the event of new managers, those new managers should also submit the License Form.

714. The regime for life insurance intermediaries can be found in Law 22 400. In order to be registered pursuant to Article 4 of Law 22 400 the intermediary should:

- have a domicile in Argentina
- have passed an exam
- not be in any of the situations described in Article 8 of the Law 22 400 which mean basically the same as for financial entities (no bankruptcy filed in past five years).

715. The SSN maintains a register of insurance intermediaries operating in Argentina. There are about 25 000. However, it should be noted that insurance intermediaries are registered, not licensed.

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

716. CNV and SSN have not issued any guidance for the entities under their supervision. The BCRA, for its parts, can issue guidelines through communication "B" in order to clarify the applicable laws and communications. The assessment team welcomes the efforts made by the BCRA to bring to the attention of the financial institutions it supervises the FATF Statements on high-risk jurisdictions through Communications "B", as well as certain information on domestic PEPs made available on the BCRA public website. However, this information remains basic.

717. Apart from the financial supervisors, the FIU also issues resolutions for each type of financial institutions except issuers cards, and travellers checks operators, which contain in annex 1 the details of CDD measures which should be implemented. These resolutions do not meet the FATF criteria of other enforceable means, but constitutes substantive guidelines for financial institutions.

3.10.2 Recommendations and Comments

718. Argentina should ensure that all financial institutions are supervised for AML/CFT purposes and should more clearly organise the repartition of supervisory competencies between the supervising authorities in order to avoid overlap. It should also consider amending its various sectoral laws in order to make it more specific that these financial supervisors are also competent to establish rules to combat money laundering and terrorist financing and to supervise and sanction the compliance of financial institutions with these rules.

719. Argentina should review the AML/CFT supervisory powers of the financial supervisors in order to create or strengthen the quality of the fit and proper tests. In particular, the CNV should have procedures in place to licence entities of the securities sector, while applying fit and proper tests and procedures of the BCRA and SSN should be reinforced to prevent criminals or other associates to take control or to hold management position of a banking or insurance institution. In particular, SSN should urgently start to licence and supervise life insurance intermediaries.

720. Argentina should also clarify and strengthen the supervisory powers of the financial supervisors, to ensure they can compel production of or obtain access to all necessary documents and to make sure they can enter the premises.

721. Argentina should also consider increasing the level of the fines in order to ensure their dissuasiveness. The authorities could also consider their existing powers, *i.e.*,CNV to make public statements which are valuable to warn the public and educate the rest of the sectors.

722. Lastly, Argentina is urged to remedy the resource constraints that SSN and CNV are facing, both in terms of staff and training. In addition, it should strengthen the on-site inspections manual of these supervisors.

3.10.3 Compliance with Recommendations 23, 30, 29, 17 & 25

	Rating	Summary of factors relevant to s.2.10 underlying overall rating
R.17	NC	• BCRA: o The maximum amount of fine as well as the sanctions already imposed being kept secret by the BCRA, this undermines the dissuasiveness of the sanction regime. o The legal basis of the sanction regime is not explicit. • CNV: o The CNV does not have any sanction power over agents and brokers. o The sanction regime of the CNV is not effective; no sanctions have been imposed, despite the low level of compliance of the sector with AML/CFT provisions. • SSN: o The legal basis of the sanction regime is unclear. o There is no sanction available for directors and senior management o The range of sanctions is not dissuasive and the sanction regime is not effective.
R.23	PC	• 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. • The FIU, which can sanction the non-compliance of financial institutions with their suspicious transaction reporting obligations, has no supervisory powers. • Market Entry requirements of the BCRA for banking institutions: o No verification of the validity of information and data provided by the applicants. o 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. o The number of persons upon which BCRA shall conduct fit and proper test is too high and not effective. • 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. • 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. • There is not sufficient information available regarding the funding of the various financial supervisors. • The AML/CFT Units of the SSN and CNV face resource constraints and their staff is not adequately trained.
R.25	PC	• There are no guidelines provided to financial institutions by financial supervisors.
R.29	NC	• The FIU has no power to conduct off-site or on-site inspections. • Financial supervisors do not have adequate powers to establish that financial institutions require their foreign branches and subsidiaries to apply R.22 effectively. • SSN: lack of clarity of its power to compel production of documents and to conduct on-site inspections. • CNV: lack of clarity of its power to compel production of documents and to conduct on-site inspections. The CNV has not yet conducted a full on-site inspection.

	Rating	Summary of factors relevant to s.2.10 underlying overall rating
		• No supervisory powers over life insurance intermediaries. • Inspection manual are lacking sufficient depth. • The number of specific AML/CFT inspections conducted by BCRA is low regarding the size of the financial sector, and there is no clear information on the importance of AML/CFT component of general inspections conducted by BCRA. CNV has only conducted on-site inspections on brokers against which it does not have sanction powers, and SSN has not conducted any inspections over life insurance intermediaries. The inspections conducted by SSN on life insurance companies are very succinct and done in the framework of general inspections.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

723. In Argentina, three kinds of entities conduct transfers of funds: the exchanges houses, which are regulated and supervised by the BCRA and generally subject to requirements as strict as the ones for banking institutions, as well as postal services and remittance service companies. These remittance service companies are agents of international networks such as Western Union, agents of regional networks (*e.g.*, Latin Express) as well as other, alternative remittance operators. Argentina did not provide the assessment team with relative market share of these various businesses, in particular the market share of the foreign exchange institutions versus the remittance service companies. However, the assessment team was told that remittance service companies cover a large part of the market, since their services are less expensive, in particular due to the fact that they are not regulated or supervised. There is no requirement for money or value transfer services to be licensed or registered.

724. The remittance service companies and postal services that are subject to the provisions of AML Law 25 246 (art. 20. 11° -- although see "Scope Issue" at the beginning of section 3 of this report which describes the unclear nature of this provision), their existence is formally recognised by the Argentinean authorities. However, they remain not regulated and not supervised, both for prudential and AML/CFT purposes.

725. The National Agenda for the fight against ML/TF adopted by the Decree 1225/2007 foresees to regulate the sector in its Objective 8, Goal 1 "Promote a legal frame for the regulation of the remittances services". A draft decree has been prepared by the Argentinean authorities, but is still in consultation process with the BCRA.

726. In addition, it is worth mentioning that the assessment team was told that other alternative remitters, which are not part of an international or regional network, and thus would not be subject to the draft decree mentioned above, also operate in the market.

727. The following paragraphs will only deal with exchange houses, which are the only companies offering money or value transfer services being subject to regulation and supervision by the BCRA. Exchange houses deal in the purchase and sale of foreign banknotes and coins, coined gold and good delivery gold bars and purchase of traveller's checks in foreign currencies. The traveller's checks so purchased are sold to the entities or houses licensed to conduct exchange transactions. They can also purchase, sell or issue checks, postal, telegraphic or telephonic transfers, postal vouchers, drafts and traveller's checks in foreign currencies. At the time of the on-site visit, there were 36 exchange houses authorised to operate in Argentina.

728. As already mention in section 3.10 of this report, exchange houses shall be licensed by the BCRA pursuant to article 1 of the Law 18 924. Article 4 of the law prohibits certain categories of persons from being granted a licence, such as for example those persons punished by BCRA for breaching the exchange regime, those persons convicted for crimes against property or against the public administration; those persons convicted for other common crimes (except those committed with negligence) and punished with imprisonment or disqualification during a two years; those persons involved in a negligent or fraudulent bankruptcy. However, there is no requirement for the BCRA to maintain a current list of the names and addresses of licensed exchange houses.

729. Exchange houses are subject to the same AML/CFT requirements as the banking institutions regarding Recommendations 4-11, 13-15, 21-23 and the Special Recommendations, in particular SR. VII. They are indeed subject to AML Law 25 246 and to the various communications of the BCRA, in particular to the requirements provided by the BCRA Compilations of AML and CFT measures. All the related requirements and the corresponding deficiencies are described earlier in section 3 of this report.

730. As described under section 3.10 of this Report, the BCRA is in charge of the supervision of the compliance of exchange houses with their AML/CFT obligations. Article 3 of Law 18 924 states that the BCRA is the enforcement authority of the law and the regulations thereof. In addition, by virtue of article 51, subsection b, Law 24 144, the BCRA shall issue regulations on the exchange regime and oversee the compliance thereof. In addition, article 51 provides that the Superintendence of Financial and Exchange Entities may require financial entities, exchange houses, agencies and bureaus, exchange brokers, exporters and importers or any other natural or legal person involved, either directly or indirectly, in exchange transactions to make their books and documents available and to furnish all such information and documentation related to the transactions they have conducted or in which they were involved. The Superintendence may further seize such books and documents as well as any other document related with such transactions. The obligations and deficiencies identified under Recommendation 23 for banking institutions also apply to exchange houses regulated and supervised by the BCRA.

731. There is no requirement in the AML/CFT regime for exchange houses to maintain a current list of their agents, which must be made available to the designated competent authorities.

732. Regarding sanctions applicable to foreign exchange institutions which fail to comply with their AML/CFT obligations, the sanction regime previously described in this report for banking institutions under Recommendation 17 also apply. However, it was not specified to the assessment team whether the sanctions imposed were for their failures identified within their currency exchange activities or wire transfers activities.

3.11.2 Recommendations and Comments

733. Argentina is recommended to urgently regulate and supervise its remittance sector and to ensure that these entities are effectively subject to AML/CFT requirements, including the requirements for SR.VI.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	• While exchange houses are licensed by the BCRA and subject to some AML/CFT requirements, all the other money or value transfer companies, which represent a large part of the market, are not required to be licensed or registered, and are not regulated or supervised in Argentina. • Regarding exchange houses, the requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, 21, 22 and SR.VII suffer from the same deficiencies than those that apply to banking institutions and which are described in section 3 of this report. • The requirements and their implementation for Recommendations 23 and 17 suffer from the same deficiencies than those that apply to banking institutions and which are described in section 3.10 of this report.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

4.1.1 Description and Analysis

Recommendation 12

Definition and scope

734. Article 20 of AML Law 25 246 provides that the following professionals and businesses shall report unusual transactions to the FIU and shall be subject to some preventive measures as described later:

- The natural or legal persons whose usual activity is games of chance (subsection 3).
- The natural or legal persons devoted to the purchase and sale of works of art, antiques or other sumptuous goods, philatelic or numismatic investments, or to the export, import, manufacturing or industrialisation of jewels or goods made with precious metals or stones (subsection 7).
- The public notaries (subsections 12).
- The licensed professionals whose activities are regulated by the Professional Councils of Economic Sciences, except when they act in defence on trial (subsection 17): this category designates the accountants.

735. Regarding the scope of Law 25 246 for DNFBPs, ones can notice the following elements:

- Subsection 3 of article 20 submits to AML/CFT requirements not only the casinos, but also the other types of games of chance, such as the lotteries and gaming rooms. However, these businesses seem to be subject to AML/CFT requirements only when they are conducted as a usual activity. It could therefore be deduced that casinos activities could be exempted from AML/CFT obligation when they are carry out on an occasional or limited basis, which is not allowed by the FATF Standards. The AML Law 25 246 does not provide for any monetary threshold above which casinos should conduct CDD measures. However, the FIU Resolution 227/2009, although not other enforceable means, provides that these businesses should take into account, as a minimum, the identification of the winning customers when the value exceeds ARS 15 000 (approximately USD 3 800).
- There are also doubts about the coverage of dealers in precious metals and dealers in precious stones: firstly, it seems that subsection 7 of article 20 specifically covers "persons devoted to the purchase and sale of works of art, antiques or other luxury goods, philatelic or numinismatic instruments, or to the export,, import, manufacturing or industrialization of jewels or goods made with precious metals and stones". This does not specifically cover retail and wholesale dealers in

precious metals and precious stones, and it should be noted that the retail dealers with whom the assessment team met during the evaluation where not aware of specific AML/CFT obligations (*i.e.*,those from the AML law and FIU Resolution 11/2003) applying to them. Secondly, in the absence of any threshold for specific transactions covered, it might be difficult to identify precisely which businesses are covered by the AML law.

- The AML Law does not apply to real estate agents, lawyers when they carry out specific activities as defined by the FATF Recommendation 12, and Trust and Companies Services Providers (TCSPs).

736. As previously described in section 3 of this report, the requirements set out in the AML Law 25 246 are very basic and common to all covered institutions (financial institutions and DNFBPs). They focus on unusual transaction reporting obligations, customers' identification and record keeping obligations, and prohibition from disclosure.

737. These requirements are completed by FIU Resolutions applicable for each covered businesses or professionals. However, as previously explained in section 3 of this report, these FIU Resolutions cannot be considered as other enforceable means since no authorities have power to supervise compliance of covered DNFBPs with AML/CFT requirements and no sanction is available in case of failure to comply with AML/CFT requirements. The description below will therefore mainly focus on the AML/CFT obligations provided by AML Law 25 246, although referring sometimes to measures provided by FIU resolutions, which are as follows:

- FIU Resolutions 17/2003 and 227/2009 on games of chance.
- FIU Resolution 3/2004 on accountants.
- FIU Resolution 10/2004 on public notaries.
- FIU Resolution 11/2003 on jewellery and other activities related to luxury goods.

738. Recognising this lack of regulation and supervision, the National Agenda to fight against Money Laundering and Terrorist Financing (Decree Law 1225/07) contains as Objective 13 - Goal 2 "to promote the effective supervision and control of Designated Non Financial Businesses and Professions already included in the list of subjects liable to report suspicious transactions" (section 20, subsection 3, 7, 12 and 17 of Law 25 246)". However, this objective has not yet been achieved.

Applying recommendation 5 (CDD) and 10 (Record keeping)

739. Article 21 of Law 25 246 requires covered DNFBPs only to "obtain from customers, requesting or contributing parties, documents irrefutably evidencing their identity, legal status, domicile and other data to be specified when carrying out any type of activity included in their purpose. In addition, when customer, requesting or contributing parties act on behalf of third parties, the necessary steps shall be taken in order to identify their principals" and every information shall be kept recorded for the period defined by the FIU.

740. *Accountants*: FIU Resolution 3/2004, which is not other enforceable means, directs accountants to, *inter alia*: 1) identify both occasional and habitual customers, including evidence of such identity, when setting up professional relationships; 2) record a copy of identification documents; verify domicile records, obtain banking and accounting records, information about their customers and suppliers, and background information of its directors; 3) verify legal structure, directors, and background of legal person; 4) verify the economic and financial situation of the customer in accordance with his/her activity; corroborate the

conditions of the legal representative; and 5) pay special attention to non-resident customers (Section III, 2.1). Accountants should also maintain the following records: 1) copies of CDD documents for at least 5 years after the business relationship; 2) national and international transaction records or copies that can be used as evidence, as well as papers of the accountant's activity for at least five years after the business relationship (Section VI).

741. Notaries: FIU Resolution 10/2004, which is not other enforceable means, contains similar measures as included in FIU Resolution 228/2007 for financial institutions. For natural persons, notaries should collect CDD data including full name, date of birth, nationality, professional activity, home and professional address, phone number and email address (Section III, 2.1.1). For legal persons, notaries should collect corporate name, company registration number, date of articles of incorporation, updated copy of company by-laws, address, main business activity, and identifying information on the legal representative (Section 2.1.2). Where transactions exceed ARS 200 000, a source and legality of funds declarations hall be requested (Section 2.2). Notaries should keep the following records: CDD records, copies and/or references of the required documents for at least five years; and original documents or certified copies of acts and contracts required by customers indefinitely (Section VI).

742. While some notaries are in practice applying these measures, the assessment team was informed that notaries in 8 of the 24 jurisdictions in Argentina, through their "*colegios*" which are SROs, had so far refused to apply any of the measures in this Resolution.

743. There are some other basic record-keeping requirements for notaries. Notaries Law 12 990, section 11 (a) requires record-keeping related to the acts and contracts they authorize, for as long as these records are under their control. While this may partly cover transactions related to buying and selling of real estate, organisation of contributions for the creation, operation or management of companies and creation, operation or management of legal persons and buying and selling of business entities, it does not cover other activities as required by R.12 (managing of client money or other assets, management of bank, savings or securities). It does not specify the details required for transaction records (*i.e.,* supporting documentation of the transactions with all the elements necessary to reconstruct them for AML/CFT purposes), and there is no requirement to maintain records of CDD data, account files or business correspondence.

744. In addition, section 48 of Regulatory Decree 1397/79 for Law 11 683 on Tax Procedures, requires all tax payers to keep documents proving their transactions for a period of 5 years after the prescription of their tax duties, which in practice means a minimum period of 10 years. Still, the provisions do not require that CDD records, account files and business correspondence are kept or that the supporting documentation of the transactions contains all the elements necessary to reconstruct them for AML/CFT purposes.

745. Enforceable provisions (*i.e.,*those in the AML Law) are therefore very limited and do not substantially meet the specific elements that are required by Recommendations 5 and 10. For example, for all DNFBPs there is no requirement on the identification and verification of beneficial owners, or about the timing of the CDD, and on obtaining the purpose and intended nature of the business relationship or on conducting on-going due diligence as required by Recommendation 5. As well, there are no requirements to make record available to appropriate authorities and on a timely basis, as required by Recommendation 10.

Applying Recommendations 6, 8-9 and 11

746. Law 25 246 does not contain any elements in relations to Recommendations 6, 8-9 and 11.

747. FIU Resolution 227/2009 on games of chance provides only that "in the case of a politically exposed person, special attention should be paid to transactions conducted by them". However, the FIU resolution, which is not other enforceable means, does not define the concept of PEPs. FIU Resolutions 10/2004 and 11/2003 for the purchaser, exporter, importer and manufacturer of precious goods do not contain any provision in relation to PEPs. Finally, the FIU Resolution 3/2004 for accountants mentions the concept of PEPs in it guidelines to identify unusual or suspicious transactions under criteria 38 that "special attention should be paid to transactions carried out by PEPs, where they are not consistent with the declared activity and profile of the customers". However, once again, there is no provision requiring having system in place to determine whether a customer is a PEP, nor requiring the other elements provided by Recommendation 6.

748. Regarding Recommendation 8, the FIU resolutions do not contain any specific requirements to have policies in place or take measures to prevent the misuse of technological developments in ML/TF schemes. As far as non-face to face business relationships are concerned, some FIU resolutions only draw the attention on their potential risks. For example, FIU Resolution 3/2004 states that "request of accounting assistance at distance should be avoided when a direct and permanent contact with the client or when a right knowledge of the client can be made".

749. There is no measure in relation to reliance on third parties (Recommendation 9) in any of the FIU Resolutions addressed to DNFBPs.

750. Regarding complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible purpose (applying Recommendation 11), FIU Resolution 03/2004 provides that accountants providing service to occasional customers must enhance their due diligence, especially when the transactions involve huge amount of cash or for transactions with foreign banks and investment accounts. Firstly, it is worth noting that the concept of occasional customer normally would not apply in relation to accountants. Secondly, the FIU resolution does not require the preventive elements provided by Recommendation 11, as such examining as far as possible the background and purpose of such transactions and to set forth their finding in writing, nor does it require keeping such finding available for competent authorities and auditors for at least 5 years. The other FIU Resolutions do not contain either adequate measure in relation to Recommendation 11.

4.1.2 Recommendations and Comments

751. Argentina should revise Law 25 246 in order to subject to AML/CFT requirements all DNFBPs, in particular dealers in precious metals and stones, lawyers, real estate agents, and TCSPs. In addition, it should adopt enforceable rules to impose more specific customer identification and record keeping requirements, as well as requirements in relation to Recommendations 6, 8 and 11.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	• Real estate agents, lawyers and TCSPs are not subject to any AML/CFT requirements. • Dealers in precious stones and metals are not captured satisfactorily by AML Law 25 246. • Only very limited identification and record keeping requirements apply to public notaries, accountants and casinos. However, none of these substantially meet Recommendations 5 and 10. • None of the DNFBP sectors is subject to obligations that relate to Recommendations 6, 8, 9 and 11.

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

Applying Recommendation 13 and Special Recommendation IV

752. According to article 21 of the AML/CFT Law 25.246, public notaries, accountants and casinos shall report any suspicious event or transaction to the FIU, independently of the amount thereof. Suspicious transactions are defined as transactions that, according to uses and customs related to the field involved, as well as to the experience and competence of the professionals, are unusual, have no economic or legal justification or are unusually or unjustifiably complex, whether performed on a single occasion or repeatedly. See section 3.7 of this report (R.13 and SR.IV) for the detailed discussion of these requirements and related deficiencies.

753. The FIU has further detailed the reporting obligations in its various sectoral resolutions, referred to in previous paragraphs (Resolutions 3/2004; 10/2004, 11/2004 and 227/2009). Those resolutions, although not enforceable means, set a procedure or criteria for detecting suspicious transactions and contain the specific form to be used. They provide that the STR should be sent to the FIU within 48 hours with supporting documents.

754. Specific provisions exist for public notaries, which should sent STRs related to sales, loans and transactions located on the border zone (*i.e.,*with Paraguay and Brazil) within five labour days of the following month since the deed was executed. Although the assessment team was advised that the delay set up in FIU resolutions are meant to ensure that STRs are not sent too late, it has some doubt concerning the effectiveness of this measures, since there does not seem to be any incentive to report suspicious transactions at soon as possible, or even before they are being performed, in order to fight ML/TF more efficiently. It is also worth noting that, according to the FIU Resolution, accountants only have to report when they act as auditors or corporative controllers (*síndicos*) and when their customers have assets exceeding ARS 3 Millions (USD 380 000) or have doubled their assets or sales in one year according to the audit balance sheet. These limitations are not compliant with the FATF Standards.

755. Lastly, the assessment team was advised that public notaries are challenging their current obligations to directly report suspicious transactions to the FIU, considering that these STRs should be sent through their self-regulatory bodies.

Table: Number of STRs sent by reporting DNFBPs (2006-2009)

DNFBPs	2007	2008	2009
Game of chance (including casinos)	2	1	5
Public notaries	48	39	22
Accountants	1	0	1
Total number of STRs sent by DNFBPs	51	40	28
Percentage of STRs sent by DNFBPs	5.37%	3.45%	1.71%
Total number of STRs sent by all reported entities	949	1 159	1 631

756. This table shows that notaries are, by far, the professionals which send the highest number of STRs to the FIU, which could be explained by their public status. Apart from that, accountants and persons conducting games of chance report very few suspicious transactions to the FIU. Overall, it is also worth noting a trend of reduction of the number of STRs sent by DNFBPs: 5.37% of the STRs received in 2006 by the FIU were sent by DNFBPs, this percentage has decreased to 1.71% in 2009. Regarding STRs

sent by persons conducting games of chance (casinos, bingos, lotteries, racetracks, horse racing bet, etc…), Argentina did not provided detailed statistics concerning entities that only operate as casinos.

Applying Recommendations 14

757. The legal protection and tipping off provisions are the same for DNFBPs as for financial institutions, as discussed in section 3.7 of this report: the scope of the persons benefiting from the safe harbour provision is not clearly defined, the prohibition from tipping off does not cover the directors, officers and employees of reporting parties, which is a significant deficiency for casinos, and there is no sanction available where a reporting entity does not comply with the prohibition of tipping off.

Applying Recommendation 15 (Internal controls)

758. There is no measure in the AML/CFT Law 25.246 requiring DNFBPs to adopt and implement internal AML/CFT policies, procedures and controls. However, the FIU Resolution 227/2009 for games of chance, which is not enforceable means, provides that these businesses should have policies and procedures to prevent and deter ML/TF. It further details that the executive board of game of chance companies should formally adopt a written policy in compliance with the AML/CFT requirements, and conduct follow-up to fully comply with the said policies. The policies should contain at a minimum the following elements: i) a definition of the prevention policy; ii) internal control procedures; iii) the appointment of a compliance officer to ensure compliance and implement the necessary procedures and controls; iv) to implement periodic independent audit; and v) to adopt a formal staff training program. These policies and procedures shall be available to the FIU and the casinos regulatory agency. In practice, since the FIU does not have supervisory powers, the effectiveness of this measure has not been demonstrated.

759. The FIU resolutions for accountants and public notaries do not contain any provision related to internal control.

Applying Recommendation 21

760. There are no specific requirements for DNFBPs to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

4.2.2 Recommendations and Comments

761. Reporting obligations should be extended to all categories of DNFBPs and special efforts should be made by the FIU to inform all DNFBPs of their obligations, in particular by giving them feedback on their STRs. The Argentinean authorities should also strengthen the safe harbour provision and the prohibition from tipping off.

762. DNFBPs should be required to pay special attention to business relationships or transaction with persons from countries that insufficiently apply the FATF Recommendations. All DNFBPs should also be required to have AML/CFT policies, procedures and controls in place, and this should be monitored.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	• Real estate agents, lawyers, TCSPs and dealers in precious metals and stones are not subject to suspicious transaction reporting requirements. • The deficiencies identified under R.13 and SR.IV for financial institutions also apply to

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
		DNFBPs. • The safe harbor and prohibition from tipping off provisions suffer from the same deficiencies than for financial institutions. • Most DNFBPs are not required to have AML/CFT policies and controls in place, nor compliance officer functions. • None of the DNFBP sectors is required to pay special attention to business relationships and transactions involving persons from or in countries that do not (or insufficiently) apply the FATF Recommendations. • There are serious concerns about the effectiveness of the reporting system as most DNFBPs rarely submit reports.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

Casinos

763. Casinos are part of the gambling industry and, under the federal system, each province organises, regulates and supervises the development of games, as wishes, in their own territory. There are 103 gambling houses in total in Argentina, including casinos, slots and racetracks. The assessment team was not provided with information on the competences and powers of each of these provincial authorities. The Argentinean authorities advised the assessment team that these entities shall be granted a license to operate in Argentina. However, Argentina did not provide any information on the conditions which shall be met to be granted a license by the various provincial authorities.

764. The gambling companies, which are located in Buenos Aires City, are regulated and supervised by a specific authority: the *Lotería Nacional*. However, this authority has no AML/CFT supervisory powers nor sanction powers.

765. More globally, there is no competent authority in Argentina designated to supervise the compliance of casinos with their AML/CFT requirements. Indeed, as already stated in this report, although the FIU has some sanction powers, it has never imposed any sanction since this sanction power is not associated with any supervisory powers. This could explain in part the very low level of implementation of AML/CFT requirements by casinos, as previously demonstrated by the very low number of STRs received by the Argentinean FIU.

766. In addition, during the on-site visit, the Argentinean authorities advised that of the existence of a draft law regulating internet casinos in Argentina, but so far, internet casinos are not regulated or supervised.

Other DNFBPs

767. As already explained in this report, real estate agents, lawyers, TCSPs and dealers in precious metals and precious stones are not subject to AML/CFT requirements in Argentina. Regarding accountants and public notaries, which are subject to the AML/CFT Law 25.246, there is no competent authority or self-regulatory bodies designated to supervised their compliance with their AML/CFT measures. Even if the FIU has in theory sanction powers for failure to report suspicious transactions, in practice it has not used this power since it does not have any supervisory powers associated with.

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)

768. The FIU has issued several resolutions described above, each of them contains guidelines to implement and comply with ML/TF requirements. Most of guidelines are related to suspicious transactions and contain criteria to identify suspicious transactions, as well as guidelines to identify customers. However, as previously explained, these guidelines are often not compliant with the FATF Standards.

769. The Professional Council of Economic Science of Buenos Aires City has also developed guidance to accountants when they conduct audit, but this is limited to accountants located in Buenos Aires City.

4.3.2 Recommendations and Comments

770. Argentina is urged to take the following actions:

- Argentina should implement an AML/CFT regulatory and supervisory regime for casinos.
- Other categories of non financial business and professions should be subject to AML/CFT requirements and to an effective oversight system, conduct either by Argentinean authorities or by their self regulatory bodies if they exist.
- The FIU should revise its Resolutions addressed to DNFBPs in order to ensure that their measures are compliant with the FATF Standards. Guidelines other than related to STR must be established.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	• There is no regulatory and supervisory regime in Argentina that ensures that casinos are effectively implementing their AML/CFT obligations. In particular, there is no competent authority designated to supervise casinos. • Internet casinos are not regulated nor supervised for AML/CFT purpose in Argentina. • Other categories of DNFBPs are not subject to any systems for monitoring and ensuring their compliance with AML/CFT requirements
R.25	PC	• The Guidelines issued by the FIU mostly focus on suspicious transactions reporting obligations and the other AML/CFT measures, such as CDD measures, are often not compliant with the FATF Standards. • There is no guideline issued by other competent authority in the AML/CFT field.

4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

Other non financial businesses and professions

771. Argentina has considered submitting to AML/CFT requirements other types of non-financial businesses and professions. AML/CFT Law 25.246 applies customer identification and suspicious transactions reporting obligations to other non financial businesses and professions, such as:

- The persons who normally run lotteries, bingos or racetracks…;
- The entities in charge of the maintenance of the Public Registries of Commerce, the representative agencies for the Surveillance and Control of Corporations, Real Estate Registries, Registries of Motor Vehicles and Registries of Chattel Mortgages;
- The natural and legal persons which purchase and sale works of arts, antiques, or other sumptuous goods, philatelic or numismatic investments
- The legal persons who receive donations or contributions by third parties. However, it was unclear who these persons were in practice.

772. However, since the FIU has not received any STR from these reporting entities and since compliance with these requirements are not monitored, these measures are not effective in practice.

Development and use of modern and secure techniques for conducting financial transactions

773. The highest denomination note is ARS 100[35]. Argentinean authorities have not taken any measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. On the contrary, the Argentinean economy relies heavily on cash, with an overall lack of confidence in the banking sector, and where real estate and cars are generally bought in cash—even in the City of Buenos Aires. It seems that this trend has increased for the last years.

4.4.2 Recommendations and Comments

774. Argentina has considered that other non financial businesses and professions were at risk of being misused for ML/TF and thus decided that they should be subject to AML/CFT obligations according to AML Law 25 246; Argentina should ensure that these AML/CFT measures are effectively implemented by these non-financial businesses and professionals.

775. Argentina is also urged to immediately take measure to discourage the use of cash for large financial transactions and it should also consider taking measures to encourage the development and use of modern and secure techniques for conducting transactions that are less vulnerable to ML.

[35] Approximately USD 26 at the time of the on-site visit.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	• Argentina has not taken any measures to encourage the development and use of modern and secure techniques for conducting financial transactions. • The Argentinean economy relies heavily on cash, and this trend has increased since the last years.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

776. Legal persons in Argentina are defined by its National Civil Code, section 33, which classifies them as either public or private legal persons. The Republic, the Provinces, Municipalities, governing autonomous entities, and the Catholic Church are considered public legal persons. The Code classifies as private legal entities civil and commercial companies (*sociedades*), and also associations and foundations. Commercial companies are ruled by Business Corporation Act ("*Ley de Sociedades Comerciales"*, Law 19 550) which applies throughout the country and sets out the different types of legal persons: corporations, corporations in which the State has a majority interest, limited liability companies, general partnerships, limited partnerships, combined silent and industrial partnerships, partnerships limited by shares, and unincorporated associations or joint ventures. Foreign companies can incorporate or register branches, but they must comply with the all the registration requirements for domestic companies. They must also have an Argentinean domicile and appoint Argentinean representatives (section 118 and 123).

777. Section 46 of Argentinean Civil Code states that associations are recognised as legal persons by the Government, if their bylaws and minutes appointing authorities are registered by a notary. Associations are not governed by any further national law for their registration. Foundations are regulated by Law 19 836; both of these types of entities are registered by each of the 24 jurisdictions.

778. While Law 19 550 applies throughout the country, implementation of the Law is carried out separately by the 24 jurisdictions, which in some cases have also issued more detailed procedures. All legal persons must be registered in the Public Registry of Commerce pertaining to the jurisdiction in which is does business (Sections 5 and 7). Below please see the number and types of legal persons included in Law 19 550 for each province, if this information was available. (See Special Recommendation VIII below for figures on foundations and associations registered, which are also legal persons.)

	Limited Liability Company (SRL)	Corpora-tion (SA)	Corporation with majority state participation	Collective Partner-ships (sociedad colectiva)	Capital and Industrial Partner-ships	Limited partner-ship (sociedad en comandita simple)	Partner-ships limited by shares (sociedad en comandita por acciones)	Foreign compa-nies
City of Buenos Aires[36]	97 801	13 838	3	362	6	170	1 490	Art.118: 6 444; Art. 123: 14 652
Province of Buenos Aires[37]	45 534	38 112	---	1 275	23	2 826	1 209	

[36] Of the approximately 260 000 companies and partnerships, approximately 3 200 are so called "299"

	Limited Liability Company (SRL)	Corpora-tion (SA)	Corporation with majority state participation	Collective Partner-ships (sociedad colectiva)	Capital and Industrial Partner-ships	Limited partner-ship (sociedad en comandita simple)	Partner-ships limited by shares (sociedad en comandita por acciones)	Foreign compa-nies
Catamarca	---	950	---	---	---	---	---	
Chaco								
Chubut								
Córdoba								
Corrientes								
Entre Ríos	5 375	2 675	5	87	---	5	89	
Formosa	---	476	---	---	---	---	---	
Jujuy[38]	1 380	315	2	31	---	173	6	
La Pampa								
La Rioja	---	1 189	7	---	---	---	---	
Mendoza								
Misiones	---	1 700	10	---	7	10	17	
Neuquén	4 838	1 408	---	228	10	70	63	
Río Negro	6 103	2 034	18	68	---	121	82	
Salta								
San Juan								
San Luis								
Santa Cruz								
Santa Fe	---	13 760	7	---	---	---	140	
Santiago del Estero								
Tierra del Fuego								
Tucumán	---	2 500	2	---	---	---	2	
TOTAL								

779. All articles of incorporation must include detailed information about the natural and legal persons involved. If the member/partner is a natural person: name, age, nationality, address, marital status, profession, and national ID; if the member/partner is a legal person: corporate name, address, registration data, and information about the person who was made available to appear before the notary public (personal data, competence, faculties) number of the members or partners, company name main office, and purpose, equity capital and contributions made by each member/partner, expiration of the original term, organisation of the supervisory management, , and of the members' meetings, clauses specifying the rights and liabilities of members/partners, rules to distribute profits and losses, and clauses about the operation, dissolution and liquidation of the company (section 11). All legal persons which are limited liability companies (where the capital is divided by "*cuotas*") or companies divided by shares (*i.e.*,all the legal persons listed above, except general and limited partnerships must also publish this information, and the data about the company's authorities (directors or senior officers and statutory auditors, if applicable), specifying the names of its members, elected domicile, and term of office (with the exception of specifying contributions made by each member/partner to the capital stock, their rights and liabilities and clauses about the operation, dissolution and liquidation of the company) as well as the date of the articles of incorporation, for one day in the Official Gazette. All articles of incorporation and any changes of them (such as any change in the companies' purpose or name) must be registered or their enforceability is limited – it could be enforced between members or partners but not before third parties, however, third parties can enforce them against the company and its partners/members, except in the cases of companies

[37] **Buenos Aires Province**: Data from 1980 to 2010.

[38] **Jujuy**: Data since 1984.

divided by shares or limited liability companies (section 12). Most of this information can be obtained publicly at the jurisdiction's Public Registry of Commerce.

780. FIU Resolution 237/2009 of 25 August 2009, which is not considered to be other enforceable means, directs Public Registries of Commerce and designated control entities for each province, and the IGJ (which is the designated control entity for the registries in the City of Buenos Aires, as described below) to collect additional information from customers. Customers are defined as any natural or legal person -national or from abroad in whose interest, name or on whose behalf anyone acts before the legally bound parties, for the purpose of registration, authorization, amendment, reorganization, dissolution, liquidation and deregistration, as well as for any other action that takes place currently or in the future). If the customers are natural persons: full names and surnames, date and place of birth; nationality; sex; marital status; number and type of identity document, whose original must be presented. Acceptable identity information and documentation includes: documents accepted by the BCRA; CUIL (Employee Identification Number), CUIT (Taxpayer Identification Number); address (street, number, city, province and postcode); phone number; profession, trade, industry, business, etc., that constitutes a customer's main business activity. If the customers are legal persons, they are required to provide: corporate name, company registration date and number; registration date; certified copy of articles and by-laws, address and place of business, branches and agencies in the country (street, number, city, and province); foreign address; business purpose and business activity. All natural persons involved in legal persons (as partners or authorities), should provide exactly the same information listed above for "natural persons".

781. Members, partners, and shareholders can be either individuals or other legal persons in Argentina, as described in sections 30-33 of Law 19 550. Section 34 describes members/shareholders that can be apparent ("*socio aparente*") and secret ("*socio oculto*"). Argentina provided the evaluation team with a judicial decision (case number 72.348/2004) which indicates that apparent partners are in fact not allowed at the moment of the company's incorporation. This is based on section 1 of Law 19 550, which states that a company must be incorporated by at least two persons (*personas*), and the judgement considers that the obligations of the members/partners should be actual and serious. It also indicates that nominees are apparent partners and concludes that apparent partners/members/ are not willing to be truly associated (*affectio societatis* doctrine), which is a cause to nullify the company. However, this principle is not stated as grounds for nullification in Section III, "System for Nullification" (sections 16-20) of the same Law.

782. Section 54 could also precipitate an action founded on the disregard of legal entity doctrine, against companies created to disguise real ownership, as follows: "The actions of the company hiding the performance of out-of-company purposes constitute a mere means to violate the law, the public order or the good faith or to prevent third-party rights, shall be directly attributed to the partners or the comptrollers that made it possible, who shall be unlimitedly and joint and severally liable for the damages caused".

783. As the jurisprudence seems to contradict the Law, which permits the existence of a nominees through hidden and an apparent members/partners which can further disguise ownership and control of the legal person, Argentina should clarify the legal provisions by amending or abrogating sections 34 and 35 of Law 19 550.

784. Directors and managers can be either natural or legal persons. Managers and directors appointments, resignations and dismissals must also be registered on the Public Registry of Commerce and incorporated into the company's file, and in the case of limited liability companies and companies divided by shares, re-published in the Gazette (section 60). For most legal persons covered in Law 19 550, there is no timeline for updating these registrations, although corporations (*sociedades anónimas*) must file their balance sheets to the IGJ on an annual basis, so they indirectly update on the name of the President of the Board and the names of the shareholders who participate at the meeting who approve the balance sheet.

Appointments of directors can only last three years (section 257), and so re-registrations would have also to take place by that time.

785. For all legal persons in Law 19 550; however, failure to re-register limits the enforceability of appointments, resignations and dismissals. They could be enforced between members/partners but not before third parties; however, third parties can enforce them against the company and its partners/members (section 12).

786. All legal persons in Law 19 550 must also maintain inventory books and balance sheets, and a general ledger with comprehensive entries using an accounting system that allows the individualization of operations (section 61). There are more detailed requirements for corporations, such as maintaining internal share registries which must be made available to shareholders (section 213), having statutory auditors ("*síndicos*"), and hold shareholder meetings. There are also more specific requirements for directors (*e.g.*, the majority of directors must be domiciled in Argentina, directors and managers cannot have been involved in bankruptcy or have been disqualified from public office in the previous 10 years).

787. For certain corporations (so called "299 corporations"), there is some oversight at the time of registration and throughout the business life as specified in sections 299 to 307. These provisions apply to corporations that: 1) offer shares or debentures to the public; 2) have equity larger than ARS 10 million; 3) are state and partially state-owned corporations; 4) they make capitalisation or saving or transactions or take money or securities from public; or 5) offer concessions or public services. In the cases of violations of the law, bylaws, or regulations, the controlling authority (which is designated by each jurisdiction, in the case of the City of Buenos Aires, this is the IGJ as described below) can issue warnings and fines up to 355 600 *Australes* (approximately ARS 36)[39] to the company, its directors, and its statutory auditors. The controlling authority can also request judicial action in the commercial court of the company's jurisdiction of domicile. With regard to corporations other than those corporations than those included into section 299, the authority to supervise is limited to the articles of incorporation, when there is a change it the entity's equity, when 10% of shareholders requires it or is required by the corporative controller, or when public interest is involved.

788. In general, this oversight is limited, and it only applies to a limited number of legal persons in Argentina. Of the approximately 260 000 companies and partnerships registered by IGJ (*i.e.*, in the City of Buenos Aires), approximately 3 200 are "299" corporations. Upon registration, there is no verification of the information received. For "section 299" corporations, the authorities would only become aware of changes when they review the company's annual financial statements, which must be signed by directors and must also include a copy of shareholders/membership meeting minutes. For all other types of legal persons, there is no means to check for changes in beneficial ownership or control – surveillance is limited to the articles of incorporation and equity variation and when 10% of the shareholders request it or in matters of public interest.

789. Ability to gain timely access to adequate, accurate, and current information on the beneficial ownership and control of legal persons under law 19 550 is further limited by the lack of a centralised registration system, as each of the 24 jurisdictions maintains its own registry. An attempt to unify and centralise all data on legal persons throughout the country began with Law 26 047 ("National Register of Companies") of 7 July 2005, but has not yet been fully implemented. This law empowers the *Inspección General de Justicia* (IGJ)[40] to organise and operate national registries of shareholding companies (the

[39] *Austral*: The Argentinean currency used between 1985 and 1991. It was replaced with the *peso* with a rate of 1 peso = 10,000 *australes*. 355 600 *australes* is thus equivalent to 35.56 *pesos*.

[40] *Inspección General de Justicia:* Literally, "General Inspection of Justice"; however, most Argentina legal documents translate this as "Superintendency of Corporations".

"National Registry of Companies Divided by Shares", created by section 2 of Law 19 550 and incorporated into the operational structure of IGJ by Executive Order 1755/2008), non-shareholding companies, foreign companies, civil associations and foundations. These functions and faculties are regulated by IGJ Resolution 7/IGJ/05. IGJ, within the Ministry of Justice, Security and Human Rights, manages the Public Registry of Commerce in the City of Buenos Aires and the other registers for the city. It maintains documentation received such as corporate contracts and any amendments thereto as well as corporate dissolutions and liquidations. However, in order to implement the registries at a national level as envisioned in Law 26 047, each of the 23 provinces must pass a provincial law in order to be part of this system. So far only three provinces, Mendoza, La Pampa, and Jujuy, have done so and are now participating in the centralised registries.

790. See the discussion of Special Recommendation VIII below for a description of measures for foundations and registered associations. These entities are also registered by the relevant jurisdictions (*i.e.,* the City of Buenos Aires or one of the 23 provinces), and the controlling authorities have similar functions as with commercial companies. File containing the registration information and related information is available to the public. The jurisdictions also issued more detailed procedures, generally similar to the one regulated by General Resolution IGJ 7/2005.

791. As from 19 November 2007, "section 299 corporations" must follow the incorporation procedure of the National Registry of Companies Divided by Shares, and therefore register directly with IGJ. However, any other type of company that is incorporated from the date onwards may also choose to file their documents with IGJ. (Joint Resolution IGJ 5/2007 and AFIP 2235/2007, section 3).

792. Law 22 315 ("Organic Law of the IGJ") of 31 October 1980 designates IGJ as the controlling authority for legal persons registered in the city of Buenos Aires and provides IGJ general powers to request information and documentation, examine books and documents of the corporations, and request the relevant civil or commercial court judge to intervene (section 6) and if necessary, dissolve the company; however, the actual surveillance is limited by sections 299 to 307 of Law 19 550 described above. IGJ has its own power to impose penalties for any non-compliance or irregularities detected while in office. IGJ cannot terminate a company involved in wrongdoing, illicit activity or fraud and has never used its interventional faculties.

793. IGJ has issued more detailed procedures for registering companies through a series of its own Resolutions. Some of these are detailed below in the discussion of SR.VIII.

794. The Argentinean authorities do not recognise company services providers as existing and carrying out the separate and specific activities indicated in Recommendation 12, and indicated that all company services are performed by lawyers, notaries, and accountants in Argentina. However, there is no requirement that these services be performed only by lawyers, notaries, or accountants. But as in other countries these services do exist in Argentina, so these providers should also be required to obtain, verify and retain records of the beneficial ownership and control of legal persons. For companies issues in the City of Buenos Aires, Resolution IGJ 07/05 does require the necessary intervention of independent professionals (lawyers, public notaries or accountants) to sign and endorse the presentation of the majority of the procedures subject of registration (see Annex II of General Resolution IGJ 7/05). This system is called previous qualification ("*sistema de precalificación")*.

795. Argentina also argued that the *affectio societatis* doctrine avoids a person to incorporate a company or corporation for another person. This doctrine, is a judicial construction which is not mandatory in Argentina (Civil Code, sections 16 and 22) and only applies when company members are two and their conflicts are of such magnitude that is impossible to perform the company activity, (case number 50 492 provided by Argentina).

Bearer shares

796. Law 19 550 originally had provisions allowing bearer shares for corporations (section 218); however, Law 24 587 of 21 November 1995 removed this possibility by requiring that all shares and other securities be issued in nominative form (section 1). Existing bearer shares must be converted into nominative shares (section 6); those bearer shares that are not converted will not be able to be transmitted or used to exercise shareholding rights. The books of registered shareholdings maintained by the companies are not publicly available, although IGJ can conduct visit the corporation's office to gain access to this information for entities registered in the City of Buenos Aires, therefore, it is unclear whether the competent authorities have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control information with regard to previously issued bearer shares.

Additional elements

797. Financial institutions do not have additional access to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.1.2 Recommendations and Comments

798. The Argentina authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control. Although the process of forming national registers for the various legal persons has begun, there are not yet complete national registers of legal persons, either for commercial companies under Law 19 550, foundations under Law 19 836, or associations as defined in the Civil Code; no verification of the information received; the registers do not contain updated shareholder information, and there is limited ability for the controlling authorities of the various registers to obtain updated information on beneficial ownership and control. Argentina should implement requirements to ensure that information on the beneficial ownership and control of legal persons is readily available to the competent authorities in a timely manner. These measures should include:

- Centralising all companies and corporations information on a federal register.
- Facilitating accurate information regarding shareholders and beneficial owners.
- Requiring company service providers to maintain records of the beneficial ownership and control of legal persons.
- Abrogating or amending sections 34 and 35 of Law 19 550, which allow nominees.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**NC**	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons because: – There is not yet a functioning national registry of legal persons; registries are maintained separately by the City of Buenos Aires and the 23 provinces. – The provincial registries do not contain updated beneficial ownership/control information, and the provincial controlling authorities have limited ability to obtain it. – Company service providers are not required to collect such information. – Nominee shareholders/members are allowed by Argentina companies law, although jurisprudence indicates otherwise. – It is unclear whether the competent authorities have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control information with regard to previously issued bearer shares.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Recommendation 34

799. Argentina's trust law is Law 24 441 of 9 January 1995, which sets out two kinds of trusts ("*fideicomisos*")—ordinary trusts by private persons (sections 1 to 18) and financial trusts (sections 19 to 24). CNV regulates financial trusts, including when the bank is acting as the trustee; in this case the bank is also supervised by the BCRA. A trust exists in Argentina when a person (settlor) transmits fiduciary property to another (trustee), who manages the property on behalf of the person designated in the contract (beneficiary) and transmit it under the terms specified.

800. The contract must identify the beneficiary, who can be a physical or legal person, and who may or may not exist at the time of the contract. More than one beneficiary can be designated. Trustees can also be natural or legal persons. The trust contract also contain: specification of the assets; determination of the method in which other assets can be incorporated into the trust; duration of the trust, the destination of the assets at the finalisation of the trust, and the rights and obligations of the trustee.

801. Neither Law 24 441 nor any other legal provision organises a register of trusts, either at the national or provincial level. The only case a trust agreement is disclosed is stated on section 215, Law 19 550 (the Business Corporations Act) and regulated by IGJ Resolution 2/2006, where the trustee requests the trust assets to be registered as shares of a corporation. In this case their transference must be registered on the Shareholders Register Book kept by the company, and the trustee must provide the company with settler and beneficiary identification, together with a copy of the trust agreement. However, this is not a public register.

802. Competent authorities do not obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settler, the trustee, and the beneficiaries of trusts. Trust contracts are not disclosed to the authorities. While law enforcement agencies have powers to obtain information from financial institutions on legal arrangements, there is minimal information disclosed to financial institutions concerning the beneficial owners (see Recommendation 5) of legal arrangements. The provision of trust services is not recognised

or regulated as a separate activity in Argentina; trust services providers therefore do not have AML/CFT obligations.

803. Indirectly, when the trust involves assets whose selling must be registered (such as real estate transactions), the law requires registration of the agreement (section 13). If the trust is to be engaged in financial or commercial activity, it must also be registered with AFIP, which requires the identification of settler, trustee and beneficiary, but this information is privileged and only available for tax purposes.

804. Argentinean authorities have as one of objectives the strengthening of AML/CFT measures with regard to trusts. On the National AML/CFT Agenda as published by Decree 1225 of 2007, Argentina has defined as Objective 7 ("Trusts), three Goals. Goal 1 is to promote the incorporation of trustees to the list of reporting parties; Goal 2 is to promote the creation of a Trust Registry; and Goal 3 is to regulate the conduct of individuals or legal entities involved in the creation, management and/or implementation of financial trusts and of those applying for registration with the registry of public ordinary trustees. In this context, a bill has been drafted by the Ministry of Economy and Public Finances, which will create a trust register and require the trustee to notify registration and modifications of the trust to AFIP, CNV, as well as the relevant provincial or municipal agencies. The bill is now being discussed within the Ministry of Justice, Security and Human Rights.

Additional elements

805. Financial institutions do not have additional access to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data.

5.2.2 Recommendations and Comments

806. Argentina should broaden the requirements on beneficial ownership so that information on ownership/control is readily available in a timely manner. This could include organising a trust register which would provide the authorities timely access to accurate information related to the deeds and expanding AML/CFT obligations for all those who provide trust services.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**NC**	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements because: – The law does not require the trust contract to identify the settlor. – There is no central registry and trust contracts are not disclosed to the authorities. – While law enforcement agencies have powers to obtain information from financial institutions on legal arrangements, there is minimal information disclosed to financial institutions concerning the beneficial owners (see Recommendation 5) of legal arrangements. – Providers of trust services do not have AML/CFT obligations.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Special Recommendation VIII

Reviews of the domestic non-profit sector

807. There are three types of non-profits organisations in Argentina:

- Non-profit civil associations, which are defined by the Civil Code, but are not further regulated by any other national law. These are authorised and overseen separately by each of the 24 jurisdictions.
- Foundations, which are defined in the Civil Code and further regulated by Law 19 836, and may be also subject to more specific procedures by each of the 24 jurisdictions.
- Mutual associations ("*asociaciónes mutuales*") which more focus on health and social services, or supporting small companies, with the purpose of promoting assistance in face of eventual risks or well being and spiritual help, through periodic contributions. They are regulated by Law 20 321 ("Organic Law on Mutual Associations") and overseen by the INAES (National Institute of Associative and Social Economy).

808. Argentina provided the following statistics for the combined numbers of civil associations and foundations, which represent the largest jurisdictions in Argentina:

Jurisdiction	Number of civil associations (registered and un-registered) and foundations
Province of Buenos Aires	35 941
City of Buenos Aires	23 617 (17 603 associations and 6 014 foundations)
Santa Fé	9 642
Tucumán	8 147
Córdoba	7 300
Mendoza	5 615
Salta	3 762 (3 054 associations and 708 foundations)
Jujuy	2 711
Rio Negro	2 662
Chaco	2 424 (2 239 associations and 185 foundations)

809. Pursuant to the Civil Code, the main purpose of associations and foundations should be common good. Both of these types of entities in the City of Buenos Aires are registered by the IGJ, and section 364 of IGJ's General Resolution 7/IGJ/2005 indicates that the "common good" should be put in practice and projected towards the whole community through the purpose of entities on purposes that match the purposes of the State. As of April 2009 the IGJ had 7 441 associations, 25 foreign NPOs, and 3 037 foundations registered. More specific figures than those above for the other provinces were not provided.

810. Regarding mutual associations (similar to "cooperativas" or cooperative in Spain and Latin America), there are approximately 4200 registered entities that comprise five million members. They are not covered by AML/CFT obligations. More specific information about these entities vis-à-vis the requirements for SR.VIII were not provided.

811. Argentina has not reviewed the adequacy of its domestic laws and regulations that relate to non-profit organisations. Argentinean authorities do not have the capacity to obtain timely information on the activities, size and other relevant features of its non-profit sector for the purpose of identifying the features and types of non-profit organisations (NPOs) that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. As indicated in the discussion of Recommendation 33 above, Law 22 315 (Organic Law of the IGJ) designates IGJ controlling authority for legal persons in the City of Buenos Aires (including the commercial companies described in Law 19 550 and R.33 above, foundations as defined in the Civil Code and Law 19 836, and associations defined in the Civil Code. Law 22 315 provides IGJ general powers to request information and documentation, examine books and documents, and request the relevant civil or commercial court judge to intervene (section 6); section 10 also specifies that, with regard to associations and foundations, the IGJ: authorises their operations and approves bylaws and amendments; supervises their dissolution and winding up; authorises and conducts ongoing monitoring of foreign entities seeking authorisation in the Argentina; investigates and resolves the claims submitted by associations or third parties; attends meetings and summons meetings of associations and the boards of foundations, when requested by any members; requests the intervention in of the Ministry of Justice, Security and Human Rights, and possibly the withdraw of a authorisation to operate in the cases of breaches of the law, bylaws or regulations, to safeguard the public interest, or serious irregularities.

812. Within the framework of these powers, general resolution 7/IGJ/2005, which further details the IGJ's powers over NPOs registered in the City of Buenos Aires, requires the reporting of information such as changes of address or headquarters, approved financial statements, change of venue, bylaws amendments, changes of name, among others, for which it will have to get supporting documentation (sections 3, 4, 22, 34, and 35). Whereas the provisions in Law 22 315 and General Resolution 7/IGJ/2005 provide some ability for the IGJ to obtain information about NPOs in Buenos Aires, these do provide for adequate capacity to obtain timely information on the activities, size and other relevant features of non-profit sector for the purpose of identifying the features and types of non-profit organisations (NPOs) that are at risk of being misused for terrorist financing by virtue of their activities or characteristics, and no capacity to obtain information on the NPOs outside the city of Buenos Aires. Specific information regarding the regulation of non-profit civil associations and foundations in the 23 provinces was provided, although Argentinean authorities indicated that these are subject to similar measures.

813. The Argentinean authorities do not conduct periodic reassessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities. For NPOs in Buenos Aires, the IGJ has been working to adapt current AML/CFT requirements for the purposes of having adequate information and thus, to evaluate potential suspicious transactions.

Outreach and awareness raising

814. The Argentinean authorities have not undertaken general outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse, such as i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; and ii) promoting transparency, accountability, integrity, and public confidence in the administration and management of all NPOs.

Licensing, supervision, monitoring and record keeping

815. While Argentina provided some information relating to licensing, monitoring, and supervision of NPOs in Buenos Aires, Argentina did not demonstrate that the measures in place represent a significant portion of the financial resources under control of the sector throughout Argentina, or a substantial share of the sector's international activities.

816. Non-profit associations and foundations in Argentina must be authorised to operate pursuant to section 45 of the Civil Code. Law 19 836 (section 3) further stipulates that foundations must be incorporated by means of a public instrument or private instrument with the signatures being certified before a Notary Public, and that this instrument must be submitted to the controlling authority of the relevant jurisdiction in order to operate. This information is thus available to the competent authorities. The instrument must include the stipulated purpose, which must be specific, and the plans intended for the first three years, indicating exact nature, characteristics and development of the activities that should be carried out for performance thereof must also be filed by the founders (section 9). Information on each of the founders must also be registered: (name, address, nationality, national ID number, or in the case of a legal person, name, address, and corporate ID number). While this covers information on the ownership of the foundation, there is no national law or regulation covering founder information for associations, or information on those who control or direct the activities (if they are different from the founders) of foundations and associations, including senior officers, board members, and trustees. This information is not publicly available either directly from the NPO or through appropriate authorities. As described above in the discussion of Recommendation 33, FIU Resolution 237/2009 stipulates additional information that should be recorded such as statutory modifications, authorities and purpose changes, approval of regulations, and presentation of accounting states; however, this is not considered to be other enforceable means as defined by FATF.

817. There are some specific measures for associations and foundations in the City of Buenos Aires. The Book VIII of Resolution IGJ 07/05 establishes requirements and obligations to comply before the authority (section 339 to 451). Law 19 836 requires the presentation of a plan of action for the first three years, that should include precise information about the nature, characteristic and development of the necessary activities for the compliance of its purpose, and also the budgetary bases for its execution, signed by its authorities (section 9) and evaluated by an independent accountant. During the development of this plan of action and with the annual financial statements, that should be certified by an independent accountant, the NPOs should present an analysis of the development of the three-year plan, compliance of the incomes and distributions predicted, reasons of the failings, and should inform about corrective measures that will be implemented by its authorities (Resolution IGJ 07/05, section 345). Founding members of associations, as well as any person designated to hold elective offices, must also be disclosed. Non-profit organisations are bound to report any change in their authorities to the IGJ. In all cases, sworn statements should be signed to report that such persons are not incapable or disqualified (section 344 to 348). Nevertheless, this does not include adequate information on those who control or direct the activities of NPOs in Buenos Aires

818. There are currently not adequate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs, such as freezing of accounts, removal of trustees, fines (outside of the NPOs in the City of Buenos Aires), de-certification, de-licensing and de-registration for NPOs in Argentina. With regard to those NPOs in the City of Buenos Aires, IGJ can apply warnings and fines up to ARS 30 million to associations, foundations and their directors or any person that fails to comply with the obligation to supply information, provides false information otherwise violates the law or bylaws, or obstructs the performance of IGJ's functions (sections 12 and 14, Law 22 315.) Sections 27 to 33 of General Resolution 7/IGJ/2005 further detail the procedures for applying these fines. The application of such sanctions does not preclude parallel civil, administrative, or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.

819. According to sections 43 – 44 of the Commercial Code, all those engaged in commerce (including associations and foundations) must maintain an accounting book ("*libro de comercio*"), as well as a ledger and inventory and balance books. Section 67 of the Commercial Code, requires that these records be kept for 10-year period following the activity. These are cross-referenced in General Resolution 7/IGJ/2005 in sections 23-26, Law 19 836 also requires foundations to have a uniform accounting system.

It specifies that: 1) foundations must keep accountancy records expressing a true chart of their operations and a clear justification of each and all actions subject to accounting record; 2) inventories, balances, and income statements shall be filed according to the provisions of the control authority in order to accurately express the equity state of the institution; 3) books required by the law and regulations stipulated by the control authorities shall be bounded and numbered, and must be individualised according to what is stipulated by said authorities (sections 23-26).

820. For NPOs in the City of Buenos Aires, section 373 – 375 of General Resolution 7/IGJ/2005 establishes that associations and foundations must keep their books signed and identified mandatorily, including the inventory book and accounting journal. The inventory book must contain the annual financial statements, an accurate description of corporate assets and liabilities, their securities, expenses and resources, owners' equity and certified accountants' reports. The obligation to have endorsed books also includes the meetings minutes book of the administration and political organs, and the associates registration book. The accounting journal shall contain all income and expenses and any receipts supporting documents for each entry. Corporate books and documents should be kept at the corporate headquarters. Foundations shall also keep their accounting records in duly signed, identified and numbered books.

821. The Argentinean authorities indicated that the controlling authorities of the 23 provinces have issued similar requirements as the IGJ, although this could not be verified. While requirements for foundations nationally, and for foundations and associations in the City of Buenos Aires are generally broad, it is therefore not clear that these record keeping requirements are sufficiently detailed to ensure that the authorities can verify that funds have been spent in a manner consistent with the purpose and objectives of NPOs throughout Argentina.

Information sharing, investigation and domestic co-ordination

822. As indicated above, Law 22 315 and General Resolution 7/IGJ/2005 provide the ICJ information gathering and investigative powers with regard to NPOs in the City of Buenos Aires. One of the main functions of IGJ is to be an official source of information within its jurisdiction. By means of several agreements and representatives IGJ cooperates with other Argentinean authorities that require information from IGJ. IGJ has a specific area through which it channels responses to written communications from courts and requests for information about IGJ's records, which can include information on the administration and management of a particular NPO. In addition, for the purposes of a more efficient response to such requests, IGJ is working an agreement with the Argentinean Supreme Court of Justice to simplify and speed up information exchange.

823. However, outside of the oversight of NPOs in the City of Buenos Aires, there was not sufficient information provided regarding the information gathering and investigative powers for the 23 provinces; evidence of domestic cooperation, coordination, and information sharing with regard to the other jurisdictions and organizations that hold relevant information on NPOs of potential terrorist financing concern; or full access to information on the administration and management of a particular NPO.

824. Overall, Argentina has not implement mechanisms for the prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action when there is suspicion or reasonable grounds to suspect that a particular NPO is being exploited for terrorist financing purposes or is a front organization for terrorist fundraising. There is not yet sufficient investigative expertise and capability to examine those NPOs that are suspected either being exploited by or actively supporting terrorist activity or terrorist organisations or adequate mechanisms in place to allow for prompt investigative or preventative action against such NPOs.

Responding to international requests for information about an NPO of concern

825. Argentina has not identified specific points of contact or procedures for responding to international requests regarding NPOs that are suspected of FT or other forms of terrorist support. International requests could be made to the FIU, which could use its information gathering abilities to gather information and respond to the request. Argentina could also respond to such requests through judicial requests for mutual legal assistance.

5.3.2 Recommendations and Comments

826. Argentina does not have an effective system to prevent the misuse of the NPO sector by those who finance terrorism. Argentina has not: (i) reviewed the adequacy of its laws and regulations that relate to NPOs; (ii) used all available sources of information to undertake domestic reviews of size and other relevant features of this sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT; or (iii) conducted periodic reassessments of such reviews. There has been no outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. The extent of sanctioning powers for NPOs outside of Buenos Aires is limited. The majority of measures that are in place pertain either nationally to all foundations (which are only a subset of NPOs) or only to those NPOs (both foundations and associations) in the City of Buenos Aires. While Argentinean authorities indicated that the monitoring, investigative, information gathering and sanctioning powers, and domestic cooperation mechanisms that are similar for NPOs registered in the 23 provinces, this could not be verified. Argentina should:

- Conduct a review of the domestic laws and regulations that relate to NPOs, and review the activities, size and other relevant features of the sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT by virtue of their activities or characteristics. This is especially important given that NPOs are registered separately by the 24 jurisdictions, and there is very little information about the NPO sector outside of the City of Buenos Aires.

- Conduct regular outreach with the sector to discuss scope and methods of abuse of NPOs, emerging trends in FT and new protective measures, and the issuance of advisory papers and other useful resources regarding FT prevention;

- Ensure adequate monitoring, investigation, and sanctioning powers for NPOs throughout Argentina.

- Increase cooperation mechanisms with the provinces in order to be able to investigate and take prompt action when required for NPOs suspected of being involved of FT.

- Continue work to unify within the IGJ the registries of the 23 provinces in order to facilitate information gathering and exchange on NPOs.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• Argentina has not reviewed the adequacy of its domestic laws and regulations that relate to non-profit organisations; no periodic reassessments. • Argentinean authorities do not have the capacity to obtain timely information on the activities, size and other relevant features of its non-profit sector for the purpose of identifying the features and types of non-profit organisations (NPOs) that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. • No requirements for mutual associations for the requirements of SR.VIII.

	Rating	Summary of factors underlying rating
		• The Argentinean authorities have not undertaken general outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. • There is not adequate information regarding the founders for associations, or information on those who control or direct the activities of foundations and associations, including senior officers, board members, and trustees. • There are not adequate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. • There is not sufficient information gathering and investigative powers; domestic cooperation, coordination, and information sharing, or full access to information on the administration and management of a particular NPO. • No specific points of contact or procedures for responding to international requests regarding NPOs.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

Recommendation 31

Policy co-operation and co-ordination

827. There are a number of mechanisms for both operational and policy cooperation in Argentina. The main mechanism for national policy coordination is through the National Coordination Representation for the Financial Action Task Force (FATF-GAFI), Financial Action Task Force of South America (GAFISUD) and the Organization of American States Inter-American Drug Abuse Control Commission (CICAD-OAS). This was created by Resolution 792 of 22 May 2006, and works under the Ministry of Justice, Security and Human Rights of Argentina. In addition to coordinating policy responses and leading the Argentinean delegations in these international fora, the National Coordination Representation is also tasked with coordinating and proposing a National Agenda on AML/CFT.

828. The National Coordination worked with a number of Federal authorities in this regard. This involved 17 government agencies from the Ministries of Justice, Security and Human Rights, Ministry of Economy and Production, Foreign Affairs, International Trade and Worship, Employment and Social Security, the Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking (SEDRONAR), the Central Bank of Argentina (BCRA) and the Attorney General's Office. On 11 September 2007, the National Agenda on Anti-money Laundering and Combating the financing of terrorism was approved through Presidential Decree No. 1225.

829. The National Agenda is addressed to strengthen the prevention, detection, reporting, investigation and trial of money laundering and terrorist financing crimes, and, particularly, it is intended to facilitate the work of the Financial Information Unit (FIU), while organising the joint action of involved organisations, by means of several goals and objectives to attain between 2007-2009.

830. It defines 20 priority objectives in the fight against money laundering and terrorist financing and 44 goals within these objectives, such as improving the criminal justice system, the consolidation of rules for the financial system, the broadening of the list of subjects obliged to report suspect transactions, the institutional strengthening of the financial sector regulators, and increase of the cooperation devices, among others. The main goals for the coming years are:

- Draft new money laundering and terrorist financing legislation taking into the international standards and any deficiencies found in this current mutual evaluation report
- Expand mechanisms of supervision and sanctions, working together with the other federal agencies and incorporate new DNFBP sections into the AML/CFT sanctions framework.

- More fully integrate the FIU with the investigation and prosecution agencies.
- Expand the list of obliged entities of the AML/CFT framework.
- Systematise and make compatible the databases and national statistics on beneficial ownership, AML/CFT freezing and confiscation, and increasing record keeping requirements.

831. Despite this framework, however, the National Coordination Representation does not have adequate powers to organise meetings as necessary with other agencies, or to collect information, in order to review and coordinate effective improvements in the national AML/CFT regime. A number of the stated goals have not been achieved, such as those dealing with banking secrecy and the criminalisation of ML. In particular, while the National Coordination receives positive voluntary cooperation from the Federal authorities which are all housed in Buenos Aires, there are no mechanisms for coordinating on policy matters with the provincial authorities.

832. The Ministry of Economy and Production also issued Resolution N° 905 on 23 November 2006, which creates the Work Team on Prevention of Money Laundering and Terrorist Financing. This Work Team has the task to, *inter alia*, to establish instruments of coordination and cooperation with the other State Powers, agencies and international forums regarding this subject. The Ministry has appointed a linking officer to assist in common tasks before the Financial Information Unit. In addition, the following agencies within the scope of the Ministry have also appointed liaison officers to work together with a Working Group for the Prevention of Money Laundering and Terrorist Financing in order to coordinate the necessary measures to fulfil the purposes of the fight against these offences. The areas that have made these appointments are the following: AFIP, BCRA, CNV, SSN, Banco de la Nación Argentina, and Banco de Inversión y Comercio Exterior (a state-owned bank).

833. Joint Commission: The President of B.C.R.A. has called for a meeting to be held by the Joint Commission established by Decree N° 1849/90 and validated by Act 24,450/95, with a view to analyzing the different mechanisms used to perform Money Laundering transactions and proposing the authorities a course of action to detect, prevent and punish such actions.

834. Law 24 450 established the *Joint Commission for the Control of Operations related with Money Laundering from Drug Trafficking*. The commission is presided for six months alternating terms of the President of the BCRA and SEDRONAR. It is made up of two representatives of each one of the following agencies: Central Bank of the Argentinean Republic, Secretary for the Programming of the Prevention of Drug Addiction and Struggle against Drug Trafficking of the Presidency of the Nation (SEDRONAR); by the Judiciary and four representatives of the Congress of the Nation, two. Since its establishment the commission widened its scope to include other agencies involved such as the Attorney General's Office, the Ministry of Justice, Security and Human Rights, the Anti Corruption Office of the Ministry of Justice, Security and Human Rights, the Ministry of Foreign Affairs, International Trade and Worship, AFIP, the FIU, the CNV, and the SSN.

Operational co-operation

835. The Office of the Attorney General through UFILAVDIN works on an ongoing basis with a number of other Federal authorities in order to facilitate money laundering investigations and prosecutions. It liaises with the FIU on the case files that it receives from it, tasks law enforcement agencies for their assistance. For example, UFILAVDIN is working with the Division for Asset Investigations of the Argentinean Federal Police in four preliminary investigations around the testing of suspect facts related to asset laundering pursuant to section 19 of Law 25 246. UFILAVIN forwards case files to judges for prosecution, and continues to work with those and other judges to assist money laundering prosecutions.

836. The BCRA also worked with UFILAVDIN in six cases in 2008 and in four cases in 2009 (up to September), all of which were preliminary investigations related to case files received from the FIU on suspected ML.

837. On this matter, it is worth mentioning that section 14, subsection 9 of Law 25 246 provides, among the Financial Investigations Unit's powers that of: "Organizing and managing files and information related to the activity of the FIU or information obtained in performing its functions for the recovery of information related to its mission, with power to enter into agreements and contracts with national, international and foreign bodies to integrate information networks of the same kind, on condition of effective reciprocity as needed. Thus, at a national level, the FIU Unit has signed several Cooperation Agreements with a number of National Agencies in order to facilitate operational cooperation. These agreements are oriented to the strengthening and enhancing the collaboration with other national entities, thus permitting better cooperation, as well as access to any of these entities' database to the Unit:

- National Superintendence of Insurance (SSN) (FIU Resolution 4/03 – Collaboration agreement)
- Supreme Court of Justices of the Argentinean Republic (FIU Resolution 4/04 – Collaboration agreement)
- Administrative Investigations Prosecutor (FIU Resolution 8/05 – Collaboration agreement)
- Information Technology Argentinean Office (ONTI) (FIU Resolution 9/05 – Collaboration agreement)
- Argentinean Federal Police (FIU Resolution 69/09 – Collaboration agreement)
- National, Fiscal and Social Identification System (SINTYS) (Consultation agreement).
- Federal Bureau of Public Revenue (AFIP) (FIU Resolution 59/09 – Cooperation agreement for the better use of existing resources)
- Electoral Court of Argentina (Collaboration agreement)

838. Likewise, other similar projects of similar conventions are being prepared which will be subscribed with the following entities:

- Argentinean National Gendarmerie
- Airport Security Police,
- Argentinean Federal Penitentiary Service,
- Argentinean Coast Guard,
- Argentinean Social Security Administration (ANSES),

839. It is also worth mentioning that, for policies cooperation and coordination the FIU has the support of liaison officers, whose duty is the consultation and coordination of the activities carried out by the Financial Information Unit with those of the agencies to which they belong. Section 12 of Law 25 246 (amended by Law 26 119) SECTION 12 — The Financial Information Unit shall have the support of liaison officers appointed by the heads of the Ministry of Justice, Security and Human Rights, Ministry of Foreign Affairs, International Trade and Worship, Ministry of Internal Affairs, Ministry of Economy and

Production, the Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking, the Presidency of the Nation, the Central Bank of the Republic of Argentina, the Federal Bureau of Public Revenue, the Public Commercial Registries or similar entities in the Provinces, the Securities and Exchange Commission and the National Superintendence of Insurance.

840. The list of agencies having appointed liaison officers may be found at the FIU website. Likewise, the Unit has a database for identification of such officers, which is updated on a regular basis.

841. Finally, it is important to point out that it is, within the framework of FIU's competence: "Assisting the judicial system and the Attorney General's Office (for the appropriate actions) in the criminal prosecution of the crimes punished by this law" according to the provisions of section 13, subsection 3 of Law 25 246. Since its creation, the FIU has worked in 184 joint actions, out of which 183 were collaborations with the judicial power and 1 with the Houses of the Argentinean Congress. At the time of the on-site visit, the FIU had provided or was providing its services for 78 judicial cases.

842. The Anti-Money Laundering Unit of the National Superintendence of Insurance ("UASSN") exchanges information with other similar units of the Public Administration Agencies such as the Central Bank, the Federal Bureau of Public Revenue (AFIP), the National Securities Exchange Commission (CNV) and the General Superintendency of Corporations (IGJ), and the FIU in following up to suspected ML/FT that is reported.

Recommendation 32 (Reviewing the effectiveness of AML/CFT systems on a regular basis)

843. Argentina does not review the effectiveness of its AML/CFT systems on a regular basis. While the National Agenda and the National Coordination Representation have made a series of proposals to upgrade AML/CFT measures to be more in line with international standards, there has not been a comprehensive review of the systems already in place. The authorities lack any statistics on confiscation, provisional measures, and mutual legal assistance. Statistics on money laundering investigations and prosecutions only exist for the Federal authorities, and not for the provinces. Statistics on STRs received, analysed, and disseminated are more comprehensive, but there has not been a system in place to review the quality of these reports, or why these and other measures in Argentina have so far not produced better results.

Resources (policy makers)

National Coordination Representation:

844. The National Coordination Representation has 12 people in total, 5 operational support, and 6 legal, financial, and international advisors. All consultants are university graduates, in several cases with postgraduate degrees in public administration, finance and law in the country and abroad. They have also worked in other departments relating to AML/CFT such as the FIU or BCRA. Half of the advisers have been trained in GAFISUD and FATF seminars for assessors in mutual evaluations, obtaining the certificate of international reviewers.

845. The office operates in a building annexed to the Ministry of Justice, Security and Human Rights and has sufficient technological capacity and budget to carry out their current daily tasks. The privacy policy is determined by the National Coordinator for each case setting the level of opening up internal cases. The office does not deal with confidential information.

846. Overall, the National Coordination Representation has sufficient resources to fulfil its current functions and authorities, although this office should be provided greater authority to perform coordination functions, with a corresponding increase in necessary resources.

6.1.2 Recommendations and Comments

847. There are a number of formal and informal mechanisms for inter-agency cooperation at the operational level; however, these systems have not been effective in producing results. Argentina also has systems in place for coordination on the policy level. However, these only at the Federal level, there are no mechanisms for policy cooperation with the provinces, and the Federal mechanisms are not working effectively in order to develop and implement AML/CFT improvements. Argentina should improve its mechanisms for cooperation and coordination, and review the effectiveness of AML/CFT measures in Argentina, in order make improvements in this area. The National Coordination Representation should be provided more authority and resources in order to coordinate more effectively with the Federal and provincial authorities.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	PC	• Domestic cooperation and coordination, at the policy and operational level, are not working effectively. • There are no cooperation and coordination mechanisms between the Federal authorities and the provinces. • Argentina does not periodically review the effectiveness of AML/CFT measures.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

848. Argentina approved the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances 1988 ("the Vienna Convention") through Law 24 072 published in the Official Gazette on 14 April 1992; Argentina officially ratified the Vienna Convention on 28 June 1993. While the large majority of the Convention's provisions have been implemented, the money laundering provisions in Argentina do not specifically cover possession and use of proceeds of crime. Furthermore, there are still some exemptions of criminal responsibility in matter on acquisition, concealing and disguising proceeds of crime, which are outside the scope of the Vienna Convention.

849. Argentina approved the United Nations Convention against Transnational Organized Crime 2001 ("the Palermo Convention") through Law 25 632 published in the Official Gazette on 30 August 2002; Argentina officially ratified the Palermo Convention on 19 November 2002. While the large majority of the Convention's provisions have been implemented, the current Argentinean legislation does not cover self-laundering, and the deficiencies identified in relation to the Vienna Conventions also apply. There is also a lack of ability to utilise controlled delivery or other special investigative techniques as undercover operations.

850. Argentina approved the United Nations International Convention for the Suppression of the Financing of Terrorism ("the CFT Convention") through Law 26 024 published in the Official Gazette on 19 April 2005; Argentina officially ratified the CFT Convention on 22 August 2005. Also, the nine Conventions listed in the Annex of the CFT Convention were passed by Laws 19 793, 20 411, 22 509, 23 956, 23 620, 23 915, 24 209, 25 771 and 25 762. Argentina has not fully implemented the Convention; the FT crime under section 213 *quarter* introduced by Law 26 024 in the Criminal Code, has a very limited scope (see deficiencies in relation to SR.II). Only very special types of terrorist organisations and would not cover terrorist organisations that exist solely within Argentina. The law does not cover: collection or

provision of funds to be used for a terrorist act outside of the context of the terrorist organisation as defined in Argentina; the acts included do not fully cover all the provisions of Article 2(1)(b) of the Convention, nor the acts in all the treaties listed in the Annex of the CFT Convention (Specifically the acts of fraudulent obtaining of nuclear material regulated in article 7 letter c) of the Convention on the Physical Protection of Nuclear Material and the acts seizes or exercise control over a fixed platform by force regulated in article 2.1. letter a) of the Protocol for the Suppression of Unlawful Acts Against The Safety of Fixed Platforms located on the Continental Shelf) as required by Article 2(1)(a). The current provisions are not being effectively implemented.

Special Recommendation I

851. *CFT Convention*: Argentina became a party to the CFT Convention on 28 August 2005; however, Argentina has not fully implemented the Convention (see paragraph above and deficiencies in relations to SR.II).

852. *United Nations Security Council Resolutions:* Argentina's framework to freeze funds in relation to the S/RES/1267(1999) was published by the Resolution 253/2000 in the Official Gazette on 10 October 2001, and S/RES/1373(2001) is contained in Decree 253/2000, Decree 1235/2001 Presidential Decree 1521/2004, FIU Resolution 125 of 5 May 2009 ("Resolution 125/2009"), section 23 of the Criminal Code, and mutual legal assistance provisions. See SR.III for further details and the deficiencies relating to implementing these Security Council Resolutions, including: Argentina's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) are ineffective; laws and procedures for implementing S/RES/1267(1999) rely on a reporting obligation 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; laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal procedures which do not allow for effective freezing action to 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.

Additional elements (Other relevant international conventions)

853. Inter-American Convention against Terrorism was approved by Law 26 023 published in the Official Gazette on 18 April 2005 and ratified on 16 December 2005. Argentina also approved the United Nations Convention against Corruption by Law 26 097 and ratified the Convention on 28 August 2006.

6.2.2 Recommendations and Comments

854. Argentina has signed and ratified the Vienna, Palermo, and CFT Conventions; however, not all of the Conventions' provisions have been effectively implemented. For the Vienna and Palermo Conventions, Argentina should fully cover possession of proceeds of crime, and remove all the exemptions for criminal liability relating for family and friends regarding acquiring, concealing and disguising proceeds of crime. For the Palermo Convention, Argentina should also broaden the ML offence so that it also applies to the perpetrator of the predicate offence ("self-laundering) and measures for controlled delivery and for other special investigative techniques as undercover operations.

855. Finally, the Terrorism Financing Convention must be fully implemented with regulating the FT crime with a wide range of subjects with criminal responsibility under the section 213 *quarter* in relationship with the terrorism crime regulated in the Criminal Code. The scope of the FT and terrorism arising from must be greatly extended.

856. The UN Resolutions in matters relating to terrorism must also be fully implemented, with an effective system that permits freezing without delay of all type of funds relating to any kind of terrorism or associated persons.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• *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. • *Palermo Convention*: lack of ML criminal liability for person who committed the predicate offence ("self-laundering") and lack of adequate special investigative techniques. • *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).
SR.I	**PC**	• CFT Convention: limited scope of the terrorist financing offence (see R.35). • UN Security Council Resolutions: existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) are ineffective (see SR.III).

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

Recommendation 36 and Special Recommendation V

857. The basis of the international mutual legal assistance system of Argentina is the treaties entered into by Argentina with other States, including bilateral and multi-lateral treaties. Argentina has signed multilateral treaties or agreements in criminal matters under the scope of United Nations (Vienna, Palermo, and Corruption Conventions, for example), the Organization of American States (Nassau Convention) and MERCOSUR. Argentina has a number of bilateral instruments, and with regard to mutual legal assistance in criminal matters, Argentina has agreements with Australia, Canada, Colombia, El Salvador, the United States, France, Italy, Mexico, Paraguay, Peru, Portugal, Spain and Uruguay.

858. For the countries with which Argentina does not have a specific mutual legal assistance treaty and in the cases where the treaties do not sufficiently cover AML/CFT matters, Argentina uses its Law on International Cooperation in Criminal Matter, Law 24 767 of 1997. Comprising 125 sections, this law regulates widely many forms of international assistance to and from Argentina, including the enforcement of foreign confiscation orders and extraditions. This law has two purposes: to establish the procedures to be followed by the bodies involved in executing the requests for assistance and to set forth the conditions for such requests to be granted by the applicable authorities.

859. The framework for providing mutual legal assistance applies equally to money laundering, predicate offences, and financing of terrorism.

860. Law 24 767 establishes in section 1 that Argentina shall afford any State that so requests the "broadest possible assistance" in the investigation, prosecution and punishment of offences falling within the other state's jurisdiction. Furthermore, under this section "any authorities involved shall act with the greatest diligence to ensure that the procedure is completed in an expeditious manner that does not hinder

the assistance. The law governs all matters dealing with countries with which Argentina does not have a specific mutual legal assistance treaty, granting assistance based on the existence or offer or reciprocity (section 3). Where there is such a treaty, its provisions shall govern the assistance procedure, and the provisions of Law 24 767 shall serve to interpret the text of treaties and to provide for aspects not covered by it (section 2).

Range of assistance

861. In international assistance, the judiciary applies the same methods for obtaining evidence as in internal proceedings. Provided that the formal requirements of the request are met, and the case is passed to the domestic investigation/prosecution authorities (see below), all domestic measures relating to obtaining evidence (see Recommendation 28) can be applied.

862. Law 24 767 permits a wide range of mutual legal assistance in matter of production, search and seizure of evidence in AML/CFT investigations and prosecutions which are laid out in broad terms in sections 67 – 81 of the Law. It does not specify all the types of assistance are available; rather it indicates that the widest range of assistance should be available, subject to the conditions and procedures laid out. There are, however, specific references to the procedures for taking witness statements (sections 75) and providing official documentation and information, indicating that the request should be complied with to the extent that such documentation or information would be provided to a similar Argentina authority (section 79). The provisions are therefore broad enough to provide assistance relating to: the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons; the taking of evidence or statements from persons; providing originals or copies of any information and evidentiary items; effecting service of judicial documents; facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country.

863. Under this law Argentina can also identify, freeze, seize, and confiscate assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences. However, Argentina cannot apply provisional measures to and confiscate assets of corresponding value, since these measures cannot be applied domestically. In addition, dual criminality is required for these coercive measures under section 68, and therefore the limitations on the ML and FT offence limit the scope of mutual legal assistance that could be provided. In particular, the limited scope of the FT offence (see SR.II) in Argentina limit Argentina's ability to provide for identification, freezing, seizing, and confiscation of assets relating to FT.

Processes for MLA and timeliness of assistance

864. The Ministry of Foreign Affairs, International Trade and Worship is the central authority to receive nearly all MLA requests. The exception is that, under the terms of Argentina's MLATs with the United States and Uruguay, the Ministry of Justice, Security and Human Rights is the central authority for receiving requests from the United States and Uruguay. Under section 69 of Law 24 767 the request for assistance shall by submitted through diplomatic channels. The administrative procedure in cases relating to requests for assistance is the same as that established for extradition requests (see R.39 and the explanation of the procedures) and are also subject to some specific requirements (sections 70 – 74):

a) The request must clearly describe the criminal conduct, including precise dates and circumstances, a legal classification of and penalty applicable to the conduct, the purpose of the request and all the circumstances that may be useful to know in order to ensure the effectiveness of the assistance; the personal details of officials and representatives of the parties

authorized by the requesting State to participate in the requested operations. Such participation shall be approved insofar as it is not contrary to Argentinean law.

b) If compliance with the request could interfere with a criminal investigation in progress in Argentina, a postponement or appropriate conditions of execution may be ordered and the requesting State shall be notified thereof.

c) Argentinean law shall govern the conditions and procedures in accordance with which the requested measures shall be carried out. If the requesting State requires any specific conditions or procedures, it shall make its requirements expressly known. In such event the request shall be granted provided that no constitutional guarantees are violated.

d) If the Ministry of Foreign Affairs, International Trade and Worship decides to act on a request, it shall refer the matter to the Ministry of Justice, Security and Human Rights.

e) The Ministry of Justice, Security and Human Rights shall refer the matter to the authority which is appropriate according to the type of assistance requested. It may order a postponement or conditions and even decline to grant authorization in relation to (b) and (c) above.

f) If the assistance requires referral of the matter to a judge, the Attorney General's Office shall represent the interest in the assistance in the proceeding.

865. Law 24 767 provides for a comprehensive ability to provide mutual legal assistance. However, it is not known whether in Argentina provides mutual legal assistance in a constructive and timely manner without undue delays. The number of steps required under sections 67, 71 and 74—i.e., requiring a request to be made through diplomatic channels to the Ministry of Foreign Affairs, International Trade and Worship, and then through the Ministry of Justice, Security and Human Rights, Attorney General's Office and finally to a criminal judge—poses significant delay in the ability to respond. At least in almost all cases of treaties is possible to avoid the step involving the Ministry of Justice, Security and Human Rights. There are no comprehensive statistics to indicate any timeframe for responding and therefore the effectiveness of the system.

Conditions on MLA

866. MLA requests are not prohibited or made subject to unreasonable, disproportionate, or unduly restrictive conditions. The admissibility of requests made by a foreign authority for assistance in the investigation and prosecution of offences is governed by sections 3 (reciprocity in the absence of a treaty); 5 (for determining the competence of the requesting country, its own legislation shall be applied); 8 (assistance shall not be possible for a political offence, or an offence solely under military criminal law, etc.); 9 (cases excluded from being considered as political offences such as war crimes or crimes against humanity; acts of terrorism; attacks against life, physical integrity or freedom of heads of state or heads of government or their family, diplomatic personnel, other internationally protected persons; offences in respect of which Argentina has assumed an international obligation to extradite or prosecute the persons involved) where there is not a political offence) and 10 (inadmissible if there are special reasons of national sovereignty, security or public order or other essential interests for Argentina). Finally, dual criminal is required when assistance would relate to seizure of property, searching of premises, surveillance of persons, interception of mail or telephone tapping (section 68).

867. MLA cannot be provided in relation to insider trading/market manipulation since these offences are not criminalised.

868. Requests may not be dismissed on the sole grounds that they may also relate to fiscal matters. In addition, secrecy or confidentiality requirements on financial institutions or most DNFBP cannot generally impede provision of ML. However, under section 244 of the Criminal Procedure Code (CPP), lawyers, paralegals, and notaries must not provide information relating to confidential acts that came to their knowledge through their office or profession. This wide exemption extends to all information gained by these professionals when exercising their functions. This raises serious concerns that authorities cannot obtain information from lawyers and notaries (and therefore provide this information to assist foreign investigations) when they are not acting in defence of a client.

Mechanisms to avoid conflicts of jurisdiction

869. To avoid conflicts of jurisdiction, Argentina has only considered applying limited mechanisms for determining the best venue for prosecution of defendants. Section 5 of Law 24 767 indicates that "For the purpose of determining the competence of the requesting country with regard to the offence giving rise to the request for assistance, such country's own legislation shall be applied". Section 72 indicates that "If compliance with the request could interfere with a criminal investigation in progress in Argentina, a postponement or appropriate conditions of execution may be ordered and the requesting State shall be notified thereof".

Additional elements

870. Argentinean law does not permit authorities to exercise coercive measures pursuant to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.

Recommendation 37 (Dual criminality)

871. Under section 68 of Law 24 767, assistance is provided even when the conduct giving rise to an assistance request is not deemed an offence in Argentina that is linked with facts that there are not an offence in Argentina. Only if the assistance requested relates to seizure of property, searching of premises, surveillance of persons, interception of mail or telephone tapping is dual criminality necessary.

872. There are no legal or practical impediment to rendering assistance was long as both countries criminalise the conduct underlying the offence. Technical differences between the laws in the requesting state and Argentina, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance. As indicated in the report by the Attorney General's Office "For the principle of dual criminality to apply, it is not necessary that the definitions of the crimes into which the contracting parties subsumed the facts that motivated the extradition request be identical; but it is necessary that the rules of the requesting and requested countries provide for and punish, in substance, the same criminal offence (Rulings 319:531; 323:3055; 325:2777, among many others) and for this verification the judge acting in the extradition is not affected by the *nomen juris* of the crime (Rulings 284:59 and 315:575). The decisive point is the coincidence in the "substance of the offence" (Rulings 326:4415) (Rulings 329:1245).

Recommendation 38 and Special Recommendation V

873. As indicated above, under Law 24 767 which triggers the use of domestic provisional and confiscation measures, Argentina can also identify, freeze, seize, and confiscate assets laundered or proceeds from, or instrumentalities used in, the commission of any ML or predicate offence, or FT offence. However, Argentina cannot apply provisional measures to and confiscate assets of corresponding value, since these measures cannot be applied domestically. In addition, dual criminality is required for asset freezing and confiscation under section 68, and therefore the limitations on the ML and FT offence limit

the scope of mutual legal assistance that could be provided. In particular, the very limited scope of the FT offence (see SR.II) in Argentina limits Argentina's ability to provide for identification, freezing, seizing, and confiscation of assets relating to FT.

874. There is no specific authority under the Law 24 767, to allow Argentinean authorities to coordinate forfeiture and confiscation actions with other countries.

875. Argentina has considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited. Section 27 of AML Law 25 246 indicates that money and other assets or resources confiscated by court order on account of the commission ML crimes herein shall be delivered by the court to a special fund to be created by the Executive Branch of the Nation. This fund may administer assets and dispose of money according to the provisions in the law, being responsible for their return to whom it may concern upon final judicial decision. However, no such fund has yet been established in practice.

876. Argentina has considered consider authorising the sharing of confiscated assets between Argentina and a foreign country when confiscation is directly or indirectly a result of co-ordinated law enforcement actions. Under section 96 of Law 24 767, "The Ministry of Foreign Affairs, International Trade and Worship may agree with the requesting State, on a basis of reciprocity, that part of the money or property obtained as a consequence of the enforcement procedure shall remain in the possession of the Argentinean Republic".

877. As for the cases of a foreign judgment's enforcement within Argentina, under Law 24 767, section 101, the Argentinean Republic and the requesting State are authorised to agree that Argentina retain part of the confiscated property as a result of the judgment. In addition, in the cases where an Argentinean judgment imposing a fine or the property's confiscation upon a criminal action is enforced by a foreign State, the Argentinean Republic may, under section 110, sign an agreement to agree that another State retain part of the confiscated property. However, these measures have not been applied in practice.

Additional elements

878. Under Argentinean Law there is not a measure equivalent to civil forfeiture.

Recommendation 30 Resources (Central authority for sending/receiving mutual legal assistance/ extradition requests)

879. Argentina has not provided information relating to the structure, funding, staffing, resources, professional and confidentiality standards, and AML/CFT training for the central authority for sending/receiving mutual legal assistance and extradition requests (in this case, the Ministry of Foreign Affairs, International Trade, and Worship). The adequacy of these measures cannot therefore be determined.

Statistics

880. The authorities of Argentina do not maintain any statistics relating to mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond.

881. During the face-to-face meeting in June 2010, Argentina provided some statistics of mutual legal assistance made and received relating to ML, prepared for that meeting; however, the evaluation team did not have the opportunity to review any of these cases:

File Number	Requesting country	Execution Country	Date of the presentation to the Argentinean central authority	Date of sending to the Court	Nature of request	Date of response
7553/07	Brazil	Argentina	19/12/2007	11/01/08	Banking information	28/05/2008
5731/07	Venezuela	Argentina	27/09/2007	03/10/07	Information of a Argentinean criminal case	02/01/2008
5640/07	Argentina	Colombia	25/09/2007	26/09/07	Information request	03/07/2008
5524/06	Ecuador	Argentina	30/01/2007	09/02/07	Financial information	10/07/2007
5116/07	Brazil	Argentina	27/08/2007	11/09/07	Witness statement	18/12/2007
4146/06	Paraguay	Argentina	23/08/2006		Notification	Returned without results
4865/07	Venezuela	Argentina	11/6/2008	30/6/08	Financial Information	8/10/2008
3096/03	Switzerland	Argentina	15/07/2003	28/07/03	Information	17/09/2003
3634/08	Brazil	Argentina	17/06/2008		Finding person by INTERPOL	
7205/07	Uruguay	Argentina	05/12/2007	12/12/07	Information	26/12/2007
5640/08	Peru	Argentina	16/09/2008	01/10/09	Information about physical person	19/03/2010
4874/08	Peru	Argentina	12/08/2008	19/09/08	Banking Information	18/11/2009
4168/08	Argentina	South Africa	03/12/2008	12/01/09	Information about assets of enterprise and persons	Unresolved
3774/06	Honduras	Argentina	13/03/2007	21/06/07	Financial Information about physical person	11/08/2008
5583/06	Ecuador	Argentina	30/01/2007	09/02/07	Information	15/06/2007

6.3.2 Recommendations and Comments

882. It is not possible to assess the effectiveness of the MLA system in Argentina; the many steps and authorities in the assistance procedures, especially when there is no treaty, implies delays in the ability to respond to requests without undue delays, and a lack of comprehensive statistics demonstrates the lack of Argentina's monitoring for effectiveness of the system. The authorities must also quickly establish an effective system of statistics that include the number of requests, time required for responding, origin and objectives of the requests, and the results, in order to evaluate the effectiveness of the system and make improvements as necessary.

883. The current requirement for dual criminality for executing freezing, seizure or confiscation requests poses an important limitation to providing assistance; to ensure more effective assistance in matter of freezing, seizure or confiscation in AML/CFT international request, it is necessary to improve the scope of the ML and FT offences in the Argentina's legislation related to offences that are not currently covered in Argentina.

884. Argentina should broaden its legislation to allow for provisional measures and confiscation of property of corresponding value to permit assistance for these issues. Argentina should also reduce the steps and authorities involved in processing requests for international assistance, to improve the timeliness and effectiveness of responses. The Asset Forfeiture fund established under section 27 of Law 25 246 should also be implemented.

885. Finally, Argentina should remove the professional secrecy provisions that prevent lawyers and notaries from providing information to appropriate law enforcement authorities upon appropriate authority.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	• 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 inability to respond to requests involving assets or property of corresponding value. • 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. • MLA cannot be provided in relation to insider trading/market manipulation since these offences are not criminalised. • Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession.
R.37	C	
R.38	PC	• 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. • 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. • Inability to respond to requests involving assets or property of corresponding value.
SR.V	PC	• 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. • 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. • Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

Recommendation 39 and Special Recommendation V

886. Money laundering and terrorist financing are extraditable offences in Argentina. Section 6 of Law 24 767 (the Law on International Cooperation in Criminal Matters) sets forth that "[i]n order for the extradition of a person to be admissible, the act forming the subject of the proceedings shall constitute an offence which under both Argentinean law and the law of the requesting State carries a sentence of imprisonment for which the sum of the minimum and maximum terms divided by two shall be at least one year. If a State requests extradition for two or more offences, it shall be sufficient that one of them meets this condition for the extradition to be granted with regard to the others." Under section 278 of the

Argentinean Criminal Code (which covers converting or transferring proceeds of crime) the sentence is two to 10 years of imprisonment; for section 277 (which covers acquisition, concealing and disguising proceeds of crime) the punishment is six months to three years imprisonment. Finally, under section 213 *quarter* (the terrorist financing provisions) of the Criminal Code terrorist financing is punishable by five to fifteen years imprisonment. The sum divided by two of all these offences is more than one year; thus, all these offences are extraditable.

887. Nevertheless, limitations in the ML and FT offences in Argentina, and the requirement for dual criminality, would not allow for extradition when:

- For ML: The predicate offence was insider trading or market manipulation, the crime involved possession of criminal proceeds, involved acquiring, concealing, or disguising proceeds of crime and involved relatives or close friends without profit interests.

- For FT: 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; involved a terrorist organisation that exists solely within Argentina; and acts 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 the special type of terrorist organisation as defined by Argentina.

System on Extradition Procedure

888. Argentina has bilateral extradition agreements with Australia, Belgium, Brazil, Bolivia, Korea, Spain, the United States, United Kingdom (also applicable to Canada, Kenya, Pakistan, Saint Vincent & the Grenadines, and South Africa), Italy, the Netherlands, Paraguay, Peru, Switzerland and Uruguay.

889. In terms of multi-lateral treaties or agreements which contain extradition measures, Argentina has signed the Treaty on International Penal Law (Montevideo, 1889); the Inter-American Convention on Extradition (Montevideo, 1933, applicable to countries of the Americas, except for Canada); the Inter-American Convention against Corruption (Caracas, 1996); the United Nations Convention against Corruption (Merida, 2003), and the Palermo and Vienna Conventions.

890. As mentioned in section 6.3 of this report, Law 24 767 governs all matters dealing with countries with which Argentina does not have a specific mutual legal assistance treaty, granting assistance based on the existence or offer or reciprocity (section 3). Where there is such a treaty, its provisions govern the assistance procedure, and the provisions of Law 24 767 shall serve to interpret the text of treaties and to provide for aspects not covered by it (section 2).

891. The extradition process set out in Law 24 767 is a three-staged process: the first stage comprises the administrative procedure; the second, the judicial procedure; and the third, the final decision made by the Executive. Details are provided below.

892. *Administrative procedure* (sections 19 – 25): As diplomatic channels are the only permitted means, the extradition request must be submitted to the Ministry of Foreign Affairs, International Trade, and Worship. After submission, the request is first check to verify that the person claimed is not a refugee. It is also checked whether reciprocity exists or has been offered and if there are grounds for inadmissibility (reasons based on sovereignty, essential interests of the nation, etc.). Compliance with formal requirements is then preliminary verified. If the request is not challenged, the judicial process starts through the Attorney General's Office to carry out the judicial procedure.

893. *Judicial procedure* (sections 26 – 34): First, the prosecutor submits the request to the federal court having jurisdiction over the case. Provisional arrest of the person claimed will then be ordered if he

has not been arrested yet. Within 24 hours following the arrest, the court will summon the detainee to attend a hearing where he will be informed of the reasons for the arrest and the details of the request. If the person claimed freely and expressly consents to be extradited, the court will render a decision without further formality. If the person claimed challenges extradition and the case is suitable, a date for trial will be scheduled. Otherwise, the process will be suspended for 30 days for the requesting State to submit lacking documentation. The purpose of the trial is limited, since the existence of the alleged crime and the guilt of person claimed may not be challenged.

894. *Content of requests* (sections 13 – 15): Requests must contain an accurate description of the criminal act, with precise references as to the circumstances; the statutory classification of the crime in accordance with the laws of the requesting State; the grounds for the requesting State's jurisdiction over the case and the reasons why the cause of action is not terminated; an authenticated copy of the judicial decision ordering detention of the person claimed; an authenticated copy of the text of the applicable criminal and procedural laws; and data on his whereabouts and all the information necessary to identify the person claimed. If the request refers to a convicted person, it is necessary to submit an authenticated copy of the judgment imposing the sentence, with an attestation that the judgment was not rendered in absentia, and a statement of the calculation of the sentence term that remains to be served.

895. *Admissible Challenges* are as follows (section 8): Extradition is based on a political or military offence; the requesting State's court does not respect the guarantee of being tried by an independent and impartial court; the person claimed has already been tried for the offence giving rise to the request; under Argentinean law, the person claimed would have been considered to be not criminally responsible because of his age; the person claimed was convicted through a judgment rendered in absentia; or, the person claimed is a refugee.

896. *Involvement by Prosecutor and the Requesting State* (section 25): In the judicial procedure, the prosecution represents the interest in extradition. The requesting State may be a party to the judicial procedure through an authorized representative.

897. *Ruling and Appeal* (sections 32 – 39): Once the trial stage is completed, the judge will decide whether extradition is admissible. The subsequent ruling may be appealed before the Supreme Court of Justice. The Supreme Court of Justice's decision will then be immediately informed to the Ministry of Foreign Affairs, International Trade, and Worship. If the ruling dismisses extradition, the Ministry of Foreign Affairs, International Trade, and Worship will notify this to the requesting State. New requests based on the same act will not be carried out. If the ruling grants extradition, the records of the case will be sent to the Ministry of Foreign Affairs, International Trade, and Worship for the final stage to be conducted.

898. *Final decision:* In the case that the ruling grants extradition, the Executive may refuse surrender if, at that time, grounds for inadmissibility apply (reciprocity assurances, reasons based on sovereignty, essential interests of the Nation, etc.). Refusal by the Executive must be exercised expressly within 10 working days following receipt of the records of the case. Otherwise, it will be considered that the Executive has definitely granted extradition.

899. *Surrender of the Person Claimed:* The final decision will be immediately informed to the requesting State. If the ruling grants extradition, such notification will set the term to surrender and transfer the person claimed. This term if 30 days (it may be extended by 10 more days) and Interpol will operatively coordinate the surrender and transfer.

900. The expeditiousness principle is established in the second paragraph of section 1of Law 24 767.

Extradition of Argentinean nationals

901. The three scenarios for extradition of Argentinean nationals are set out in section 12 of Law 24 767:

- *There is no extradition treaty*: the person claimed can opt instead to be prosecuted in Argentina. In this case, the extradition request will be dismissed and, if the requesting State agrees, the pertinent criminal action will be brought before an Argentinean court.

- *There is an extradition treaty in which the extradition of nationals is optional:* upon completion of the proceedings and only if extradition is granted by judicial resolution, the Executive will make a decision by considering particularly reciprocity regarding surrender by the requesting State of its own nationals upon an Argentinean judicial request; and

- *There is an extradition treaty that establishes that the nationality of the person claimed may not be asserted to dismiss an extradition request*: the extradition proceedings will be carried out both by judicial and administrative procedures, regardless of the person's claimed nationality.

902. Specifically, under extraditions treaties signed by Argentina:

- *Belgium, the Netherlands and Switzerland*: Nationals will not be surrendered under the extradition treaties in force

- *Brazil, the United Kingdom, Spain, Italy and Paraguay*. Nationals may be surrendered under the extradition treaties in force.

- *United States and Uruguay*: Nationality may not be relied on as a ground for objecting to extradition under the extradition treaties in force.

903. Argentina did not provide any information regarding effective cooperation on procedural and evidentiary aspects to ensure efficiency of a prosecution that would take place in Argentina.

ML/FT Extradition requests and proceedings without undue delay

904. Law 24 767 does not provide for general timeframes for processing extradition requests. It does establish some specific ones for certain stages of the proceeding, such as terms of temporary arrest or deadlines for surrendering the requested person once an extradition request has been granted. In this regard, it should be noted that the law only lays down certain principles and guidelines, such as the principle of prompt cooperation, which requires all persons working on the assistance and extradition proceedings to grant assistance within time frames that are brief enough for the cooperation rendered to foreign authorities to be effective.

905. However, there are many authorities and steps (Foreign Affair Department plus Federal Judge plus appeal to Supreme Court plus Executive Branch Decision) in the procedure of an extradition that imply much time for the process to be carried out.

Simplified procedures of extradition

906. There are only limited simplified procedures for extradition. If the person claimed consents to be extradited, the court will authorise his surrender to the requesting State's authorities without further formality. This decision will have the same effect than a judgment granting extradition. This procedure could be applied for both ML and FT crimes that are also punishable in Argentina.

907. There are no procedures in place to allow direct transmission of extradition requests between appropriate ministries; persons cannot be extradited based only on warrants of arrests or judgements. In accordance with Argentinean Law, extradition requests addressed to the Argentinean Republic must be submitted through diplomatic channels. In order for extradition to be granted, the formal requirements to submit the request (either based on an arrest order or a conviction) must be met and a decision granting the extradition must be obtained through both the administrative and processes, after the procedure described above has been completed.

Recommendation 37 (extradition and dual criminality)

908. Extradition requires dual criminality in Argentina. However, there is no legal or practical impediment to rendering assistance where both countries criminalise the conduct underlying the offence. Technical differences between the laws in the requesting and Argentina, such as differences in the manner in which each country categorises or denominates the offence do not pose an impediment to the provision of mutual legal assistance.

909. The Argentinean Supreme Court of Justice has often stated that, under the double criminality principle, it is required that the crime be punishable in both the requesting and the requested States, but the crimes need not be identical under the laws of both states. This is the criteria to be followed by judges and representatives of the Attorney General's Office. Therefore, the key requirement is that the same criminal offence be provided for and punished by the laws of both the requesting and requested States. As indicated in section 3.6 of this report, the General Prosecution of Argentina has indicated in a report "For the principle of dual criminality to apply it is not necessary that the criminal types into which the contracting parties subsumed the facts that motivated the extradition request be identical; but it is necessary that the rules of the requesting and requested countries provide for and punish, in substance, the same criminal offence (Rulings 319:531; 323:3055; 325:2777, among many others) and for this verification the judge acting in the extradition is not affected by the *nomen juris* of the crime (Rulings 284:59 and 315:575). The decisive point is the coincidence in the "substance of the offence" (Rulings 326:4415)". (Rulings 329:1245).

Statistics

910. The authorities of Argentina do not maintain any statistics relating to extradition requests that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond.

6.4.2 Recommendations and Comments

911. There is no evidence of the effectiveness of Argentina's extradition system in practice. Argentina should consider reducing the steps (linked with the administrative, judicial and political or executive procedures) and authorities involved in executing extradition requests, to improve timeliness and effectiveness. The Argentinean authorities must also establish quickly an effective system of statistics that includes the number of extradition requests, time required for responding, origin and objectives of the requests, and the results, in order to evaluate the effectiveness of the system and make improvements as necessary.

912. Argentina should expand the scope of the ML offence and especially the scope of the FT offence in order for dual criminality not to prevent the extradition for those aspects of ML/FT that are not currently crimes in Argentina.

913. The law should also contain a simplified procedure of extradition in place by allowing direct transmission of extradition requests between appropriate ministries.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	• The effectiveness of the system for responding to extradition requests for ML 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. • Dual criminality and the limitations on some ML acts limit the possibility of granting some extraditions. • The absence of simplified and direct procedures for extradition.
R.37	C	
SR.V	PC	• The effectiveness of the system for responding to extradition requests for FT 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. • Dual criminality and the limitations on the scope of the FT offence limit the possibilities to extradite for FT. • The absence of simplified and direct procedures for extradition.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Recommendation 40 and Special Recommendation V

914. Argentinean authorities have powers to collaborate with their foreign counterparts in their respective areas of competence. In the majority of cases, international cooperation may take place directly between authorities exercising similar responsibilities and functions. The framework to cooperate internationally applies equally to money laundering and terrorist financing.

915. Exchange of information with foreign Financial Information Units is conducted considering the Egmont Group's statement of objectives and its principles for information exchange.

916. Argentina is active in the Inter-American Committee against Terrorism (CICTE). The Committee has the goal of cooperating to prevent, combat and eliminate terrorist acts and activities. It does this by establishing a technical cooperation framework, by developing, coordinating and evaluating recommendations of government experts, by encouraging member States to adopt necessary legislation, and by coordinating and carrying out ways to share and exchange information on pertaining groups or activities, including early warnings.

FIU Cooperation

Range and quality of assistance provided

917. The FIU can provide the foreign counterpart with any information already in its power. It can (a) search its own databases, including with respect to information related to suspicious transaction reports; (b) search other databases to which it may have direct access, including public databases, administrative

databases and commercially available databases. See the discussion of Recommendation 26 for a description of these databases to which the FIU has access.

918. However, there must be a prior domestic STR in order to lift bank secrecy and therefore gain any further information or conduct enquiries on behalf of foreign counterparts. Without a domestic STR, the FIU cannot access to any additional information held by third parties, for example, such as law enforcement information. For information on BCRA databases on large transactions, the FIU would not have the power to ask the BCRA to conduct a general research to see the transactions or assets made by the person. Reporting parties, including BCRA and CNV, are not obliged to provide any information the FIU might ask them on behalf of a foreign counterpart. In order to be able to respond to foreign counterparts, the FIU indicated that the request must be received from the foreign counterpart as a "voluntary statement" or "information from other sources" (IOS). However, the legal basis for this is not clear (since these are domestic reports), and as indicated in the chart in the statistics at the end of this section, a number of foreign requests are pending the further information from the foreign FIU to demonstrate a link with a domestic investigation in Argentina. The elimination of this confidentiality legal restriction to increase the exchange of information with foreign FIUs is one of the objectives of the National Agenda, and a draft bill has been prepared for this purpose.

919. While the FIU responds to foreign request, the law does not provide for spontaneous sharing of information (either from STRs or other information). Law 25.246 permits the FIU to enter into international agreements to share information on a reciprocal basis. However, it remains unclear whether judicial approval will be necessary for such international sharing of information between financial intelligence units when the exchange involves information subject to bank secrecy (see paragraph above) or tax secrecy limitations. Alternatively, Argentina can share such information under the direction of a judge, either at the request of a foreign authority or at the judge's initiation. During the on-site visit the FIU staff confirmed that they did not spontaneously exchange information even if it was allowed by the MOU and other international agreements.

920. In addition, while the FIU has a legal limitation on its ability to disseminate information on some ML activities and many predicate offences. Specifically, and as indicated in section 2.5 of this report, the FIU only has the authority to disseminate (as well as receive and analyse), information relating to some money laundering activities (conversion or transfer of proceeds of crime as indicated in section 278 of the Criminal Code) and six out of the 20 designated categories of offences.

921. The quality of the assistance provided by FIU to the requesting countries could not be tested because the lack of adequate statistics. The FIU indicated that the time required to respond to information requests will depend on the viability of the request (it is checked if the requirement is complete and the link with this country), the wording of the request and the availability of information, although no further details were provided. The FIU maintains very basic statistics that track the number of request received and sent, and how many are still pending. Analysing these statistics, it is possible to say that very few requests are still pending. It therefore seems that the FIU is able to provide assistance in a rapid manner; however, given the lack of other data the evaluation team is not able to conclude that the assistance provided has been constructive and effective.

Gateways for information exchange

922. FIU and law enforcement authorities are allowed to provide assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations

923. Section 14, subsection 9 of Law 25 246 provides the FIU the authority enter into agreements and contracts with national, international and foreign bodies, on condition of reciprocity, for the purpose of organizing and managing files and information related to the activity of the FIU or information obtained in performing its functions. For such purpose, the Argentinean FIU follows the model MOU approved by Organisation of American States Inter-American Drug Abuse Control Commission (OAS-CICAD) for agreements with those member States' FIUs and, for other countries, it follows the model approved by the EGMONT Group.

924. The FIU formally entered the EGMONT Group in 2003. Additionally, it has signed several MOUs and other are in progress. As of November 2009, the FIU had entered into MOUs with 23 counterparts in the following countries, which are ratified through FIU Resolutions as indicated below:

1. Australia (Resolution 7/ 2004)
2. Belgium (Resolution 6/2004)
3. Bolivia (Resolution 14/2003)
4. Brazil (Resolution 1/2004)
5. Canada (Resolution 10/2005)
6. Chile (Resolution 1/2005)
7. Colombia (Resolution 2/2003)
8. Ecuador (Resolution 227/2007)
9. El Salvador (Resolution 13/2003)
10. Spain (Resolution 3/2003)
11. France (Resolution 101/2009)
12. Guatemala (Resolution 12/2003)
13. Honduras (Resolution 5/2004)
14. Israel (Resolution 3/2009)
15. Netherland Antilles (Resolution 205/2009)
16. Panama (Resolution 5/2003)
17. Paraguay (Resolution 2/2005)
18. Peru (Resolution 9/2004)
19. Poland (Resolution 12/2009)
20. Portugal (Resolution 5/2005)
21. Romania (Resolution 07/2005)
22. Russian Federation (Resolution 160/2009)
23. Venezuela (Resolution 19/2003)

925. MOUs with a number of other FIUs were finalised since the on-site visit.[41] Several other MOUs were under different stages of discussion and negotiation. For example, MOUs with China and Mexico were awaiting approval of those counterparts. MOUs with Andorra, Bahamas, Cyprus, Denmark, Dominican Republic, India, and Nigeria were in the negotiation stage. Discussions with other countries were also in the more initial stages:

1. Egypt
2. Japan
3. Monaco
4. Philippines
5. Republic of Fiji Islands
6. Senegal
7. Thailand

[41] MOUs were finalised with Albania, Greece, Macedonia, and Singapore.

8. Tunisia
9. Ukraine
10. United Arab Emirates

Conditions and restrictions

926. As indicated above, the legislation imposes a strong limitation on the FIU to provide information relating to some ML activities (specifically acquisition, concealing and disguising proceeds of crime), and 14 and of the 20 designated categories of offences). There are no other unduly restrictive conditions; information exchange would only be limited in the event of lack of reciprocity or if the exchange would jeopardise national sovereignty, security or politics, the public order and the essential interests of the Argentina State. The Argentinean authorities indicate that exchanges of information have not yet been denied for any of these reasons.

927. Requests for information are not refused on the sole ground that it may also involve fiscal matters. In fact, tax offences are crimes and therefore money laundering predicate offences in Argentina. However, if information required is collected and stored by AFIP, it would be subject to tax secrecy, and according with Article 14 subsection 3 Law 25 246 the FIU would need to request the competent judge to lift tax secrecy to obtain the information. The judge must decide within a maximum period of 30 days.

928. Nor may professional privilege or legal professional secrecy prohibit the provision of assistance by the FIU. Article 14, subsection 2, of Law 25.246 (as replaced by section 1 of Law 26 087, Official Gazette April 24, 2006) provide that reporting parties under section 20 shall not be entitled to invoke banking, securities and professional secrecy nor legal or contractual confidentiality agreements against the Financial Information Unit where a suspicious transaction report is under analysis. Therefore, no restrictions are imposed and information is exchanged under the conditions of reciprocity and confidentiality.

Safeguards and protection of data

929. Information received by the FIU is treated with the same security standards already outlined in section 2.5. Section 22 of Law 25 246 provides that: "Officers and employees at the Financial Information Unit shall be bound to keep in secret all the information received due to their position, as well as the tasks of intelligence developed as a consequence thereof. The same duty of confidentiality is valid for the persons or entities bound by this law to provide data to the Financial Information Unit. The officer or employee at the Financial Information Unit, as well as those persons who by themselves or on behalf of another reveal the confidential information outside the purview of the Financial Information Unit, shall be punished with six months to three years of imprisonment."

930. In addition, staff members sign confidentiality agreements when they join the FIU. Administrative and professional staff must comply with provisions under the Code of Ethics for Public Officials, approved by Decree 41/1999. These provisions apply to information received by the FIU since the MOUs provide that any information exchanged in accordance with the MOU will be strictly confidential and must receive the same treatment as reserved information and the same protection that the legislation of the requesting FIU grants to similar information originating from national sources.

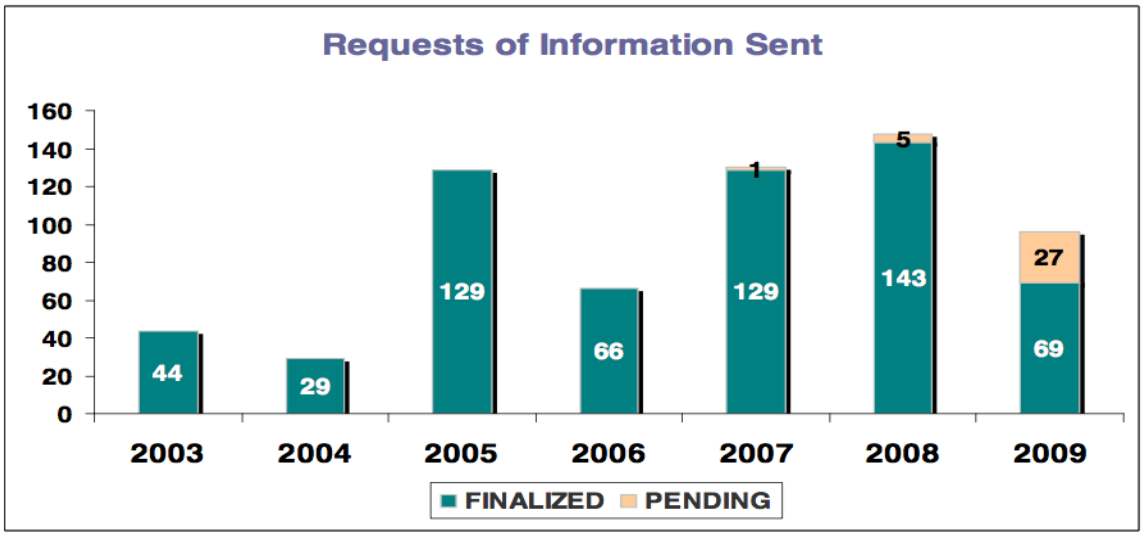
931. Upon information requests made by the Unit relating to STRs, IOSs or judicial collaboration, if the records of the case have to be sent to the Attorney General's Office, authorisation to notify the information obtained is always requested to the foreign counterpart. Information authorised to be provided is sent to third parties under the legality conditions imposed by the counterpart unit.

Additional elements

932. The Argentina FIU cannot with non-counterparts, although it can obtain information from other competent authorities or other persons relevant to information requested by a foreign counterpart FIU provided that the information is received as a "voluntary statement."

Statistics

933. FIU maintains statistics that indicate the number of information requests sent and received as well as how many of the requests are still pending. As indicated above, there is a concern that bank secrecy and the need to show a link with a domestic investigation is impeding more effective and timely cooperation.



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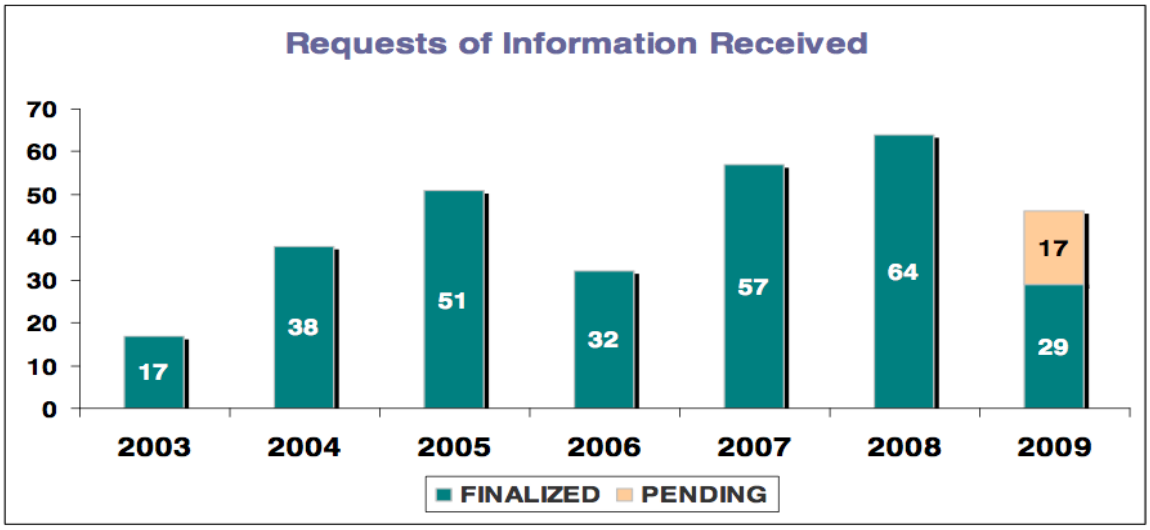

Note: Pending Requests are those awaiting for the requesting FIU to provide the link between their investigation and the Argentine Republic.

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Law enforcement co-operation

Range and quality of assistance provided

934. Law enforcement authorities and prosecutorial authorities, to be able to conduct formal inquiries on behalf of foreign counterparts in official manner, must work inside of the MLA channels in order to obtain evidence or official information. The federal law of criminal procedure instructs the law enforcement agencies to investigate on their own initiative or under complaint or competent authority order, crimes of public action (Book II Title I Chapter II, in particular, section 183). That communication or complaint can be transmitted by the foreign counterpart directly to the law enforcement authorities. Furthermore, the framework to conduct the preliminary investigation (by the UFILAVDIN or the ordinary jurisdiction district attorney) is provided by section 26 of Law 24 946 (Organic Law of the Attorney General's Office) which empowers the members of any level of the Attorney General's Office, to request reports from national, provincial, community entities, private bodies and individuals, when appropriate, as well as to obtain assistance from police authorities to carry out procedures and summon persons to its offices for the sole purpose of give testimony. Likewise, this section obliges police and security agencies to provide the assistance required from them, in accordance with the guidelines issued by the members of the Attorney General's Office, allocating the necessary staff and other means available.

935. However, informal inquiries on behalf of foreign counterparts can be conducted with the purpose to provide elements to guide the investigation, through the various gateways described below.

936. Law enforcement authorities, customs authorities and prosecutorial authorities do not have any limitations with respect to the exchange of information, pursuant to a request, provided the requirements set forth under the applicable agreements are met. In most cases information is exchanged between correspondent authorities in a confidential way (meaning that information cannot be used in a prosecution but only in the investigation phase to orient the police forces' or prosecutors' next steps or decisions), both spontaneously and upon request, and in relation to both money laundering and the underlying predicate offences as well as terrorist financing.

937. The gateways, mechanisms and channels below would seem to allow the various law enforcement authorities authority to provide assistance in a rapid, constructive and effective manner. However, in practical terms, no statistics on the exchange of information were provided, and it is therefore not possible to evaluate the effectiveness of this activity.

Gateways for information exchange

938. International cooperation from the investigation point of view generally takes can and does take place directly and spontaneously between authorities exercising similar responsibilities and functions.

939. Argentina is also member of the *Comunidad de Policías de América* (AMERIPOL), a continental police organisation recently created (14 November 2007 in Bogotá) that works primarily on public safety, terrorism, organised crime, war crimes, illicit drug production, drug trafficking, weapons smuggling, human trafficking, money laundering, child pornography, white-collar crime, computer crime, intellectual property crime and corruption. Through AMERIPOL Argentina can exchange information with the others member states: Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Paraguay, Peru, and Uruguay. AMERIPOL's primary function is to draw upon police resources at a regional level to combat the transnational criminal elements that operate in two or more countries between Chile and Canada – along a vast trail from supply to market in the Western Hemisphere. This regional police cooperation is facing a number of challenges to become truly effective. Still, it as a significant step toward higher standards of professionalism and

accountability in a region where many countries count on the military to perform public security functions that in most cases should be reserved for the police.

940. AMERIPOL, as a regional initiative, takes a step in the direction of strengthening police forces in member countries. There is potential for a higher level of accountability, and with the participation of highly professional police forces such as those in Chile and Colombia, the possibility for transfers of technology, especially in the area of forensics and the judicial process, is promising. AMERIPOL also offers a regional point of interaction for other transnational organizations such as Interpol, the US Drug Enforcement Agency (DEA), the Organization of American States (OAS) and the UN. Rather than taking the time to interact with individual police forces to gather information on the various elements of one transnational criminal group such as FARC, the DEA or Interpol, theoretically, could go to one point of contact for information coming in from across the region. AMERIPOL provides an avenue for building informal and individual relationships, that through phone calls, e-mails or ad-hoc meetings tie together the network of professional policemen. Even if it will take some time before they can take root and begin to bear fruit.

941. Also, for the law enforcement side, Interpol channels are frequently used for the exchange of information in police (as well as judicial) matters, both inside and outside of the MLA channels.

942. To facilitate and allow for prompt and constructive exchanges of information directly between counterparts, police forces have several liaison officers working abroad, usually within the framework of diplomatic structures, who maintain constant and effective contact with their counterpart police forces.

943. Different gateways for information exchange are used by other authorities and their foreign counterparts. The various gateways for collaboration and exchange of information allow customs authorities to conduct inquiries on behalf of foreign counterparts. Section 23(q) of the Customs Code (Law 22 415), states that customs agents have the functions and powers to request and provide collaboration and reports directly to foreign customs administrations and international bodies in this area. The Argentinean Customs is also a member of the World Customs Organization (WCO) within which agreements with different countries contemplate international customs cooperation and exchange of information. These include the COMALEP agreement signed by Latin American countries, Spain and Portugal, and the 1953 Customs Cooperation Framework Agreement, with the participation of 40 countries of all continents, used for information exchange. Furthermore, customs authorities utilise several MOUs and other international agreements that are in place, including agreements with Brazil, Peru, Spain, the United States, France, Hungary, Italy, Libya, and the Russian Federation. Others are in progress. Finally, because of daily dealings with respect border controls with its neighbouring countries, the Customs Services maintains in certain places an integrated control system where the services of both countries work together.

944. Law enforcement officers participating in the Triple Frontier's Security 3 +1 Mechanism (Argentina, Brazil, Paraguay and United States) meet regularly to discuss and analyse preventive actions against terrorism, as well as the strengthening of financial institutions, money laundering legislation, financing of terrorism and drugs and weapons trafficking, frontier's control, cooperation in the exchange of information and application of legislation in this matter. Argentinean Federal Police, Argentinean Coast Guard, National Border Patrol, Airport Security Police and Customs General Directorate, take part at these meeting and exchange information with the counterparts under this mechanism.

Conditions and restrictions

945. Law enforcement exchanges of information are not made subject to disproportionate or unduly restrictive conditions. Requests for cooperation are not refused on the sole grounds that the request is also

considered to involve fiscal matters, nor on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs.

Safeguards and protection of data

946. Law 25 326 (Protection of personal data and safeguards) protects such data except for the following cases: a) the data is obtained from unrestricted public sources; b) the information is collected for the exercise of functions of the branches of government or under a statutory duty c) in the case of listings where data are limited to name, identity card, pension or tax identification, occupation, date of birth and address; d) the data results from a contractual, professional, or scientific relationship, or from the owner of the data, which have resulted necessary for their development or fulfilment; e) in the case of transactions carried out by financial institutions and information received from clients under the provisions of Article 39 of Law 21 526.

Additional elements

947. Exchange of information with non-counterparts can take place through international networks like Interpol and AMERIPOL. Liaison officers of the police forces can also be used for this purpose.

Statistics

948. Neither law enforcement nor prosecutorial authorities maintain any statistics regarding other international requests for co-operation such the exchange of information with the counterparts and inquiries conducted on behalf of foreign counterparts.

Supervisory co-operation: BCRA

949. The only mention to international cooperation in the BCRA Charter (Law 24 144) is made in article 18, which provides that the BCRA "may represent or be part of any international institution existing or to be set up for banking, monetary or financial cooperation purposes". Therefore, the Charter does not organise by itself the conditions under which the BCRA may exchange information with international counterparts, nor does it authorise the BCRA to sign MOUs which would set up these conditions. In addition, article 53 of the Charter provides that "the information obtained by the Superintendence of Financial and Exchange Entities in the exercise of its supervisory powers shall be confidential. The officers and employees shall not disclose it without the express authorisation of the Superintendence of Financial and Exchange Entities, even after having ceased holding office therein." Moreover, articles 39 and 40 of the Financial Entities Act (Law 21 526) require strict confidentiality from the banking and exchange institutions for deposit information, except when the information is required by a judge, by tax authorities in certain circumstances, or by the BCRA within its supervisory functions. But article 53 of the Charter on confidentiality applies in this last case.

950. Despite the absence of identified legal basis for information exchange with foreign counterpart, the BCRA has issued Communication "A" 2911 on April 1999 as amended by Communication A 4010, which on the one hand reiterates the confidentiality obligations of article 39 and 40 of the Financial Entities Act, and on the other hand permits information to be shared by the financial entities after the explicit authorisation of the BCRA with foreign supervisory authorities overseeing domestic institutions of foreign capital and/or branches of foreign institutions whose shareholders or parent houses are under their supervision. Any request for information received from a foreign supervisory (in the framework of consolidated supervision) and explicitly approved by the BCRA is considered to have been made by the BCRA itself. In addition, the BCRA advised that, in carrying out a consolidated supervision, the Superintendence of Financial and Exchange Entities (SEFyC) coordinates its supervisory tasks with other supervisory authorities in other countries which controls the parent house or controlling groups of foreign

capital institutions operating in Argentina. In order to facilitate consolidated supervision, and despite the absence of legal basis, the BCRA has signed MOUs with foreign counterparts. Argentinean authorities advised that some of these agreements include specific provisions related to AML/CTF (United Kingdom, Uruguay, United States, South Africa, Cayman Islands), some other agreements only mention the fight against ML or financial crime (Spain and Germany), and others do not contain any AML/CFT provision (Chile, Brazil). The BCRA advised that it answered 1 request made by the UK, 2 requests from Uruguay and the US in 2008-2009, with respect to the banking system. It has not sent any request of exchange of information.

951. This series of MOUs signed by the BCRA do not provide for clear and effective gateways, mechanisms or channels for international cooperation between banking supervisors. Indeed, the MOUs detailed above are limited to facilitate consolidated supervision and the provisions of Communications A 2911 as amended by Communication A 4010 organises the relationships between Argentinean banking or exchange institutions, which are branches of a foreign financial institution, with the supervisor of this foreign financial institution, with the authorisation of the BCRA.

952. The BCRA also advised the assessment team its possibility to exchange information with foreign counterparts in the absence of MOUs. However, considering that this is not allowed by its Charter nor by the Financial Entities Act, which provide for strong confidentiality, and in the absence of request of information ever sent to or received from a foreign counterpart, the assessment team disregarded this information.

953. Taking into account these elements and in the absence of other useful information regarding other elements of the Methodology, the assessment team was unable to assess the other criteria of R.40 regarding international cooperation with foreign banking supervisors.

Supervisory co-operation: CNV

954. As with the banking sector, articles 8 and 9 of the Law 17 811 also provide that information held by the CNV in the framework of its supervisory tasks should be kept confidential. However, article 82 of Decree 2284/91, ratified by Law 24 307, states "the restrictions and limitations set forth by Law 17 811 related to disclosure of information as obtained by the National Securities Commission and its officials and employees while exercising their functions shall not be applicable to the disclosure of said information to foreign similar authorities with which the CVN has an agreed mutual cooperation agreement". In this context, CNV considers that it is authorised to exchange information of any kind (included for AML/CFT purposes) with foreign counterparts. However, since the access by CNV is legally formally limited to prudential information, it is unclear that this would cover AML/CFT related information.

955. CNV has signed MOUs with foreign securities commissions (Bolivia, Brazil, Colombia, Costa Rica, Chile, China, Ecuador, Germany, Salvador, Spain, US, France, Israel, Italy, Malaysia, Mexico, Panama, Paraguay, Peru, Poland, Portugal, Quebec, Thailand, South Africa, Chinese Taipei, UK and US). The assessment team did not receive more information on the content and the provisions of these MOUs, and was unable to assess whether they also cover AML/CFT issues. However, it is worth noting that the CNV applied to become a member of the IOSCO MMOU, but it is currently on Annex B, since it lacks adequate legal authority to be part of Annex A and being authorised to exchange information with foreign counterpart on the basis of the MMOU.

956. Considering these elements, it cannot be considered that CNV has clear and effective gateways, mechanisms or channels to exchange information directly with foreign counterparts. The CNV has never sent to or received request of exchange of information from foreign counterparts. In addition, Argentina advised that in case of foreign supervisor would request assistance to conduct inquiries on behalf of it, this

would then have to be done through judicial authorities. As for the other criteria of the methodology, such as the fact that exchange of information should not be subject to disproportionate or unduly restrictive conditions, should not be refused on the sole ground that the request is also considered to involve fiscal matters, should not be refused on the grounds of laws that impose confidentiality requirements on financial institutions, and the fact that Argentina should establish controls and safeguards to ensure that information received by competent authorities is used only in an authorised manner and which are consistent with national provisions on piracy and data protection, no useful information has been received.

Supervisory co-operation: SSN

957. Article 74 of Law 20 091 on insurance and its controls provides that information gathered by the SSN in its supervisory tasks is confidential. The law does not contain provisions lifting this confidentiality obligation to allow the SSN to exchange information with foreign counterparts. Nor does it mention the possibility for international exchange of information between supervisors.

958. Argentina advised that section 5 of SSN Resolution 28 608 provides that the AML Unit of the SSN shall "have a database, share information with other similar Unit existing […] bodies that exercise regulatory, monitoring, supervision and/or supervision over economic activities, legal business, as well as on individuals or entities, the BCRA, the Argentine Internal Revenue Service (AFIP), the CNV, the General Inspection of Justice and foreign insurance supervisory agencies. The SSN has not signed any MOU and has never sent or received a request for exchange of information. The deficiencies detailed in paragraph 956 above therefore also apply regarding SSN.

6.5.2 Recommendations and Comments

959. The Argentinean FIU has a number of written agreements with other countries to exchange information. However, the authorities should ensure that secrecy provisions do not inhibit information exchange, that information can be provided spontaneously, and rectify its legal limitation on its ability to share information on some types of money laundering and many predicate offences.

960. With regard to law enforcement cooperation, in principle Argentina has at its disposal various special investigative techniques such as controlled delivery and undercover agents. However, the application of these techniques is limited to investigations of drug-related offences, and so foreign requests must be related to narcotics in order to employ these techniques. The limitation of the application of these special investigative measures does affect both purely national Argentinean investigations and foreign investigations taking place in Argentina. It unnecessarily limits Argentina's capability to assist foreign countries.

961. The absence of official and comprehensive statistics on cooperation does not allow the evaluation team to assess the effective implementation of certain requirements (such as the scope and duration of execution, or the quality) in Argentina for requests from foreign FIUs and law enforcement agencies. Argentina should develop centralised statistics relating to other requests dealing with money laundering, the predicate offences and terrorist financing, including details on the nature and the result of the request.

962. Argentina is called to urgently take all the necessary provisions to create clear and effective gateways, mechanisms or channels that will facilitate and allow for prompt and constructive exchange of information directly between supervisory counterparts. In particular, Argentina should urgently amend its appropriate laws to expressly lift the confidentiality clauses of the 3 supervisors in cases of international exchange of information and to organise the conditions to exchange information.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	NC	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. • 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. 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.
SR.V	**PC**	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 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.

7. OTHER ISSUES

7.1 Resources and statistics

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating

R.30	NC	**FIU:**
		• The number of staff dedicated to the analysis of potential ML/FT cases is low especially in comparison with:
		  ○ The very heavy delay of STRs 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 adequate human resources overall (49 out of 74 positions filled), and lack of adequate resources for the analysis division.
		• Inadequate training for FIU staff.
		• An increase in technical capabilities is needed.
		
		Law enforcement/ prosecutors:
		• Insufficient AML/CFT training for all agencies.
		• UFILAVDIN: staff numbers should be increased and more stability should be provided through permanent contracts.
		• PFA (Federal Police): Staff numbers, both overall as well as for the personal assets investigations unit are not sufficient; no evidence to assess the adequacy of PFA's budget.
		• GNA: human resources and budget are not sufficient.
		
		Supervisors:
		• There is no information available regarding the funding of the various financial supervisors.
		• The AML/CFT Units of the CNV and SSN face resource constraints.
		• CNV and SSN staff are not adequately trained to effectively perform their functions.
		
		Policy makers (National Coordination Representation):
		• The National Coordination representation should be provided greater authority to perform coordination functions, with a corresponding increase in necessary resources.

R.32	NC	• Argentina does not review the effectiveness of its systems for combating ML/FT. • No reliable or comprehensive statistics on money laundering prosecutions (or investigations. • No statistics regarding the number of cases and the amounts of property frozen, seized, and confiscated relating to (i) ML, (ii) FT, and (iii) criminal proceeds. • No statistics yet on declarations of outgoing Argentinean currency. • No statistics relating to mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond. • There are no statistics available on AML/CFT on-site examinations conducted by the SSN. • There are no statistics available on the formal requests for assistance made or received by supervisors, whether the requests were granted or refused.

7.2 Other relevant AML/CFT measures or issues

963. There are no additional measures or issues that are relevant to the AML/CFT system which are not covered elsewhere in this report.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1: Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the *FATF Recommendations* has been made according to the four levels of compliance mentioned in the 2004 Methodology[42] (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially Compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non Compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not Applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country *e.g.,* a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating
Legal system		
1. ML offence	PC	• 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. • Jurisdictional difficulties and a close link with the predicate offence impede effective money laundering investigation/prosecution. • Exemption for criminal responsibility to relatives or friends for some money laundering offences (*e.g.,* acquisition, concealing and disguising under section 277). • Self-laundering is not criminalised. • The ancillary offence of conspiracy is not covered. • Insider trading and manipulation market are not predicate offences and the range of offences within the terrorism and terrorist financing definitions are not sufficient. • Possession of proceeds of crime is not specifically covered. • The acquisition, concealment, and disguising elements of the money laundering offence do not cover property that is indirectly the proceeds of crime.
2. ML offence – mental element	PC	• The sanctions for ML are not dissuasive and have never been applied. • The penalties for acquiring, receiving and concealing, as well as converting or

[42] *Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations*, 27 February 2004 (Updated as of February 2009).

Forty Recommendations	Rating	Summary of factors underlying rating
and corporate liability		transferring proceeds of crime below the ARS 50 000 threshold, are low. • No criminal liability for legal persons, and there is no fundamental principle of domestic law that prohibits this. Lack of effectiveness of the system of administrative liability of legal persons.
3. Confiscation and provisional measures	PC	• The confiscation regime is not effectively applied. Neither statistics for ML/FT nor for predicate offences (such as drug trafficking, corruption, etc), were provided. • 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. • Ability to freeze/confiscate property relating to FT is limited due to the limitations of the FT offence. • Insider trading/market manipulations are not criminalised, so it is possible to freeze/confiscate in such cases. • There are practical difficulties in identification and tracing of assets, especially because there are no unified databases under federal system. • No clear powers for judges to void illicit acts and contracts.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	• 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. • 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. • 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.
5. Customer due diligence	NC	• 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 traveller 's cheques and credit and purchase card operators are not subject to any AML/CFT measures other than the very basic ones provided by the law. • 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. • 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. • 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. • There is no requirement in law or regulation applicable to all financial institutions to identify and verify the identity of beneficial owners. • There is no requirement for banking and foreign exchange institutions to

Forty Recommendations	Rating	Summary of factors underlying rating
		understand the ownership and control structure of all customers that are legal persons. • 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). • The BCRA Compilation of AML measures only requires to identify the settlers, trustees and beneficiaries of trusts or other legal arrangements when they are used to avoid the process of identifying clients. • 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. • 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. • 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 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. • 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. • 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. • The effective implementation of the requirements that exist is undermined by factors such as: o 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) o 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.
6. Politically exposed persons	PC	• There is no requirement in law, regulation or other enforceable means for financial institutions of the securities and insurance sector to identify and apply enhanced CDD for foreign PEPs. • The approval by the Head of the branch office (local branch) to establish a business relationship with a PEP does not constitute approval by senior management level. In addition, there is no requirement to require such approval when an existing customer becomes a PEP. • Banking and foreign exchange institutions are not required to take reasonable measures to establish the source of wealth of customers or beneficial owners identified as PEPs. The absence of STRs related to foreign PEPs and the low number of STRs submitted on domestic PEPs suggest a lack of effectiveness of the system in place.
7. Correspondent banking	NC	• There are no AML/CFT requirements vis-à-vis cross-border correspondent banking.

Forty Recommendations	Rating	Summary of factors underlying rating
8. New technologies & non face-to-face business	PC	• There is no requirement for financial institutions to take any measures to prevent the misuse of technological developments in ML/TF schemes. • There are contradictory provisions concerning the possibility to establish non-face-to-face business relationships between, the FIU and BCRA rules, and there is no guidance on the enhanced CDD measures to be undertaken (except in the insurance sector). However, the impact of this deficiency seems to be limited given the practice of the private sector to always require the physical presence of the customer to establish a business relationship. Requirements for the insurance and sector are not in OEM, but they constitute guidance.
9. Third parties and introducers	NC	• Whilst in practice financial institutions do rely on third parties to perform some CDD measures, there is no requirement in law, regulation or OEM to regulate the conditions of this reliance.
10. Record keeping	PC	• The AML Law does not require keeping records of transactions, though other laws contain some related provisions. • 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. • 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. • There is no requirement to keep record of business correspondence for 5 years.
11. Unusual transactions	PC	• There is no requirement for financial institutions to examine as far as possible the background and purpose of unusual transactions and to establish their findings in writing. • There is no requirement for financial institutions to keep such findings available for competent authorities and auditors for at least five years. • The lack of effective supervision undermines the effectiveness.
12. DNFBP – R.5, 6, 8-11	NC	• Real estate agents, lawyers and TCSPs are not subject to any AML/CFT requirements. • Dealers in precious stones and metals are not captured satisfactorily by AML Law 25 246. • Only very limited identification and record keeping requirements apply to public notaries, accountants and casinos. However, none of these substantially meet Recommendations 5 and 10. • None of the DNFBP sectors is subject to obligations that relate to Recommendations 6, 8, 9 and 11.

13. Suspicious transaction reporting	NC	• Mutual associations and cooperatives, stock exchange market and stock exchange without market are not subject to reporting obligations.
		• 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 predicates offences, it appears that the current requirements cover 6 categories of the predicate offences.
		• 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.
		• 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.

Forty Recommendations	Rating	Summary of factors underlying rating
		○ 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.
14. Protection & no tipping-off	PC	• The scope of the persons benefiting from the safe harbor provision is not clearly defined. • The prohibition from tipping-off does not cover directors, officers and employees of reporting parties. • There is no sanction available where a reporting entity does not comply with the prohibition of tipping-off.
15. Internal controls, compliance & audit	PC	• There is no measure in law, regulation or other enforceable means to require financial institutions of the securities and insurance sector and other financial institutions not supervised to adopt policies and controls to prevent ML and TF, to set up compliance management arrangements and to train and screen employees. • Banking and foreign exchanges institutions are not required to communicate the policies and procedures against ML/TF in place to their staff. • For banking and foreign exchanges institutions, there is no requirement to give to the compliance officer and other appropriate staff timely access to customer identification data and other CDD information, transaction records and other relevant information.
16. DNFBP – R.13-15 & 21	NC	• Real estate agents, lawyers, TCSPs and dealers in precious metals and stones are not subject to suspicious transaction reporting requirements. • The deficiencies identified under R.13 and SR.IV for financial institutions also apply to DNFBPs • The safe harbor and prohibition from tipping off provisions suffer from the same deficiencies than for financial institutions. • Most DNFBPs are not required to have AML/CFT policies and controls in place, nor compliance officer functions. • None of the DNFBP sectors is required to pay special attention to business relationships and transactions involving persons from or in countries that do not (or insufficiently) apply the FATF Recommendations. • There are serious concerns about the effectiveness of the reporting system as most DNFBPs rarely submit reports.
17. Sanctions	NC	• BCRA: ○ The maximum amount of fine as well as the sanctions already imposed being kept secret by the BCRA, this undermines the dissuasiveness of the sanction regime. ○ The legal basis of the sanction regime is not explicit. • CNV: ○ The CNV does not have any sanction power over agents and brokers. ○ The sanction regime of the CNV is not effective; no sanctions have been imposed, despite the low level of compliance of the sector with AML/CFT provisions. • SSN: ○ The legal basis of the sanction regime is unclear. ○ There is no sanction available for directors and senior management. ○ The range of sanctions is not dissuasive and the sanction regime is not effective.
18. Shell banks	PC	• There are not sufficient statutory provisions preventing shell banks in domestic law. • The legal framework preventing foreign shell banks operate in Argentina is not sufficient.

Forty Recommendations	Rating	Summary of factors underlying rating
		• There is no prohibition on financial institutions from entering into or continuing correspondent banking relationships with shell banks. • Financial institutions are not required to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	• The Recommendation is fully met.
20. Other NFBP & secure transaction techniques	PC	• Argentina has not taken any measures to encourage the development and use of modern and secure techniques for conducting financial transactions. • The Argentinean economy relies heavily on cash, and this trend has increased since the last years.
21. Special attention for higher risk countries	NC	• Financial institutions are not required to give special attention to business relationships and transaction with persons from or in countries which do not or insufficiently apply the FATF requirements. • Although financial institutions are informed by the BCRA and the FIU of the statements issued by the FATF, they are not required to apply enhanced CDD measures in such cases. • There is no explicit requirement to set out in writing the results of the analysis conducted by financial institutions on transactions from or to these countries that have no apparent economic or visible lawful purpose and to keep this results available to competent authorities and auditors. • There is no measure in place to allow the Argentinean authorities to apply appropriate counter-measures when countries continue not to apply or insufficiently apply the FATF Recommendations.
22. Foreign branches & subsidiaries	NC	• There is no requirement for financial institutions of the securities and insurance sector to ensure that their branches and subsidiaries abroad observe AML/CFT measures consistent with Argentinean or FATF requirements. • No financial institution is required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. • Where the minimum AML/CFT requirements of Argentinean and host countries differ, branches and subsidiaries in host countries are not required to apply the higher standard. • Financial institutions are not required to inform their supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local rules.

23. Regulation, supervision and monitoring	PC	• 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.
		• The FIU, which can sanction the non-compliance of financial institutions with their suspicious transaction reporting obligations, has no supervisory powers.
		• 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.
		• 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.
		• 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.
		• There is not sufficient information available regarding the funding of the various

Forty Recommendations	Rating	Summary of factors underlying rating
		financial supervisors. • The AML/CFT Units of the SSN and CNV face resource constraints and their staff is not adequately trained.
24. DNFBP - regulation, supervision and monitoring	NC	• There is no regulatory and supervisory regime in Argentina that ensures that casinos are effectively implementing their AML/CFT obligations. In particular, there is no competent authority designated to supervise casinos. • Internet casinos are not regulated nor supervised for AML/CFT purpose in Argentina. • Other categories of DNFBPs are not subject to any systems for monitoring and ensuring their compliance with AML/CFT requirements.
25. Guidelines & Feedback	PC	• The FIU does not inform reporting entities on the current techniques, methods and trends by providing them typologies which would be tailored for the Argentinean context. • The FIU does not provide reporting entities with specific feedback. • There are no guidelines provided to financial institutions by financial supervisors. • The Guidelines issued by the FIU mostly focus on suspicious transactions reporting obligations and the other AML/CFT measures, such as CDD measures, are often not compliant with the FATF Standards. • There is no guideline issued by other competent authority in the AML/CFT field.
Institutional and other measures		

26. The FIU	PC	• 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.
		• The FIU does not have adequate access to additional information to assist in its analysis functions. This is partly due to secrecy provisions.
		• The FIU has not published reports on ML/FT trends or typologies in Argentina.
		• *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.

27. Law enforcement authorities	PC	• ML offences are not effectively investigated and prosecuted. • There is a low number of ML investigations and prosecutions, and no investigations or prosecutions for FT. • Lack of specific authority to waive or postpone arrest or seizure of criminal proceeds for evidence gather purposes; these actions are not taken in practice.
28. Powers of competent authorities	LC	• Prosecutors and investigators have comprehensive powers to obtain evidence; however, they are not effectively used. • Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession. • There are practical difficulties in identification and tracing of assets.
29. Supervisors	NC	• The FIU has no power to conduct off-site or on-site inspections. • Financial supervisors do not have adequate powers to establish that financial institutions require their foreign branches and subsidiaries to apply R.22 effectively. • SSN: lack of clarity of its power to compel production of documents and to conduct on-site inspections. • CNV: lack of clarity of its power to compel production of documents and to

Forty Recommendations	Rating	Summary of factors underlying rating
		conduct on-site inspections. The CNV has not yet conducted a full on-site inspection. • No supervisory powers over life insurance intermediaries. • Inspection manual are lacking sufficient depth. • The number of specific AML/CFT inspections conducted by BCRA is low regarding the size of the financial sector, and there is no clear information on the importance of AML/CFT component of general inspections conducted by BCRA. CNV has only conducted on-site inspections on brokers against which it does not have sanction powers, and SSN has not conducted any inspections over life insurance intermediaries. The inspections conducted by SSN on life insurance companies are very succinct and done in the framework of general inspections.
30. Resources, integrity and training	NC	FIU: • The number of staff dedicated to the analysis of potential ML/FT cases is low especially in comparison with: ○ The very heavy delay of STRs 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 adequate human resources overall (49 out of 74 positions filled), and lack of adequate resources for the analysis division. • Inadequate training for FIU staff. • An increase in technical capabilities is needed. Law enforcement/ prosecutors: • Insufficient AML/CFT training for all agencies. • UFILAVDIN: staff numbers should be increased and more stability should be provided through permanent contracts. • PFA (Federal Police): Staff numbers, both overall as well as for the personal assets investigations unit are not sufficient; no evidence to assess the adequacy of PFA's budget. • GNA: human resources and budget are not sufficient. Supervisors: • There is no information available regarding the funding of the various financial supervisors. • The AML/CFT Units of the CNV and SSN face resource constraints. • CNV and SSN staff are not adequately trained to effectively perform their functions. Policy makers (National Coordination Representation): • The National Coordination representation should be provided greater authority to perform coordination functions, with a corresponding increase in necessary resources.
31. National co-operation	PC	• Domestic cooperation and coordination, at the policy and operational level, are not working effectively. • There are no cooperation and coordination mechanisms between the Federal authorities and the provinces. • Argentina does not periodically review the effectiveness of AML/CFT measures.
32. Statistics	NC	• Argentina does not review the effectiveness of its systems for combating ML/FT. • No reliable or comprehensive statistics on money laundering prosecutions (or investigations. • No statistics regarding the number of cases and the amounts of property frozen, seized, and confiscated relating to (i) ML, (ii) FT, and (iii) criminal proceeds. • No statistics yet on declarations of outgoing Argentinean currency. • No statistics relating to mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond. • There are no statistics available on AML/CFT on-site examinations conducted by

Forty Recommendations	Rating	Summary of factors underlying rating
		the SSN. • There are no statistics available on the formal requests for assistance made or received by supervisors, whether the requests were granted or refused.
33. Legal persons – beneficial owners	NC	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons because: o There is not yet a functioning national registry of legal persons; registries are maintained separately by the City of Buenos Aires and the 23 provinces. o The provincial registries do not contain updated beneficial ownership/control information, and the provincial controlling authorities have limited ability to obtain it. o Company service providers are not required to collect such information. o Nominee shareholders/members are allowed by Argentina companies law, although jurisprudence indicates otherwise. o It is unclear whether the competent authorities have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control information with regard to previously issued bearer shares.
34. Legal arrangements – beneficial owners	NC	• Competent authorities do not have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements because: o The law does not require the trust contract to identify the settlor. o There is no central registry and trust contracts are not disclosed to the authorities. o While law enforcement agencies have powers to obtain information from financial institutions on legal arrangements, there is minimal information disclosed to financial institutions concerning the beneficial owners (see Recommendation 5) of legal arrangements. o Providers of trust services do not have AML/CFT obligations.
International Co-operation		
35. Conventions	PC	• *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. • *Palermo Convention*: Lack of ML criminal liability for person who committed the predicate offence ("self-laundering") and lack of adequate special investigative techniques. • *CFT Convention*: Limited scope of the terrorist financing offence: limited definition of terrorist organisation; the law does not cover: o Terrorist organisations that exist solely within Argentina. o Collection or provision of funds to be used for a terrorist act outside of the context of the terrorist organisation as defined in Argentina. o 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).
36. Mutual legal assistance (MLA)	PC	• 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 inability to respond to requests involving assets or property of corresponding value. • 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. • MLA cannot be provided in relation to insider trading/market manipulation since these offences are not criminalised. • Lawyers and notaries cannot provide information relating to acts that came to their knowledge through their office or profession.

Forty Recommendations	Rating	Summary of factors underlying rating
37. Dual criminality	C	
38. MLA on confiscation and freezing	PC	• 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. • 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. • Inability to respond to requests involving assets or property of corresponding value.
39. Extradition	PC	• The effectiveness of the system for responding to extradition requests for ML 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. • Dual criminality and the limitations on some ML acts limit the possibility of granting some extraditions. • The absence of simplified and direct procedures for extradition.
40. Other forms of co-operation	NC	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. • 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. 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.

Nine Special Recommendations	Rating	
SR.I Implement UN instruments	PC	• CFT Convention: limited scope of the terrorist financing offence (see R.35). • UN Security Council Resolutions: existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) are ineffective (see SR.III).
SR.II Criminalise terrorist financing	PC	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. • 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

Nine Special Recommendations	Rating	
		organisation. • 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). (See examples in Recommendation 35). • No criminal liability for legal persons, and there is no fundamental principle of domestic law that prohibits this. • The effectiveness of the provisions has not yet been demonstrated.
SR.III Freeze and confiscate terrorist assets	NC	• 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. • The effectiveness of Argentina's existing measures to implement S/RES/1267(1999) and S/RES/1373(2001) has not been demonstrated. • Laws and procedures for implementing S/RES/1373(2001) rely on ordinary criminal procedures which do not ensure that an effective freezing action can to 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. • No measures for monitoring or sanctioning for non-compliance with the obligations of SR.III. • 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. • Lack of adequate guidance to the financial and DNFBP sectors. • 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). • The effectiveness of Argentina's measures for unfreezing the funds/assets of someone inadvertently affected by a freezing mechanism cannot be assessed. • No specific provisions for authorising access to funds/assets in accordance with S/RES/1452(2002). • Lack of power to freeze property of corresponding value. • Limited role of the FIU in freezing due to its dealing with the limited definition of terrorist financing.
SR.IV Suspicious transaction reporting	NC	• 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 characteristics of suspicious transactions (unusual, complex, no economic justification) are not broad enough to satisfactorily capture TF cases. • The scope issues of R.13 also apply to SR.IV. • Lack or insufficient supervision and of imposed sanctions and lack of awareness of TF threats negatively affect the effectiveness of the system. • The provisions of the FIU Resolutions 125/2009 and the BCRA Communication A 4273 are inconsistent and negatively impact effective reporting. • The FIU has never received any STR related to terrorist financing, which demonstrates the lack of effectiveness of the regime.
SR.V International co-operation	PC	<u>Applying R.36-39:</u> • 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

Nine Special Recommendations	Rating	
		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. 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.
SR.VI AML requirements for money/value transfer services	NC	• While exchange houses are licensed by the BCRA and subject to some AML/CFT requirements, all the other money or value transfer companies, which represent a large part of the market, are not required to be licensed or registered, and are not regulated or supervised in Argentina. • Regarding exchange houses, the requirements and their implementation for Recommendations 5, 6, 7, 8, 9, 10, 13, 15, 21, 22 and SRV.II suffer from the same deficiencies than those that apply to banking institutions and which are described in section 3 of this report. • The requirements and their implementation for Recommendations 23 and 17 suffer from the same deficiencies than those that apply to banking institutions and which are described in section 3.10 of this report.
SR.VII Wire transfer rules	PC	• There are no requirements for money remittance companies and postal services rendering transfer of funds. • There are no requirements applicable for occasional wire transfers made by the banking sector. • There is no requirement for banks and foreign exchange institutions to adopt a risk-based approach to handle wire transfer without the full information on the originator, which might encourage the use of non-regulated systems. • Financial institutions are not required to restrict or terminate business relationship with financial institutions not complying with SR.VII requirements. • Lack of proven effectiveness of the measures related to cross-border wire transfers due to the very recent introduction of the requirements on cross-border wire transfers performed by banks and exchange institutions.
SR.VIII Non-profit organisations	NC	• Argentina has not reviewed the adequacy of its domestic laws and regulations that relate to non-profit organisations; no periodic reassessments. • Argentinean authorities do not have the capacity to obtain timely information on the activities, size and other relevant features of its non-profit sector for the purpose of identifying the features and types of non-profit organisations (NPOs) that are at risk of being misused for terrorist financing by virtue of their activities

Nine Special Recommendations	Rating	
		or characteristics. • No requirements for mutual associations for the requirements of SR.VIII. • The Argentinean authorities have not undertaken general outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. • There is not adequate information regarding the founders for associations, or information on those who control or direct the activities of foundations and associations, including senior officers, board members, and trustees. • There are not adequate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. • There is not sufficient information gathering and investigative powers; domestic cooperation, coordination, and information sharing, or full access to information on the administration and management of a particular NPO. • No specific points of contact or procedures for responding to international requests regarding NPOs.
SR.IX Cross Border Declaration & Disclosure	PC	• Mail and containerised cargo: no provisions relating to incoming cash or BNI; no provisions relating to the export of Argentinean currency and BNI. • For outgoing currency/BNI, the requirements do not include foreign negotiable instruments (other than travellers' checks), or Argentinean negotiable instruments, bearer or otherwise. • There is no authority to seize or restrain currency/BNI when there is a suspicion of ML/FT. • There is no requirement that the amount of currency/negotiable instruments or the identification of the bearer be recorded when there is a suspicion of ML/FT. • There would be no ability to apply sanctions if a person makes a truthful declaration but the authorities suspect that the currency could be related to terrorist financing or money laundering. • Inability to seize and confiscate property of corresponding value, and the ability to confiscate property related to terrorist financing is limited to the limitations of the FT offence. • For a cross-border transportation that is related to persons/entities designated pursuant to S/RES/1267(1999) and S/RES/1373(2001), these measures are very limited, and suffer from the deficiencies noted above in section 2.4 of this report.

Table 2: Recommended Action Plan to improve the AML/CFT system

	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional	
2.1 Criminalisation of Money laundering Measures (R.1 & R.2)	• *Strengthening the autonomy of the ML offence.* Argentina should strengthen the autonomy of the ML offence relative to the predicate offence, so that jurisdictional and procedural requirements do not interfere with the consistent prosecution of money laundering cases. • *Proper treatment of concealment in relation to other ML offences*. The ML as a form of concealment produces difficulties in prosecuting and convicting for these offences and this should be rectified. • *Regulation of the all acts of UN Vienna and Palermo Conventions in the ML crime*. The legislation should be amended to specifically cover possession of proceeds of crime. "Proceeds of crime" should also apply to assets that indirectly represent the proceeds of crime with regard to acquisition and concealment offences. • *Elimination of the exemption to relatives or friends in all the cases of ML acts required under the standards.* In spite of the modifications of Law 25 246 law (with Law 26 087), there are still broad exemptions for family and friends under section 277; these should be removed. • *Self-laundering:* Criminal liability for money laundering should also be made to apply to the person who commits the predicate offence. Such self-laundering should be established in the law to cover many cases that the investigative authorities recognised as occurring frequently. • *Conspiracy:* The law should cover conspiracy in the same way that it is now treated in the narcotics law. • *Insider trading and market manipulation:* These offences should be incorporated into the Criminal Code or other criminal laws, so that they would become predicate offences for money laundering. • *Criminal liability for legal persons:* Argentina should provide for criminal liability of the legal persons as there is not a fundamental principal of domestic law that prevents this. • Available criminal penalties for acquisition, concealment, or disguising, as well as conversion or transfer of proceeds of crime below the 50 000 threshold, should be increased.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Terrorism and FT should be broadened so that the current limitations on the terrorist organisations are removed. Argentina should also specifically criminalise the collection or provision of funds to be used (for any purpose) for a terrorist act or an individual terrorist outside of a terrorist organisation and ensure that all the acts of terrorism mentioned in Article 2(1)(a) and (b) of the CFT Convention are clearly covered. • Argentina should introduce criminal liability of the legal persons in FT. As a starting point, Argentina could implement an effective system of administrative or civil liability. • Argentinean authorities should more proactively investigate, and if necessary, prosecute FT activities.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The law should be amended to recognise the seizing and confiscation for property of corresponding value as well as the indirect proceeds of crime, including income, profits or other benefits from the proceeds of crime. • Authorities should be provided increased resources to identify and trace assets, such as the creation of a central database with real estate assets. • Judges should be provided powers to void illicit acts and contracts.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Argentina should implement effective laws and procedures to take freezing action pursuant to S/RES/1267(1999) and S/RES/1373(2001). Such measures should include a rapid and effective mechanism for examining and giving effect to the requests of other countries in the context of S/RES/1373. • Guidance should be issued to all financial and DNFBP sectors on how, in

	Recommended Action (listed in order of priority)
	practice, to meet these obligations. • Argentina should ensure that the supervisory authorities, in all financial and DNFBP sectors, routinely monitor for compliance and have the authority to apply appropriate sanctions to both natural and legal persons. • Argentina should have specific regulation in matter of communication of freezing and unfreezing to the financial institutions. Argentina should also implement effective and publicly-known procedures for considering delisting requests, unfreezing the funds/assets of persons inadvertently affected by a freezing mechanism, and authorising access to funds/assets pursuant to S/RES/1452(2002). • Argentina should broaden its definition of terrorist financing and provide criminal judges the authority to freeze property of corresponding value, in order to freeze more comprehensively the funds of terrorist related funds in all circumstances.
2.5 The Financial Intelligence unit and its functions (R.26)	• The limitation introduced by Article 6 of Law 25 246 (*i.e.,*a limited list of crimes that the FIU is empowered to examine and process) should be rectified; the FIU's authority should be expanded to be able to receive, analyse, and disseminate suspected money laundering related to the remaining 14 designated categories of offences as well as other crimes in the Criminal Code, which are predicate offences for money laundering in Argentina. This should also include the authority to receive and process suspected cases of the acquisition, concealment, and disguising proceeds of crime. • Guidelines to reporting parties should be developed over time and in a more timely way. • The FIU should also develop general and specific feedback to reporting parties. • The lack of a legal basis to supervise and enforce for AML/CFT obligations should be addressed in the law. • Obstructions and impediments in the exchange of information among national agencies should be removed in order to provide more timely access to information, and clear instructions should be sent to competent authorities when exchanging information • The FIU should improve significantly its annual reports sent to the National Congress. The lack of important information (such as those that could be provided maintaining important statistics; or those that should be provided to explain the delay in the analysis activity) has a negative impact on the annual reports on its activities that FIU submits.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Argentinean authorities should more proactively pursue ML offences and the proceeds of crime in addition to predicate offences. • Knowledge on trends, typologies and modus operandi should be communicated to all parties involved in AML efforts. • Argentina should remove the professional secrecy provisions that prevent lawyers and notaries from providing information to appropriate law enforcement authorities upon appropriate authority. • Argentina should consider providing law enforcement authorities with a broader range of special investigative techniques. • Argentina should consider adopting more effective mechanisms to reduce the compartmentalisation of information and facilitate the exchange of information.
2.7 Cross Border Declaration & Disclosure (SR.IX)	• The Customs, the FIU and other law enforcement agencies should improve the coordination to work more closely and permanently to investigate significant cash-smuggling cases, as such currency may be the proceeds of criminal conduct committed in the country of origin. • The Customs Authority should be given clear authority to retain, seize or confiscate currency and BNI when the authorities suspect that the currency can be possible related to money laundering or terrorist financing. In the same frame, it should also consider improving specific training to provide its personnel with higher capacities to deal with the

	Recommended Action (listed in order of priority)
	identification of money possibly linked to terrorist financing activities, persons, or organisations. • The requirements for declaring outgoing currency/BNI, should be expanded to include foreign negotiable instruments (other than travellers' checks), as well as Argentinean negotiable instruments, bearer or otherwise. • There should also be a requirement to record the amounts of currency/BNI when there is a suspicion of ML/FT, with a corresponding ability to share this information domestically and internationally. • Argentina should also enhance its ability to seize and confiscate currency and BNI relating to the financing of terrorism and instrumentalities used in money laundering offences as well as property of corresponding value. • Argentina should ensure that cross-border movements of currency and BNI through the mail and containerised cargo are fully covered by the requirements of SR.IX.
3. Preventive measures – Financial institutions	
3.1 Risk of money laundering or terrorist financing	• Argentina should carry out an AML/CFT risk assessment of the overall financial sector.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<u>In relation to Recommendation 5:</u> • Argentina should take substantive actions in two main areas: i) the structure and the content of the legal framework requiring CDD measures; and ii) the need to ensure the enforceability of the texts issued by the FIU and the financial regulators (CNV and SSN). • Argentina should remedy the instability of the AML/CFT preventive regime, as well as the lack of clarity for the financial institutions on the types of CDD measures they shall implement. • Argentina should revise the scope of financial institutions subject to AML/CFT requirements as defined by Law 25 246, by adding *mutuales*, *cooperativas*, the stock exchange market and the stock exchange without market. It should clarify the coverage of the remittance companies. • Argentina should abrogate the possibility foreseen in article 21 of the Law 25.246 to establish a monetary threshold below which identification and verification of regular customers would be exempted and it should consider establishing a threshold for occasional customers. Argentina should provide that no threshold would be acceptable where there is suspicion of ML/TF. It should also specifically require conducting CDD measures when a financial institution has doubt about the veracity of the previously obtained identification data. • A specific requirement to verify the identity of a customer acting on behalf of someone else should also be added. • Argentina should introduce in the AML Law or in regulation specific requirements on the identification and verification of the beneficial owners. The notion of natural person exercising ultimate ownership or control over a legal person should be clearly required and defined to ensure a proper implementation by the reporting parties. It should also be clarify that in case a legal person, the identification and verification of the beneficial owner should always be required. Financial institutions should be required to verify the legal nature of legal persons. • Provisions concerning on-going due diligence are currently set out in FIU resolutions. Argentina should include a requirement in law or regulation to conduct on-going monitoring on the business relationship. • Argentina should reorganise its secondary rules and clearly set out which agency has AML/CFT regulatory competences to avoid duplication of agencies requirements AML/CFT measures, which can be contradictory. An intense coordination effort to allow the reporting parties to be subject to a text of reference with all their obligations, currently required by in the one hand the FIU and on the other hand their sectoral regulators. • Argentina should also streamline the nature of identification data to be requested of customers.

	Recommended Action (listed in order of priority)
	• In addition to banks and foreign exchange institutions, other financial institutions should also be required to apply enhanced CDD measures for higher risk customers and business relationships. Argentina should consider require financial institutions to conduct simplified or reduced CDD measures for lower risk customers or business relationships, but not allow for exemption of CDD measures in these cases. There should also be a prohibition to conduct simplified CDD measures where there is ML/TF suspicion. • Argentina should clarify when identity data of customer should be verified. • Financial institutions should not be allowed to open an account, commence of business relationship or perform transactions when adequate CDD measures have not been conducted. They should also be required to terminate the business relationship when they fail to satisfactory complete CDD measures. • Argentina should adopt clear rules governing the CDD treatment of existing customers at the time detailed CDD requirements were brought into force. • Argentina should ensure that the AML/CFT measures are effectively implemented by financial institutions, by ensuring an appropriate monitoring of the compliance of financial institutions with their obligations and by imposing sanctions for failure to comply with these measures. <u>In relation to Recommendation 6:</u> • All reporting parties should be required to conduct enhanced CDD measures as defined by Recommendation 6 in relation to foreign PEPs. • BCRA should appropriately define what constitute approval by senior management and make an explicit requirement to obtain the approval of the senior management to continue the business relationship when a customer becomes a PEP. BCRA should also require financial institutions to take reasonable measures to establish the source of wealth of PEPs. • Argentina should harmonise the provisions set out by the BCRA and the FIU in relation to PEPs and ensure their effective implementation. <u>In relation to Recommendation 7:</u> • Argentina should implement Recommendation 7. <u>In relation to Recommendation 8</u>: • Financial institutions should be required to have policies in place to prevent the misuse of technological development in AML/CFT schemes. It should also be clarified if it allows establishing a business relationship without the physical presence of the customer and if so, authorities should provide for some rules on the nature of enhanced CDD to be taken.
3.3 Third parties and introduced business (R.9)	• Argentina is urged to introduce in law, regulation or OEM the requirements set out in FATF Recommendation 9, regulating the obligations that must be met by the third parties and the financial institutions to allow such a reliance.
3.4 Financial institution secrecy or confidentiality (R.4)	• Article 14 of Law 25 246 in order to guarantee that no private or public institution can invoke secrecy rules to the FIU exercising its functions, and include the stock exchange market and stock exchange without market among the reporting entities. • Argentina should introduce legal provision clarifying that, upon request of the FIU, CNV can demand information to all entities under its supervisory and regulatory powers and provide it to the FIU without violating secrecy rules or alternatively incorporate the FIU to the entities to which Caja de Valores cannot oppose the secrecy. • Argentina is encouraged to introduce the draft amendment into the AML Law to eliminate the current restrictions on information exchange between the FIU, BCRA, CNV, SSN and their foreign counterparts. Provision allowing for a wider exchange of information amongst domestic agencies should also be incorporated.

	Recommended Action (listed in order of priority)
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	In relation to Recommendation 10: • Argentina should include in article 21 of Law 25 246 or in regulation an express requirement to keep records of all conducted transactions and business correspondences. An explicit mention to the fact that all records should be kept for 5 years should also be introduced in law or regulation. • Law, regulation or OEM should also specify that transactions should be recorded in a sufficient way to allow for their reconstruction. In relation to Special Recommendation VII: • Argentina is urged to regulate and supervise money remittance companies and postal services, in particular to submit them to effective requirements in relation to SR.VII. • Argentina should ensure that occasional domestic wire transfers made by banks are subject to SR.VII requirements and equally cover domestic wire transfers made by foreign exchange houses. The system would also benefit from a clearer requirement for intermediary institutions to maintain the full originator information in the payment chin. BCRA should also consider that the procedures that the banks and foreign exchange houses should apply detect wire transfer without the full information on the originators and remedial measures should be taken in such cases should be risk-based.
3.6 Monitoring of transactions and relationship (R.11 & 21)	In relation to Recommendation 11: • Argentina should introduce a direct requirement for all financial institutions to keep in writing the results of the analysis of unusual or complex transactions, and to make them available to competent authorities and auditors for at least 5 years. • Argentina is urged to introduce appropriate and effective supervision for all financial institutions. In relation to Recommendation 21: • Argentina should introduce in law, regulation or OEM provisions to directly require financial institutions to pay special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Of these transactions have no apparent economic or lawful purpose, they should be examined and writing findings should be available to competent authorities and auditors. • Argentina is also urged to develop a set of counter-measures against countries that continue not to apply or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	In relation to Recommendation 13: • Argentina should ensure that all financial institutions conducting financial activities as defined by the FATF are subject to suspicious transaction reporting obligations. In addition, Argentina is asked to urgently revise the scope of the reporting obligations in order to ensure that reporting entities are required to report when they suspect or have reasonable ground to suspect that funds are the proceeds of all offences which are required to be included as predicate offences under Recommendation 1. • Argentina should also empower the FIU to receive and analyse all cases of ML from proceeds of all designate categories of predicate offences. • Argentina is called to increase the awareness of reporting entities of their obligations and impose sanctions for failure to report STR. In relation to Special Recommendation IV: • Argentina should urgently explicitly require in law or regulation reporting entities to report all transactions suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisation or those who finance terrorism. In relation to Recommendation 14: • Argentina should consider defining more precisely who the persons benefiting from the safe harbour provision are. It should also amend the AML Law to ensure that directors, officers and employees of reporting

	Recommended Action (listed in order of priority)
	parties are subject to the prohibition of tipping-off and foresee sanctions for disclosure of confidential information. In relation to Recommendation 25: • The FIU should consider producing typology cases to assist the Argentinean reporting entities to detect suspicious transactions. It should also consider providing specific feedback for reporting parties.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	In relation to Recommendation 15: • Argentina should require in law, regulation or OEM financial institutions from the securities and insurance sector to adopt internal policies and procedures to prevent ML and TF, to have in place compliance management functions and to operate audit of these procedures. These financial institutions should be required to communicate those policies and procedures to their employee and compliance officers should explicitly have access on a timely manner to relevant information. In relation to Recommendation 22: • Argentina should require all financial institutions to ensure that their branches and subsidiaries abroad apply AML/CFT measures consistent with the international standards, when the local rules allow for it. • In the event where a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local rules, those financial institutions should be required to inform Argentinean authorities. Financial institutions should also be required to pay special attention that the principle is also observed when branches and subsidiaries are located in countries which do not or insufficiently apply the FATF Recommendations.
3.9 Shell banks (R.18)	• The BCRA should address several deficiencies identified in Communication A 5006, in particular in relation to the concept of meaningful mind and management. • BCRA should have the authority to withdraw a licence, in the event a bank already established prior to the introduction of the Communication A 5006 would appear to operate as a shell bank. • Argentina should also prohibit its financial institutions from entering into, or continuing, correspondence banking relationships with shell banks and require financial institutions to satisfy themselves that the respondent foreign institutions in a foreign country do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	In relation to Recommendation 23: • Argentina should ensure that all financial institutions are supervised for AML/CFT purposes and should more clearly organise the repartition of supervisory competencies between the supervising authorities in order to avoid overlap. It should also consider its various sectoral laws in order to make it more specific that these financial supervisors are also competent to establish rules to combat ML/TF and to supervise and sanction the compliance of financial institutions with these rules. • Argentina should review the AML/CFT supervisory powers of the financial supervisors in order to create and strengthen the quality of the fit and proper tests. In particular, the CNV should have procedures in place to licence entities of the securities sector, while applying fit and proper tests and procedures of the BCRA and SSN should be reinforced to prevent criminals or other associates to take control or to hold management position of a banking or insurance institution. In particular, SSN should urgently start to licence supervise life insurance intermediaries. • Argentina should also clarify and strengthen the supervisory powers of the financial supervisors to ensure they can compel production or obtain access to all necessary documents to make sure they can enter the premises. • Argentina should also consider increasing the level of the fines in order to ensure their dissuasiveness. The authorities could also consider their existing powers, *i.e.,* CNV to make public statements which are valuable to warn the public and educate the rest of the sector.

	Recommended Action (listed in order of priority)
	• Argentina is urged to remedy the resource constraints that SSN and CNV are facing, both in terms of staff and training. In addition, it should be strengthen the on-site inspections manual of these supervisors.
3.11 Money or value transfer services (SR. VI)	• Argentina is recommended to urgently regulate and supervise its remittance sector and to ensure that these entities are effectively subject to AML/CFT requirements, including the requirements for SR.VI.
4. Preventive measures – Non-Financial Business and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Argentina should revise its AML/CFT Law 25.246 in order to submit to AML/CFT requirements all DNFBPs, in particular the dealers in precious metals and stones, lawyers, real estate agents and TCSPs. • It should adopt enforceable rules to impose more specific customer identification and record keeping requirements, as well as requirements in relation to R.6, 8 and 11.
4.2 Suspicious transaction reporting (R.16)	• Reporting obligations should be extended to all categories of DNFBPs and special effort should be made by the FIU to inform all DNFBPs of their obligations, in particular by giving them feedback on their STRs. The Argentinean authorities should also strengthen the safe harbour provision and the prohibition from tipping off. • DNFBPs should be required to pay special attention to business relationships or transactions with persons from countries that insufficiently apply the FATF Recommendations. All DNFBPs should also be required to have AML/CFT policies, procedures and controls in place, and this should be monitored.

4.3 Regulation, supervision and monitoring (R.24-25)	• Argentina is urged to take the following actions:
	  • Argentina should implement an AML/CFT regulatory and supervisory regime for casinos.
	  • Other categories of non financial business and professions should be subject to AML/CFT requirements and to an effective oversight system, conduct either by Argentinean authorities or by their self regulatory bodies if they exist.
	  • The FIU should revise its Resolutions addressed to DNFBPs in order to ensure that their measures are compliant with the FATF Standards. Guidelines other than related to STR must be established.

4.4 Other non-financial businesses and professions (R.20)	• Argentina should ensure that the AML/CFT obligations of other non-financial businesses and professions are effectively implemented. • Argentina is urged to immediately take measures to discourage the use of cash for large financial transactions and it should also consider taking measures to encourage the development and use of modern and secure techniques for conducting transactions that are less vulnerable to ML.
5. Legal Persons and Arrangements & Non-profit Organisations	

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Argentina should implement requirements to ensure that information on the beneficial ownership and control of legal persons is readily available to the competent authorities in a timely manner. These measures should include:
	  • Centralising all companies and corporations information on a federal register.
	  • Facilitating accurate information regarding shareholders and beneficial owners.
	  • Requiring company service providers to maintain records of the beneficial ownership and control of legal persons.
	  • Abrogating or amending sections 34 and 35 of Law 19 550, which allow nominees.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Argentina should broaden the requirements on beneficial ownership so that information on ownership/control is readily available in a timely manner. This could include organising a trust register which would provide the authorities timely access to accurate information related to the deeds and expanding AML/CFT obligations for all those who provide trust services

	Recommended Action (listed in order of priority)
5.3 Non-profit organisations (SR.VIII)	• Conduct a review of the domestic laws and regulations that relate to NPOs, and review the activities, size and other relevant features of the sector for the purpose of identifying the features and types of NPOs that are at risk of being misused for FT by virtue of their activities or characteristics. This is especially important given that NPOs are registered separately by the 24 jurisdictions, and there is very little information about the NPO sector outside of the City of Buenos Aires. • Conduct regular outreach with the sector to discuss scope and methods of abuse of NPOs, emerging trends in FT and new protective measures, and the issuance of advisory papers and other useful resources regarding FT prevention; • Ensure adequate monitoring, investigation, and sanctioning powers for NPOs throughout Argentina. • Increase cooperation mechanisms with the provinces in order to be able to investigate and take prompt action when required for NPOs suspected of being involved of FT. • Continue work to unify within the IGJ the registries of the 23 provinces in order to facilitate information gathering and exchange on NPOs.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Argentina should improve its mechanisms for cooperation and coordination, and review the effectiveness of AML/CFT measures in Argentina, in order make improvements in this area. • The National Coordination Representation should be provided more authority and resources in order to coordinate more effectively with the Federal and provincial authorities
6.2 The Conventions and UN special Resolutions (R.35 & SR.I)	• For the Vienna and Palermo Conventions, Argentina should fully cover the use of proceeds of crime, and remove all the exemptions for criminal liability relating for family and friends regarding acquiring, concealing and disguising proceeds of crime. For the Palermo Convention, Argentina should also broaden the ML offence so that it also applies to the perpetrator of the predicate offence ("self-laundering) and measures for controlled delivery and for other special investigative techniques as undercover operations. • The Terrorism Financing Convention must be fully implemented with regulating the FT crime with a wide range of subjects with criminal responsibility under the section 213 quarter in relationship with the terrorism crime regulated in the Criminal Code. The scope of the FT and terrorism arising from must be greatly extended. • The UN Resolutions relating to terrorism must also be fully implemented, with an effective system that permits freezing without delay of all type of funds relating to any kind of terrorism or associated persons
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• The authorities should quickly establish an effective system of statistics that include the number of requests, time required for responding, origin and objectives of the requests, and the results, in order to evaluate the effectiveness of the system and make improvements as necessary. • The current requirement for dual criminality for executing freezing, seizure or confiscation requests poses an important limitation to providing assistance; to ensure more effective assistance in matter of freezing, seizure or confiscation in AML/CFT international request, it is necessary to improve the scope of the ML and FT offences in the Argentina's legislation related to offences that are not currently covered in Argentina. • Argentina should broaden its legislation to allow for provisional measures and confiscation of property of corresponding value to permit assistance for these issues. Argentina should also reduce the steps and authorities involved in processing requests for international assistance, to improve the timeliness and effectiveness of responses. The Asset Forfeiture fund established under section 27 of Law 25 246 should also be implemented. • Argentina should remove the professional secrecy provisions that prevent lawyers and notaries from providing information to appropriate law

	Recommended Action (listed in order of priority)
	enforcement authorities upon appropriate authority
6.4 Extradition (R.37, 39 & SR.V)	• Argentina should consider reducing the steps (linked with the administrative, judicial and political or executive procedures) and authorities involved in executing extradition requests, to improve timeliness and effectiveness. • The Argentinean authorities must also establish quickly an effective system of statistics that includes the number of extradition requests, time required for responding, origin and objectives of the requests, and the results, in order to evaluate the effectiveness of the system and make improvements as necessary. • Argentina should expand the scope of the ML offence and especially the scope of the FT offence in order for dual criminality not to prevent the extradition for those aspects of ML/FT that are not currently crimes in Argentina. • The law should also contain a simplified procedure of extradition in place by allowing direct transmission of extradition requests between appropriate ministries.
6.5 Other forms of co-operation (R.40 & SR.V)	• Argentina is called to urgently take all the necessary provisions to create clear and effective gateways, mechanisms or channels that will facilitate and allow for prompt and constructive exchange of information directly between supervisory counterparts. In particular, Argentina should urgently amend its appropriate laws to expressly lift the confidentiality clause of the 3 supervisors in case of international exchange of information and to organise the conditions to exchange information.
Other issues	
7.1 Resources and statistics (R.30 & 32)	In relation to Recommendation 30: • FIU: The FIU should increase its analytical staff, AML/CFT training for analytical and other employees, and technical resources to receive STRs such as the SIAIOS (Support Integrated System for Suspicious Transaction Investigation) project in order to improve the FIU's analytical capabilities. • Law enforcement/prosecutors: Argentina should intensify training at all levels of the criminal justice system and police forces in order to make money laundering and asset tracing a regular part of criminal cases. Basic courses on money laundering, terrorist financing and confiscation should be incorporated into the basic curriculum of all prosecutors and federal police agents, not just those specialised in money laundering. • Comprehensive CFT programmes should be developed. • UFILAVDIN: human resources for this unit should be increased and the temporary nature of the staff contracting should be rectified. • PFA: The total number of staff should be increased. • Gendarmerie: This budget is should be increased. • Prefectura: Argentina may need to consider increasing staffing and funding for this entity. • Supervisors: Argentina should remedy the resources constraints faced by CNV and SSN and should ensure that their staff is adequately trained to perform their functions. In relation to Recommendation 32: • Argentina should review on a regular basis the effectiveness of its system for combating ML/TF. • The FIU should improve the quality of statistics which prepared by adding important information: statistics such as the quality, the accuracy and the completeness of the STRs received; how many times the FIU had to ask the reporting parties to send additional elements; how long an STR is filed before it is fully analysed (both for domestic and International STRs); how long an STR analysis takes (both for domestic and International STR); should be maintained in order to concretely understand and the improve the effectiveness of the system. • SSN should maintain annual statistics on the onsite examination relating

	Recommended Action (listed in order of priority)
	to AML/CFT and any sanctions applied.
7.2 Other relevant AML/CFT measures or issues	-
7.3 General framework – structural issues	-

Table 3: Authorities' Response to the Evaluation

Country Comments
Argentina informs that the FIU has entered in a new reinforced phase of institutional consolidation, and therefore implementing all the competences that Law 25 246 confers, according to a new and broader interpretation of the mentioned Law. Since February 2010, the FIU is carrying out on-site inspections to the legally bound parties (Section 13, subsection 1 and Section 14, subsections 7 and 4), as per the application of Law 25 246 and FIU Resolutions (Section 14, subsection 10), imposing sanctions for non-compliance to any obligation to report (Section 14, subsection 8, and Section 24). Moreover, the FIU is acting as plaintiff in judicial cases and has received requests by the Judges to carry out on-site supervision as a judicial agent/expert.

ANNEXES

ANNEX 1: LIST OF ABBREVIATIONS

Abbreviation (and Spanish title when indicated)	English Translation
ABA: Asociación de Bancos de la Argentina	Association of Banks of Argentina (private banks with international capital)
ABAPPRA: Asociación de Bancos Públicos y Privados de la República Argentina	Association of Public and Private Banks of the Republic
ABE: Asociación de la Banca Especializada	Association of Specialised Banks
ADEBA: Asociación de Bancos Argentinos	Association of Argentinean Banks (private banks with Argentinean capital)
AFIP: Administración Federal de Ingresos Públicos	Federal Administration of Public Revenue
AML	Anti-Money Laundering
AML Law	Anti-Money Laundering Law 25.246
ARS	Argentinean peso
BCRA: Banco Central de la República Argentina	Central Bank of Argentina
CADECAC: Cámara Argentina de Casas y Agencias de Cambio	Argentinean Association of Exchange Houses and Agencies
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CNV: Comisión Nacional de Valores	National Securities Commission
CRN: Coordinación Representación Nacional ante el GAFI - GAFISUD & LAVEX/CICAD/OEA	National Coordination Representation for FATF, GAFISUD and OAS/CICAD
CTR	Currency Transaction Report
DNFBPs	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FI	Financial institution
FIU (IUF)	Financial Intelligence Unit
FT	Financing of terrorism
GAFISUD	Grupo de Accion Financiera de Sudamérica
GNA: Gendarmería Nacional Argentina	Argentinean National Gendarmerie

IGJ: Inspección General de Justicia	General Inspection of Justice (also known as "Superintendency of Corporations")
ML	Money Laundering
MLA	Mutual Legal Assistance
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
MRECIC: Ministerio de Relaciones Internacionales, Comercio Internacional y Culto	Ministry of Foreign Affairs, International Trade and Worship
NGO	Non Governmental Organisation
NPO	Non-Profit Organisation
OA: Oficina Anticorrupción	Anti-Corruption Office
OECD	Organisation for Economic Co-operation and Development
Palermo Convention	2000 UN Convention against Transnational Organised Crime
Para.	Paragraph
PEP	Politically Exposed Person
PF: Policía Federal	Federal Police
PF: Prefectura Naval	Coast Guard
PSA: Policía de Seguridad Aeroportuaria	Airport Security Police
SEDRONAR: Secretaría de Programación para la Prevención de la Drogadicción y la Lucha contra el Narcotráfico	Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking
SR	Special Recommendation
S/RES/1267(1999)	United Nation Security Council Resolution 1267 (1999)
S/RES/1373(2001)	United Nation Security Council Resolution 1373 (2001)
SRO	Self Regulatory Body
SSN: Superintendencia de Seguros de la Nación	Insurance Authority of the Nation
SsPC: Subsecretaria de Política Criminal	Subsecretariat of Criminal Policy
STR	Suspicious Transaction Report
UFILAVDIN : Unidad Fiscal de Lucha contra el Lavado de Dinero :	Fiscal Unit for Combating Money Laundering
UIF: Unidad de Información Financiera	Financial Information Unit (FIU)
UN	United Nations
UNAC	United Nations Convention Against Corruption
Vienna Convention	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

ANNEX 2: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION - MINISTRIES, OTHER GOVERNMENT AUTHORITIES OR BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHERS.

Government agencies

National Coordination Representation (Ministry of Justice, Security, and Human Rights)	International Cooperation Directorate – Ministry of Justice, Security, and Human Rights
UFILAVDIN (Fiscal Unit for Combating Money Laundering, Attorney General's office)	FIU (Financial Information Unit—Unidad de Información Financiera)
SEDRONAR (Secretariat of Programming for the Prevention of Drug Addiction and Fight against Drug Trafficking	IGJ (Inspección General de Justicia)
Anti-Corruption Office	Provincial Directorate of Legal Persons, Ministry of Justice, Province of Buenos Aires BCRA (Central Bank of Argentina)
Presidency of the Nation	CNV (National Securities Commission)
Subsecretariat of Criminal Policies, Ministry of Justice, Security, and Human Rights	SSN (Insurance Authority of the Nation)
Argentinean Federal Police	AFIP (Federal Administration of Public Revenue)
Argentinean National Gendarmerie	Working Group on AML/CFT, Ministry of Economy and Public Finance
Argentinean Coast Guard	Lotería Nacional (National Lottery)
Airport Security Police	Buenos Aires Provincial Lottery
Ministry of Foreign Affairs, International Trade and Worship	

Industry bodies and private sector

ADEBA (Association of Argentinean Private Banks)	Western Union
ABA (Association of Argentinean Banks)	CADECAC (Argentinean Association of Exchange Houses and Agencies)
ABAPRA (Association of Public and Private Banks of Argentina)	Alhec Tours S.A.
ABE (Specialised Bank Association)	Antonio Di Giorgio S.A.
Banco Nación	Banco de Valores
Standard Bank	Banco Patagonia
Banco Santader Río	Argentinean Association of Bingo Rooms
Banco Macro	Argentinean Association of Lotteries, Sports Lotteries and state-owned Casinos
Banco Credicoop	World Games S.A.
Allaria Ledesma y Cía, Sociedad de Bolsa S.A.	Bingo Pilar S.A.
Raymond James Argentina, Sociedad de Bolsa S.A.	Star Games S.A National Games
Metlife	Federal Council of Argentinean Notaries
La Meridional	Professional Council of Economic Sciences
Ingeseg S.A.	Real Estate Association of Argentina
Latin Express	Jewellery Companies Association of Argentina