

CFATF



GAFIC

## Mutual Evaluation Report

Anti-Money Laundering and Combating the  
Financing of Terrorism (ALD/CFT)

August 10, 2009

# HONDURAS

Honduras is a member of the Caribbean Financial Action Task Force (CFATF). This report was done by the World Bank. The evaluation report was discussed by the CFATF Plenary in May 7, 2009 and adopted by its Council of Ministers on August 10, 2009 as part of the third round of mutual evaluations.

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## ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BL	Banking Law
BCP	Basel Core Principles
CC	Criminal Code
CDD	Customer Due Diligence
CPC	Criminal Procedure Code
CSP	Company Service Provider
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FPDFI	Financial Market Integrity group of the World Bank
FSAP	Financial Sector Assessment Program
FSRB	FATF-style Regional Body
FT	Financing of terrorism
KYC	Know your customer/client
MOU	Memorandum of Understanding
ML	Money laundering
MLA	Mutual legal assistance
NPO	Nonprofit organization
PEP	Politically-exposed person
ROSC	Report on Observance of Standards and Codes
SRO	Self-regulatory organization
STR	Suspicious Transaction Report
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

## **PREFACE**

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Honduras was based on the Forty Recommendations 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, as updated in 2007. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from November 26, 2007 through December 11, 2007, a follow-up mission March 23-27, 2009 and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The initial assessment in 2007 was conducted by a team of assessors from the World Bank. The evaluation team consisted of: Gabriella Ferencz, Lead Financial Sector Specialist (World Bank - team leader); Ryan Crosby, Junior Professional Associate, (World Bank), Horst Intscher, (consultant, FIU expert) and Jose Antonio Monreal (consultant, Legal Expert). A follow up assessment in March, 2009 consisted of Gabriella Ferencz, Lead Financial Sector Specialist (World Bank – team leader), Andrew Zerzan, Junior Professional Associate (World Bank), Horst Instcher (consultant, FIU expert), and Gabriele Dunker (consultant, Legal Expert). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Honduras at the time of the first mission and through April 24<sup>th</sup>, 2008 in line with the CFATF plenary's decision to extend the finalization date. It describes and analyzes AML/CFT measures, sets out Honduras' levels of compliance with the FATF 40+9 Recommendations (see Table 1) and will provide recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the World Bank as part of the Financial Sector Assessment Program (FSAP) of Honduras. It will also be presented as Honduras Mutual Evaluation to the Caribbean Financial Action Task Force.

The assessment team would like to thank the Honduran authorities for their cooperation and support during, before and after the visits.

## EXECUTIVE SUMMARY

### Introduction

1. **This Report on the Observance of Standards and Codes for the FATF Forty recommendations (2003)** on Anti-Money Laundering and the Nine Special Recommendations (2001 and 2004) on Terrorist Financing (FATF 40 + 9) was prepared by a team composed of staff of the World Bank, using the 2004 AML/CFT Methodology, as updated in 2007.

2. **This Report provides a summary of the level of compliance with the FATF 40+9, and provides recommendations to improve compliance within the prevailing context of Honduras.** The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the Government of Honduras or the Boards of the World Bank (WB) and International Monetary Fund (IMF).

### Information and methodology used for the assessment

3. **In preparing the detailed assessment, World Bank staff reviewed the institutional framework, the 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 examined the capacity, the implementation and the effectiveness of all these systems. This Report contains a summary of the AML/CFT measures in effect in Honduras as of April 24, 2008.

### Key Findings

4. **Honduras has set up a number of the fundamental components of an AML regime, through various legislative and regulatory instruments and an institutional framework which includes law enforcement, prosecution, and supervisory bodies.** While progress has been made, key changes are needed to laws and regulations in order for Honduras to have a more effective ML and TF regime

5. **There is a lack of strategic direction and coordination among the participants.** A focal point and coordination body needs to be established, involving senior representatives of all the entities involved in anti-money laundering and counter-terrorist financing to ensure the most effective and efficient collaboration of the initiative, and to ensure that necessary policy, regulatory and legislative measures can be expeditiously developed, approved and implemented and that initiative wide statistics on workload, performance and results are collected and shared. All entities need more resources to effectively play their role in the ML regime.

6. **The legal and regulatory instruments encompass criminalization of ML, confiscation of proceeds of crime, preventive measures, and suspicious transaction reporting.** The preventive measures in the financial system contain key requirements, but implementation is lagging outside the banking sector. The ML preventive regime does not supervise some of the financial activities set out by FATF. Designated Non-Financial Businesses and Professions (except lawyers who are not notaries) are covered by recently enacted (March 2008) legislation. Implementation covering the DNFBPs still needs to be addressed by the authorities.



7. **Honduras has ratified the United Nations Convention on the Suppression of the Financing of Terrorism and it has ratified the Vienna and Palermo Conventions.** However, it only criminalized the financing of terrorism at the end of the mission. It is proceeding to implement the law so as to comply with its international obligations in respect of terrorist financing.

8. **For geographical, economic and social reasons, Honduras is highly vulnerable to money derived from the proceeds of crime.** Given its geographic locations, the country is generally regarded as a point of transit for the drug trafficking between countries in North and South America. The level of corruption in the public and private sectors is described as high. Smuggling, including that of humans, clandestine immigration and other trafficking (weapons in particular) are widespread. Proceeds from corruption and narco-trafficking, among other illegal enterprises, are believed to be concentrated in real estate and automobiles.

9. **The priority in the short run should be to enhance significantly the implementation of the current legal framework, which would enable it to better realize its potential.** Only then will Honduras be in a better position to address the existing gaps in its ML framework and to customize it to the reality of the threats faced.

#### **Legal Systems and Related Institutional Measures**

10. **Money Laundering is criminalized under Honduran law through Articles 3 and 4 of Decree 45-2002 and is defined largely in line with the international standard.** Most technical aspects of the Vienna and Palermo Conventions are complied with and the sanctions applicable for the money laundering offense seem to be appropriate as well. Assessors have also positively noted that 24 convictions for money laundering have already been obtained and a large number of cases is still pending.

11. **However, a number of technical deficiencies have been identified. For example, “illicit trafficking of stolen and other goods” is not criminalized under Honduran law and is therefore not a predicate offense for money laundering.** Furthermore, it is unclear whether the money laundering provision may be applied in cases where the predicate offense has been committed abroad and whether legal persons may be held criminally liable for money laundering under Honduran law.

12. **Honduras has ratified the United Nations Convention on the Suppression of the Financing of Terrorism and criminalized the financing of terrorism in April 2008.**

13. **However, the definition of the financing offense with respect to “terrorist acts” is not quite as broad as required under the FT Convention.** Furthermore, in the absence of a definition of the terms “terrorist organization” and “financial means” the exact scope of the criminal provision remains unclear.

14. **It should also be noted that the amendments to the Criminal Code have only been enacted in April 2008 and that at the time of the onsite mission Honduras had therefore not conducted any investigations or prosecutions relating to terrorist financing.** Accordingly, the assessors were not in a position to draw any conclusions on the effective implementation of the legal framework in this area.

15. **Honduran law allows for the confiscation and the application of provisional measures with respect to property laundered, property used to finance terrorism, as well as of proceeds obtained from or instrumentalities used in the commission of any criminal offense.** However, equivalent value seizure and confiscation is allowed in very limited circumstances only and the confiscation of “instrumentalities intended to be used” in the commission of a crime is not possible at all.

16. **Overall, the number of ML cases in which provisional measures have been applied and the amount of property seized is impressive.** However, as many of the initiated cases have not yet been adjudicated and it is therefore unclear, how many of those provisional measures will indeed result in a permanent deprivation of the criminal proceeds or instrumentalities.

17. **Honduras does not have a legislative framework to implement United Nations Council Resolutions 1267 and 1373.** An appropriate legislative or regulatory framework for the freezing of terrorist assets is needed.

18. **The Honduran FIU was created by Article 44 of the AML Decree, and operates as a division-level entity in the Commission Nacional de Bancos y Seguros, under the Superintendent of Banks, Insurance and Financial Institutions.** It receives suspicious transaction reports (STR) from obliged institutions as well as threshold cash transaction reports (CTR) over \$10,000 or L180,000. At the time of the onsite visit, no TF related STRs had been received. The actual level of reporting remains relatively low. Although analysis is carried out by the FIU, it is limited by the fact that the FIU does not have access, directly or indirectly, to law enforcement information, or information from other governmental bodies or commercially or publicly available information. The Act should be amended to provide explicit authority to the FIU access such information.

19. **Domestically, the FIU is authorized to disclose reports only to the Fiscalia (Ministerio Publico). It is authorized to exchange information with foreign FIUs subject to an MOU having been concluded and 15 MOUs have been signed to date.** The FIU has only a rudimentary capacity to carry out strategic analysis, and should be funded to expand that capacity. The Act provides for the presence in the FIU of a prosecutor from the Fiscalia. In addition, the FIU can be, and is, tasked by the Fiscalia to obtain from financial institutions transaction and account information in relation to investigations undertaken by the prosecutor, and response by the FIU is obligatory. The automatic transmission of all STRs to the Fiscalia was no longer a requirement per the March 2008 modification of the Law.

20. **The prominent role of the Fiscalia in the business of the FIU, together with the location of the FIU within the supervisory authority, without its own budget, raises concerns as to the independence of the FIU. Clearer delineation between the roles of the FIU and the Fiscalia is needed.** The FIU should be provided with its own budget, and should be better funded to enable it to undertake more comprehensive analysis as well as to respond to information requests from the Fiscalia.

21. **Investigation and prosecution of the money laundering offences is shared between the Ministerio Publico (the Fiscalia) and various investigative agencies which are equipped with the key investigation tools though they are underfunded and there is insufficient coordination among these agencies.** Article 13 of the Decree authorizes the Ministerio Publico to direct

investigations of money laundering offences. The General Directorate of Special Investigative Services of the National Police is tasked by the Ministerio Publico to conduct investigations under its direction throughout the national territory. Its several other bodies provide some support to AML investigations, which leads to fragmentation of AML investigations. In general, the AML section of the MP, as well as the investigative agencies noted above, are seriously underfunded and in some instances lack even basic equipment and vehicles needed to enable their work. These bodies should be provided with additional funding to make it possible for them to undertake additional, and more complex, investigations in a timely manner.

**22. Cross Border movements of Currency and monetary instruments valued in excess of a specified threshold (currently \$10,000 or the Lempira equivalent) must be reported by persons entering or leaving Honduras.** This requirement is enforced by Customs, and undeclared money or instruments can be seized and turned over the Office of Seized Assets Control. The Customs Service is assiduous and had seized some \$4 million in US currency and 44 million in Lempiras. In addition it has also seized a variety of instruments, including 54 houses or properties and 216 movables (cars, boats, small airplanes, etc).

#### **Preventive Measures – Financial Institutions**

**23. The key preventive measures are defined in the AML Law, Decree 45-2002 and subsequent regulations, setting up a system where primary customer identification requirements are in place, but not consistently implemented across the board.** There is no requirement regarding beneficial ownership. The ML Regulations for banking, insurance, and the securities industry have minimum requirements for the composition of the Compliance Committee, qualifications and responsibilities of the designated Compliance Officer, and submission of the name and changes in designation of the Compliance Officer to the CNBS. Requirements for supervised institutions include formal Codes of Ethics, AML procedures manuals, and formal systems of internal audit for AML, and institutional sanctions.

**24. Anonymous, numbered and fictitious accounts are not permitted; requirements regarding the identification of legal persons are broadly satisfactory (except for beneficial ownership).** There are requirements for enhanced CDD for domestic PEPs only. The requirements exempt international clients that may be PEPs and should be amended to include them.

**25. There is no framework for introduced business,** although insurance brokers provide 80 percent of the clients to the insurance companies and these are considered introduced business.

**26. Important progress has been achieved in compliance in the banking sector, but implementation remains elusive in the other components of the financial sector.** The banking sector has the highest level of compliance especially for new customers. A noticeable share of pre-existing customers have not yet been subject to full CDD, and no risk analysis of these has been undertaken. According to both the supervisory authorities and the industry, implementation with customer identification requirements is low in the insurance sectors. This is attributed to the lack of adequate CDD by insurance brokers who account for 80 percent of insurance companies' business. Compliance in the securities sector is adequate. However, the sector is small, being comprised of local companies whose issues are mostly bonds bought by other local companies.

27. **The cornerstone of the suspicious transactions reporting requirement is laid out in the AML Law and Regulation and is detailed in the supervisory manual for inspections.** Supervised institutions are required to pay special attention to those transactions that are considered complex, unsolicited, significant and do not conform with normal type of transactions in the account, that are not significant but have regular periodicity, or have no fundamental economic or legal basis.
28. **The supervised institutions are required to immediately communicate their findings to the UIF who in turn reports these transactions to the Ministerio Publico.** Supervised institutions are required to report cash transaction over ten thousand dollars, or the equivalent in lempiras, or multiple transactions which total that amount in a given time frame. For money remitters, the limit is three thousand dollars but the same qualitative requirements apply.
29. **Tipping-off is forbidden. Staff of the FIs and managers are exempt from administrative, civil and criminal responsibility when reporting suspicious transactions.**
30. **There is no general feed-back (beyond acknowledgement of the receipt of the report) on STRs. Specific feed-back, mandated for banks, remains too sporadic.**
31. **No fines or penalties for non-compliance have been imposed to date on banks or insurance companies,** though they have been levied on casas de cambio as their fulfillment of CDD requirements is weak. This regulatory requirement needs to be enforced by the supervisory authority. The authorities need to impose fines or penalties on banks and insurance companies for noncompliance to ensure effective implementation of the law and associated regulations.
32. **There are requirements to set up internal controls relevant to ML.** These include the training of officers, managers and employees of designated bodies. There are requirements regarding the screening of employees by all designated bodies.
33. **Banks are not required to implement ML measures in their foreign subsidiaries or branches, or to report to supervisory authority if these face difficulty in implementing effective AML measures.** Some Honduran financial institutions have foreign branches and subsidiaries abroad (United States and Belize).
34. **There are no specific enhanced due diligence requirements for foreign or domestic, cross-border correspondent banking relationships or relationships with countries not applying the FATF Recommendations.**
35. **Banking secrecy is not an impediment** to the fight against money laundering and record-keeping requirements are satisfactory. Information is accessible to relevant authorities.
36. **The identification requirements for wire transfers services are embedded in the law but implementation in the private sector is not meeting the standard.** The authorities should ensure that all financial institutions providing funds transfers are including and receiving all required originator information within the transfer. Non-supervised money or value transfer services (pure MTOs) should be brought under the umbrella of supervision to ensure requirements are fulfilled. Sanctions should be applied to institutions not complying with the law.

37. **Although, “fit and proper” criteria are acceptable the authorities need to improve measures to prevent criminals or their associates from holding or being the beneficial owner, significant shareholder or controlling interest or hold a management function in a financial institution.** The CNBS should be more involved in the initial licensing of FIs; currently they only review the operational and accounting manuals for applicant banks. The authorization process for financial institutions should assess the transparency of the ownership structure of FIs and its wider group, identify and verify the identity of ultimate beneficial owners..

38. **Supervisory oversight of the banking and insurance sectors is broad in scope.** There are two (soon thereafter an additional 3 in staff were added to the function) dedicated supervisors to conduct reviews of ML/FT activities in FIs which are performed onsite annually. The reviews include assessing the implementation of KYC rules, transactions records maintenance and training. Sanctions are available to the supervisory authorities for noncompliance by supervised institutions, but have not been effectively applied.

39. **The authorities state that there are no shell banks in Honduras.** There is a requirement in Art 21 of 869 that direct or indirect financial relations are prohibited with institutions that carry the characteristics of a shell bank,

#### **Preventive Measures – Designated Non-Financial Businesses and Professions**

40. **Several designated non-financial businesses and professions were included in the AML/CFT legal framework in Honduras after the date of the mission in February 2008, but not lawyers (except those who also work as notaries whom the law subjects to AML/CFT).** The authorities should undertake a review of the ML risk for other professions. Currently, ML seems to be concentrated in real estate and the purchase of automobiles. The amendment to the recently enacted law includes notaries, real estate intermediaries, car dealers, dealers in precious metals, jewels, art and antiquities, lotteries, and casinos. Lawyers (except notaries, all of whom are required to be lawyers) and accountants are not included in the amendment.

#### **Legal Persons and Arrangements & Non-Profit Organizations**

41. **Companies are required to register in Honduras.** However, it is not required that information on the managers, beneficiaries and, for companies other than joint-stock companies, the directors is provided.

42. **While bearer shares are permitted and seem to be used in Honduras, no measures are in place to ensure that bearer shares are not being misused for ML and TF purposes.**

43. **Trusts are governed by the Commercial Code, which provides that only banks may serve as trustees.** However, the CDD measures applicable to banks do not require that information on the identity of all beneficial owners, including beneficiaries and controllers, is obtained, maintained and verified. Accordingly, such information does not seem to be available to law enforcement authorities. There is no registration requirement for trusts.

44. **Honduran law requires all NPOs established after 2003 to register but the registration requirement cannot be enforced.** Hardly any of the requirements under SR VIII and relating to

NPOs have been addressed by Honduras. Consequently very little information is available with respect to such organizations operating in Honduras. A deep review of the non-profit sector to assess its vulnerability to abuse for the financing of terrorism is needed.

### **National and International Cooperation**

45. **As mentioned earlier, there is a need for strategic direction and coordination among the participants.** A focal point and coordination body needs to be established, involving senior representatives of all the entities involved in anti-money laundering and counter-terrorist financing to ensure the most effective and efficient collaboration of the initiative, and to ensure that necessary policy, regulatory and legislative measures can be expeditiously developed, approved and implemented and that initiative wide statistics on workload, performance and results are collected and shared.

46. **While there is no overarching law regulating the provision of mutual legal assistance by Honduras, such assistance may be provided directly based on international and bilateral treaties (including the Vienna, Palermo and Terrorism Financing Conventions) or based on reciprocity through letter rogatory.**

47. **Subject to dual criminality, the Honduran authorities may take any measures on behalf of another country that could be taken if a domestic case was involved.** However, the application of the dual criminality requirement entails that all shortcomings of the money laundering and terrorism financing offenses may impact Honduras' ability to provide mutual legal assistance, for example in cases involving prosecution of a legal entity. Equally, the limitations on the availability of provisional measures, including seizing, freezing and tracing, and of confiscation measures also apply in cases where the authorities operate upon request of another country.

48. **Due to constitutional reasons, Honduras does not extradite its citizens but is required under domestic law to prosecute its nationals for whom extradition has been denied.**

49. **There is no specific law on extradition in the Honduran jurisdiction.** Therefore, multilateral and bilateral international treaties in force are the only legal instruments to carry out extraditions. As a general rule, the Supreme Court is the public body appointed as Central Connection Authority. The assessors have **been informed that there have been no extradition requests regarding money laundering.**

## **1. GENERAL**

### **1.1. General Information on Honduras**

50. The Republic of Honduras is in Central America and bordered by the Caribbean Sea and the Pacific Ocean with a total land area of 112,090 square kilometers. Honduras is also bordered by Nicaragua in the south and El Salvador and Guatemala in the western and northern parts of the country. The total estimated population is approximately 7.5 million people. The capital, Tegucigalpa, has an estimated population of 1.2 million people and shares commercial power with the city of San Pedro Sula in the northwest. Spanish is the official language with a literacy rate of 80% (2001).

51. Discovered by Christopher Columbus in 1502, Honduras became a colony of Spain for the next three centuries. Honduras declared independence from Spain on September 15, 1821. Briefly a part of the Iturbide Empire of Mexico, Honduras eventually became a member of the Central American Federation which fragmented into individual states in 1838.

52. In 1982, after two and a half decades of military rule, a free civilian government was elected. The current President was inaugurated in 2006 and elections will be held in November 2009.

53. Honduras is considered to be a Highly Indebted Poor Country (HIPC) by the World Bank and International Monetary Fund. In 2006, the per capita income was estimated at US\$ 1,170 with 50% of the population living in poverty. Honduras ranks 116th out of 177 countries in the UN Development Programme's human development index and is the second poorest country in the Western Hemisphere. The agriculture sector employs 40% of the population and is highly susceptible to inclement weather, as witnessed by the devastating 1998 storm, Hurricane Mitch.

#### **System of Government**

54. Honduras is a democratic constitutional republic separated into 18 administrative departments. The executive power is vested in the President, who is elected by popular vote for a four year term. The next presidential election will occur in November 2009. The legislative branch is a unicameral National Congress with 128 seats; members are elected based on proportion to the number of votes their party's presidential candidate receives. Currently, the Liberal Party occupies 62 seats. The judicial branch is comprised of the Supreme Court of Justice whose judges are elected for seven year terms by members of the National Congress.

#### **Legal System**

55. The Honduran legal system is ingrained in Roman and Spanish civil law, although recently, English common law has been growing in influence. Honduras accepts the jurisdiction of the International Court of Justice, with limitations.

### **1.2. General Situation of Money Laundering and Financing of Terrorism.**

56. Honduran authorities could not cite a formal analysis of the overall situation of Money Laundering and Terrorism Financing, and it would not seem that one has been conducted. Nevertheless, there is general recognition in government agencies, the financial sector and the public of the significant money laundering vulnerability of the country. There is much less awareness of the risk of terrorist financing. Broadly speaking, most of the interlocutors of the assessment team indicated that there is a significant level of criminal activity for profit, including narcotics trafficking, in and through the country, as well as fraud, arms smuggling, kidnapping for profit, people smuggling, robbery and car theft, and public and private corruption, etc. Transparency International's Corruption Perception Index ranks the country as 126 of 180 countries surveyed in 2008, much worse than the average.

57. The geography of Honduras presents challenges to effective curtailment of many of these crimes, and the attendant money laundering. Bordered by Nicaragua, El Salvador and Guatemala, Honduras is part of the drug trafficking corridor northward from South America. There are only 4 official land crossing points, and some 750 kilometers of unprotected border in relatively easy terrain where 4 wheel drive vehicles and even cars can easily cross undetected. Neither Customs nor the military have the resources to curtail illegal crossings of the frontier. Military Intelligence officials noted that there are more than 50 "clandestine" landing strips in Northern Honduras, built during the war in the 1980s and later abandoned but still usable for small aircraft that can fly in at a low level undetected. In addition, the northern coast is dotted with small fishing ports, and numerous small islands, making it very difficult to control the comings and goings of vessels. Smuggling of contraband, arms, people, is reported by several agencies (police, military, and customs) to be a significant and lucrative activity.

58. The National Council Against Corruption, created in 2000, in a recent annual report highlighted the results of a survey of a large number of Hondurans. It was noted that public confidence in the public and private institutions relevant to fighting crime and money laundering are disturbingly low, and that politicians, public servants, lawyers, judges and the police are professions that are regarded by most respondents as being "too corrupt".

59. Since 2002, Honduras has put in place a number of measures to detect and deter money laundering, and has made appreciable efforts to implement those measures. Financial crimes enforcement has increased since the previous assessment, and there have been investigations that have resulted in charges and cases going to trial. With respect to the cases that have been concluded, the authorities report that less than half have resulted in convictions. A number of cases appear to have been "pending" for extended periods.

60. There is a vulnerability to FT but it is not quantifiable at this time. While it was a predicate crime in the law, Honduras only criminalized the financing of terrorism in April, 2008. However, there was no implementation and no investigations at the time of the mission. Authorities stated that the lists of suspected terrorists by the United States Embassy are routinely checked by banks in the CDD processes.

### **1.3. Overview of the Financial Sector**



61. As in most developing countries, the banking sector dominates the financial sector. There are 18 commercial banks with total assets of \$8.4 billion as of September 30, 2007. The sector has recently experienced an increase in foreign ownership which brings with it enhanced operating capacity and a broader array of products. Life insurance companies and company and occupational pension funds control the next largest group of financial assets in Honduras. There are 17 such entities with \$2.3 billion in assets as of September 30, 2007.

62. Honduras has made progress in AML/CFT since the prior mission, particularly in terms of having put in place a broader legal and regulatory framework in which to address the problems and challenges in the financial sector. However, enforcement is very uneven and some sectors that are vulnerable to money laundering and terrorist finance (e.g. money transfers) were only included in the law and subject to compliance with minimum KYC and CDD requirements at the end of the mission. As they were not yet subject to supervision, the level of compliance could not be evaluated by the mission.

### Structure of financial sector, September 30, 2007

Financial Sector	Number of institutions	Total assets (US\$ million)*	Authorization/Registration	Supervision	Supervision AML/CFT
<b>Commercial banks</b>	18	8,397.8	CNBS	CNBS	CNBS-Permanent <sup>3</sup>
<b>Life insurance companies and occupational pension funds**</b>	11	337.1	CNBS	CNBS	CNBS-Annual Revision
<b>Company pension funds***</b>	6	1,931.1	CNBS	CNBS	CNBS-Annual Revision
<b>Insurance brokers</b>	519 <sup>2</sup>	Not Available	CNBS	None	None
<b>Savings institutions<sup>1</sup></b>	1	28.8	CNBS	CNBS	CNBS-Permanent <sup>3</sup>
<b>Foreign exchange</b>	8	10.6	BANTRAL	CNBS	CNBS-Annual Revision
<b>Credit cards etc.</b>	1	117.2	CNBS	CNBS	CNBS-Annual Revision
<b>Finance Companies</b>	9	193.0	CNBS	CNBS	CNBS-Permanent <sup>3</sup>

\*Total assets do not include contingents

\*\*Includes numbers for five public pension funds and one private

\*\*\*Information provided by the Securities Supervisor of the CNBS

<sup>1</sup>Savings and Loan Association

<sup>2</sup>Distributed by 153 Dependent Brokerages, 87 agents, and 279 independent agents

<sup>3</sup>Information provided by the Supervisor of and other Institutions of the CNBS

Institutions	Number of branches abroad <sup>1</sup>	Number of subsidiaries abroad	Foreign branches in the country <sup>2</sup>	Supervision of foreign branches in country
<b>Commercial Banks</b>	49	NA	3	NA
<b>Life Insurance Companies</b>	7	NA	NA	NA

<sup>1</sup>Number of commercial banks distributed in the country

<sup>2</sup>Office of representation

#### 1.4. Overview of the DNFBP Sector

63. With the exception of casinos, most designated non-financial businesses and professions have only recently been included in the AML-CFT framework in Honduras. Although casinos were obliged to comply with the AML Law and Regulation before, nothing was being done by the authorities or the casinos to implement or monitor this industry. Legislation passed by Congress now requires the sector to report unusual transactions and includes real estate intermediaries, car dealers, dealers in precious metals, jewels, art and antiquities, lotteries, and casinos in the AML/CFT regime. However, there was no oversight or supervision of the DNFBP sector at the time of the mission. Lawyers (except those also acting as notaries, all of whom are required to be lawyers) and accountants are not included in the amendment adopted. The authorities should undertake a review of the ML risk for other professions and seek to educate the sector on unusual transactions and familiarize them with the reporting forms and requirements. Anecdotally, the mission was informed by several different parties that, at the present time, ML seems to be concentrated in real estate and the purchase of automobiles. .

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

64. The Honduran Commercial Code establishes six basic types of legal persons, all of which may be set up with fixed or variable capital:

- General Partnerships (sociedad colectiva) ;
- Limited Partnerships (sociedad en comandita simple);
- Limited Liability Companies (sociedad de responsabilidad limitada);
- Cooperatives (sociedad cooperativa);
- Joint-Stock Companies (sociedad anónima); and
- Commandite Company (Sociedad comandita por acciones).

65. For all forms of legal entities, legal personality is obtained upon registration with the Merchant Registry. The Honduran Merchant Registry is not operating on a centralized basis but consists of 23 regional offices, only 5 of which keep information in electronic form. It is therefore unclear how many companies are established under Honduran law.

66. Representatives of the Merchant Registry in Tegucigalpa stated that the majority of companies registered would be individual traders followed by LLCs and then joint-stock companies. Partnerships, cooperatives and commandite companies would be very rare and in the case of Tegucigalpa would not exist at all.

67. Pursuant to Article 38 Commercial Code, general partnerships are legal entities in which all of the partners are secondarily, unrestrictedly and jointly and severally liable in respect of the partnership's obligation. Pursuant to Article 46, the general partnership may be managed either by appointed administrators or the partners themselves. Article 58 Commercial Code provides that in comparison to general partnerships, limited partnerships have only one or more partners that are secondarily, unrestrictedly or jointly and severally liable in respect of the partnership's obligations and one or more limited partners who are solely required to pay their contributions. Pursuant to Article 61 Commercial Code, limited partnerships may be managed by appointed administrators only. Partners, whether limited or unlimited, may not be managers of the partnership.

68. Pursuant to Article 66 Commercial Code, the partners of limited liability companies are only obliged to pay in their contributions while the partner's interests may generally not be transferred. Limited liability companies are expressly prohibited from issuing securities, including shares. In accordance with Article 78 Criminal Code, limited liability companies are managed by one or more persons, who may but do not have to be partners.

69. Article 278 Criminal Code provides for the company form of cooperatives. Cooperatives are founded in form of an association or corporation and perform their activities exclusively for the benefit of the partners. Cooperatives have to be set up as companies with variable capital, whereby the capital is to be divided into equal shares and the partners' liability is limited to the amount of shares they hold.

70. Article 90 Commercial Codes defines joint-stock companies as legal entities with capital that is divided into shares. Shareholders are responsible only to the amount of the shares they have subscribed to. Article 92 Commercial Code further states that at least five shareholders are required to establish a joint company. The overall founding capital has to be 25.000 HNL or more and be fully subscribed at the time of the establishment. Pursuant to Article 201 Commercial Code, joint stock companies may be managed by a director or a board of directors. Directors may be but do not have to be shareholders.

71. The only company form that may issue shares in form of securities are joint stock companies. Article 136 of the Commercial Code provides that shares may be issued on bearer or name. Article 117 Commercial Code further provides that shares shall always be issued on bearer, unless the shares have not been paid in full yet, in which case they shall be issued as registered shares. Shareholder registers have to be maintained by the company, whereby a transfer of bearer shares is valid in any case, whether or not it is registered with the company.

72. For all company forms, legal entity directors as well as legal entity founders are permitted.

73. While the Commercial Register keeps information on the representatives of legal entities and the founding members of a legal entity, it does not maintain information on company shareholders (in the case of a joint stock company), on the company managers or the company beneficiaries.

74. The only form of legal arrangement existing in Honduras is trusts (fideicomisos) administered by banks. No other person or legal entity may serve as a trustee. Trusts are not subject to a registration requirement.

## 1.6. Overview of strategy to prevent money laundering and terrorist financing

75. The Government of Honduras recognizes the significance of an effective AML/CFT regime. The country has a comprehensive legal structure to combat money laundering, and the enactment of Decree 45-2002 in March 2002 was a significant step forward in the fight against financial crimes.

76. Honduras has made notable progress since the last assessment in the implementation of the measures legislated in 2002. Officials are making a strong effort to make that the system work, despite a number of challenges, gaps and shortcomings.

77. One of the significant shortcomings noted in more detail later in this report is the apparent absence of strategic direction and leadership of the overall AML/CFT initiative. While earlier there had existed a coordinating body that met periodically to discuss strategy and priority, that body has not met for several years and appears, *de facto*, no longer to exist. Now the various elements of the initiative are working in a less coordinated, sometimes isolated, fashion.

78. *De facto*, the various elements seem to be working with the following priorities and objectives:

- a. safeguarding the financial sector against abuse by implementing KYC measures, CDD on new accounts, as well as undertaking identification and due diligence on the large base of pre-existing accounts; encouraging and verifying the reporting of suspicious transactions and large cash transactions to the FIU; conducting compliance verification examinations of banks subject to the regime;
- b. giving investigative and prosecutorial priority to identifying laundering flowing from the rising level of drug trafficking in and through Honduras;
- c. developing legislative and regulatory proposals to expand the coverage of the AML/CFT regime to include a number of vulnerable business sectors only recently covered by the Act, and to strengthen the authority for special investigative techniques..

79. The objectives are only partially being met. Some progress has been made in the area of compliance by the financial sector, particularly in the banking sector, though much remains to be done in other elements of the financial sector. Enforcement of compliance has so far only relied on persuasion, as there have not been any fines or charges laid in regard to instances of non-compliance. The police and prosecutorial bodies are clearly working toward the priority of pursuing drug related laundering, and are also giving some attention to other kinds of laundering activity. Their efforts, however, are constrained by serious shortages of resources. Prosecutions have not moved forward as quickly or successfully as hoped, in part due to insufficient judicial awareness of the law in these matters or appreciation of the gravity of the offences. Legislation to strengthen the AML Law, by bringing a number of new business sectors under coverage of the Law, and legislation to address the issue of terrorism financing were passed by the National Congress in early 2008.

### **The institutional framework for combating money laundering and terrorist financing**

80. There are a number of key players in the legal and criminal enforcement against ML but there is an apparent lack of coordination among them, hampering their individual and as well as combined effectiveness. There is a need on the part of the authorities to ensure that coordination is addressed and improved.

81. As noted in the previous assessment, the fight against money laundering and terrorism financing suffers from a chronic lack of resources. In particular, the Fiscalía and the Police appear to be seriously lacking in personnel, both numbers and in skills and experience. There is a severe lack of even the most basic tools such as cameras, computers and vehicles needed by law enforcement authorities to develop investigations and prosecutions. The FIU needs additional resources, and access to more information sources, to effectively analyze and manage the information reported to it. The work of these public bodies is made even more difficult by the fact that much of the public information needed for investigation and analysis is not computerized, and often decentralized. This includes registers of corporations, property, vehicles and persons. The persons registry is the subject of media reported current controversy because of an enormous backlog (equal to about one tenth of the population) in issuing identity cards, and the alleged widespread black market in fraudulent identity cards.

82. The courts are struggling to deal with the phenomenon of money laundering. Judges trying cases involving ML are reported often to be unfamiliar with the law or the seriousness of the offences that are presented to them. Judicial training is needed, and some efforts are being made in that regard. While the assessment mission was in Honduras, a number of prosecutors, judges, police officers and others from related entities participated in a training session that consisted of a 3 day simulation of a money laundering trial. To date, although many investigations have been concluded and charges brought in an appreciable number of them, the final number of convictions remains low and many cases have remained pending for years.

83. Already noted above is the absence of an over-arching coordinating body for the fight against money laundering and terrorism financing. The authorities that participate in the AML initiative are the following:

- The **National Commission of Banking and Insurance** – this is the supervisory body for the regulated banking sector, and it is also responsible for AML/CFT compliance by the non-regulated entities. It also is the parent body for the FIU, and provides administrative and technology services to the FIU.
- The **Financial Information Unit of Honduras** is the FIU and is responsible for receiving, analyzing and disseminating STRs filed by the reporting entity sectors.
- The **Ministerio Público**, and in particular the Office of the Special Prosecutor Against Organized Crime, in which the AML section is contained, are most directly involved in the investigation and prosecution of money laundering.
- The **General Directorate of Special Investigative Services** is a national police unit and part of the Ministry of Security. The AML Division of the Directorate has been given responsibility to investigate money laundering offences and to provide the results of its investigations to the AML prosecutor in the Ministerio Público.

- The **Preventative Police** are a uniformed member of the police that are the first responders to reports of criminal activity. Their role is to secure a site and protect the evidence until the appropriate investigative units arrive.
- The **Centre for Joint Information**, a tactical and strategic criminal intelligence unit that is part of the Preventative Police provides criminal intelligence support and some investigative support to AML investigators and to the AML prosecutor. It also conducts some money laundering investigations and provides the results of those to the AML prosecutors.
- The **Interpol Liaison Unit** of the Preventative Police provides support to AML investigations by seeking intelligence and information from a wide range of foreign law enforcement agencies in relation to subjects of ongoing investigation in Honduras.
- The **Executive Directorate of Revenue** has a unit involved in administering the requirement for travelers entering or leaving the country to declare the import or exports of currency and monetary instruments. It is present at airports, official land border crossings, and ports. It is the recipient of travelers' declarations of currency or monetary instruments that exceed \$10,000. It can and does inspect travelers' goods and baggage and has authority to seize funds that are undeclared or exceed the amounts declared by the traveler.
- The **Armed Forces of Honduras**, in some instances, and on request, provide tactical and logistical support to law enforcement bodies, (e.g. in border areas or for large operations in remote areas). The Armed Forces have no police or investigative authority.
- The **Honduran Association of Banking Institutions**, represents the commercial banks in Honduras, and is actively engaged with those institutions in promoting effective AML compliance by member organization and representing the views of the industry to government in relation to AML issues and requirements applied to the financial sector.
- The **Honduran Chamber of Insurance Companies** represents the insurance sector, and works with the various governmental organizations on ways in which the AML/CFT regime can be effectively applied to the insurance sector.

### **Approach concerning risk**

84. Honduras continues to remain at significant risk for ML and TF. Honduras is continuing to make progress addressing the areas at risk for money laundering and TF. Since the prior assessment, strong progress has been made in CDD and the supervisory authorities have done a great deal of work to ensure that banks are diligent in KYC and CDD requirements.

85. Near the end of the first mission, the Honduran Congress passed amendments to the Anti Money Laundering Law to include the previously unregulated DNFBPs, including dealers in precious stones, jewelers, etc. It does not include lawyers. A law was also passed criminalizing the financing of terrorism (FT). It will take time and significant resources to address and effectively regulate all areas of the Honduran economy that are vulnerable to risk from money laundering and terrorist finance. Much progress has been made over the last years, but important challenges remain. Given the commitment on the part of many of the authorities with whom the mission met, more progress could be made going forward.

## **Progress since the last IMF/WB assessment or mutual evaluation**

86. Honduras has made significant progress along the continuum of measures needed to ensure that it has an effective anti ML and TF infrastructure together with effective implementation. A significant shortcoming has been addressed since the prior assessment. FT was criminalized April 24th, 2008 and the authorities informed the mission that procedures for the reporting of TF suspected activities and for investigation of TF offenses are in the process of being developed and implemented. Preventive measures in the banking sector appear to have improved since previous assessments. Reporting of suspicious transactions is still rather low. Other sectors are still lacking adequate preventive measures. In addition, noncompliance with various aspects of the law such as consistent CDD, and reporting of suspicious transactions are treated administratively and through moral suasion rather than by way of effective sanctions, even though the law provides for fines and criminal sanctions for some violations. The apparent lack of enforcement by the authorities dilutes the credibility of the seriousness of the supervisory institutions in the fight against ML and TF in the financial sector.

87. In addition, the scope of activities subject to the AML Law has been expanded by the amendments of the that Law passed in 2008 and there will need to be increased attention and resources dedicate to ensuring the compliance of those new sectors, particularly in the case of money remitters and other DNFBPs.

88. Prosecutions of money laundering cases appear to have increased since the last assessment. Information provided by the Ministerio Publico indicate that since 2003 there have been 73 ML cases prosecuted and tried, 24 of which resulted in convictions, 9 cases resulted in acquittals, and 40 cases remain pending, or have been suspended or abandoned by the courts.. Provisions for legal confiscation have advanced, and more importantly, the improvement being in the effective implementation of measures of confiscation of property, proceeds and instrumentalities tied to money laundering. The FIU is operational but needs to have greater independence and additional resources to carry out its function more effectively. The limited resources of law enforcement and prosecution authorities continue to be a challenge. Both staffing levels and lack of adequate technology continue to be impediments to their ability to carry out their mandates. Steps have been taken to improve international cooperation.

89. Regulations have expanded the baseline for preventive measures set forth in the AML Law which went into effect at the time of the last assessment. The program of inspections for financial sector participants is thorough and there are three dedicated staff members who do only AML compliance. Supervision has been strongly focused on the banking sector so far. The non-regulated sectors remain highly vulnerable to money laundering, especially the money remitters.

90. The ongoing monitoring of accounts has generally been effective and attention to cash transactions has improved as well. Record keeping requirements are adequate and both customer identification and transaction activity records must be kept for a minimum of five years.

91. Suspicious transaction reporting has increased but remains low and is not consistent across institutions. Internal controls, compliance and audit have improved at most supervised institutions though more attention is needed in the insurance sector. Enforcement tools and monetary sanctions are not meaningfully applied and therefore have little effect.

92. A first attempt to know how many NGOs operate in the country has begun. It is expected that in a short time the Government will acquire enough information to exert more effective surveillance and enforcement.

93. MLAs are correctly working and no hurdles are imposed on international collaboration against money laundering. It is a legal figure in Honduras, especially useful for Prosecutor Office's duties.



## **2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES**

### **2.1. Criminalization of Money Laundering (R.1 & 2)**

#### **2.1.1. Description and Analysis<sup>1</sup>**

##### **Legal Framework:**

94. Honduras has criminalized money laundering through Articles 3 and 4 Decree 45-2002 (AML Law). Between 1997 and 2002, Honduran law criminalized money laundering only for predicate offenses involving drug trafficking. The 2002 AML Law was issued to expand the lists of predicate offenses to any unlawful conduct and to also provide law enforcement authorities with a broad range of tools, in particular with respect to the confiscation, seizure and freezing of assets, proceeds and instrumentalities of crime, and to create a modern FIU.

95. Article 3 provides that “anyone who, alone or through a third party, acquires, possesses, administers, holds in safekeeping, uses, converts, transfers, conceals, or prevents the determination of the origin, location, destination, movement, or ownership of assets, proceeds, or instrumentalities derived directly or indirectly from [a list of offenses], or having no legal economic cause or justification for the origin thereof, commits the offense of money laundering and shall be penalized by fifteen to twenty years imprisonment.” In this report, the money laundering provision relating to “assets, proceeds or instrumentalities [...] that have no legal economic cause or justification for the origin” will be referred to as the “catch-all provision”.

96. Article 4 AML Law further stipulates that “anyone who, alone or through a third party, participates in real or simulated acts or contracts which refer to the acquisition, possession, transfer or administration of assets or securities to conceal or simulate the assets, proceeds of instrumentalities resulting directly or indirectly from [a list of offenses] or [has] no legal economic cause or justification for the origin thereof” has committed the offense of money laundering and may be sanctioned with imprisonment of fifteen to twenty years.

##### **Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offence):**

97. Honduras has signed and ratified both the United Nations Convention Against Transnational Organized Crime (the Palermo Convention) and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention).

98. Article 3 criminalizes, amongst other acts, the conversion or transfer of assets, proceeds, or instrumentalities derived directly or indirectly from a predicate offense listed in the provision or of such property that has no legal economic cause or no justified origin.

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<sup>1</sup> For all recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

99. Furthermore, Article 3 makes it an offense to “conceal or prevent the determination of the origin, location, destination, movement or ownership” of illegitimate assets, proceeds or instrumentalities. The provision does not, however, extend to the concealment of the “true nature” or “rights with respect to” such property, as required by the Vienna and Palermo Conventions.

100. Finally, Article 3 criminalizes the acquiring, possession, administration, holding or use of covered assets, proceeds or instrumentalities.

101. With the exception of “concealment or disguising the true nature or rights with respect to” criminal proceeds, all acts constituting money laundering pursuant to the Vienna and Palermo Conventions are therefore covered under Honduran law.

### **The Laundered Property (c. 1.2):**

102. The money laundering offenses defined in Article 3 AML Law extend to “assets, proceeds, or instrumentalities derived directly or indirectly” from a predicate offense listed in the provision or which have “no legal economic cause or justification for the origin thereof.”

103. Article 2 AML Law defines “proceeds” as “any property derived from or obtained, directly or indirectly, by committing the offenses” listed [in the AML Law] or [that has] no economic cause or legal basis for their possession.” Furthermore, the term “assets” is defined to include “property of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, securities and legal documents or instruments evidencing title to, or interest in such property” and “instrumentalities” as “things or objects used or intended to be used, or with respect to which there is an indication that they might be used in any manner, either totally or in part, in committing” money laundering.

104. Article 3 in connection with Article 2 AML Law therefore defines the term “assets, proceeds or instrumentalities” in line with the international standard to include any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

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

105. Article 3 AML Law does not specify whether it is necessary that a person be convicted of a predicate offense to prove the illicit origin of proceeds. However, Article 6 stipulates that money laundering shall be prosecuted by the judicial authorities as an autonomous offense, separate from any other criminal offense. Pursuant to this provision it would therefore appear that a conviction for the predicate offense is not required to obtain a conviction for the money laundering offense.

106. This interpretation is further supported given that Article 3 AML Law not only applies to property that stems from the commission of a predicate offense but to any property that has no economic justification or legal origin (“catch all provision”).

107. The authorities stated that in two cases charges were brought and a conviction obtained for both money laundering and the predicate offense, one relating to drug trafficking and the other to human trafficking (Honduras vs. Bertilio Avila Castillo (TSTR 33-2004) and Honduras vs. Angela Platero Guarez (27604)) In all other cases, the charges were brought and convictions obtained for autonomous money laundering.

108. In cases relating to predicate offenses specifically listed in Article 3 AML Law, the authorities stated that the prosecutor would have to prove beyond a reasonable doubt that the proceeds laundered were indeed generated through commission of a specific predicate offense.

109. In cases where the charge is brought not based on a listed predicate offense but based on the catch all provision, however, the authorities stated that the applicable standard of proof is lower and eventually reversed. In such cases, it is only required that the prosecution can establish an initial assumption based on a criminal investigation that the origin of the property in question is not justified or has no legal economic cause and the defendant cannot disprove this assumption. Therefore, once the assumption has been established, it is upon the defendant to show the legitimacy of the sources.

110. In practice, the initial assumption is established by the prosecutor through appointment of a “financial analyst”, who receives and analyses all available and relevant financial information provided both by the prosecution and the defense, for example income statements, inheritance statements, and comes to a conclusion as to whether or not the property in question has a justified origin or a legal economic cause.

111. After the charges have been filed with the court based on the established assumption, the defendant has the right to appoint his own “financial analyst” and to bring forward any other evidence to show that the property has a justified origin or has been obtained for a legal economic cause.

112. During the last stage of the trial, the judge himself would often appoint a “financial analyst” to come to a conclusion as to whether or not the property has a legal economic cause or justified origin based on the evidence provided. While the judge is not bound by the conclusion of the expert due to the principle of free evaluation of evidence (as confirmed in *Honduras vs. Melvin Alexander Flores Umana* (CP-226-05)), in practice he would almost always take it into account. In cases where he does not follow the analyst’s conclusion, the judge has to provide a detailed justification for his decision in the judgment.

113. The authorities further stated that due to the different evidentiary burdens applicable in the two situations, the catch all provision has been utilized in the past in cases where the prosecution could not successfully establish beyond a reasonable doubt that the property involved stemmed from a specific offense. For example, in one case the court was not convinced based on the evidence presented that the defendant’s assets originated from drug trafficking. However, due to the fact that the defendant had property in his possession that could not be justified based on his economic capacity, the court still issued a conviction for money laundering based on the catch-all provision.

### **The Scope of the Predicate Offences (c. 1.3):**

114. The money laundering provision of Article 3 AML Law applies to a list of predicate offenses as well as any assets, proceeds or instrumentalities that have no economic justification or legal origin. Honduran law therefore has a combined approach, integrating both a list of predicate offenses and a catch all provision, in practice extending the money laundering provision to all unlawful conduct.

115. In discussions with the authorities it was stated that in all cases, the offense would be applicable to proceeds resulting from any form of criminal conduct, whether that conduct is defined

in the Criminal Code or a specialized criminal law. This was also confirmed by the courts in Honduras vs. Angela Platero Guarez (27604), where the defendant was convicted for money laundering based on a predicate offense not expressly listed in Article 3 AML Law, namely the “selling forged lottery tickets” pursuant to Article 261 Criminal Code.

116. Of the FATF designated categories of predicate offenses, all but one are criminalized under Honduran law, as outlined in the table below, and are therefore covered by Honduras’ money laundering provision:

<b>Predicate Offense</b>	<b>Law</b>
Participation in an organized criminal group and racketeering	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Decree 117-2003 amending Article 332 Criminal Code.
Terrorism, including terrorism financing	Terrorism is listed in Article 3 AML Law, criminalized pursuant to Articles 335 Criminal Code. Terrorism financing is covered by the catch all provision of Article 3 AML Law and is criminalized pursuant to Article 335 A-E Criminal Code.
Trafficking in human beings and migrant smuggling	Listed in Article 3 AML Law, criminalized pursuant to Articles 149 and 195 Criminal Code.
Sexual exploitation, including sexual exploitation of children	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Articles 140-145, 148 and 149 Criminal Code.
Illicit trafficking in narcotic drugs and psychotropic substances	Listed in Article 3 AML Law, criminalized pursuant to Article 2 Law about Illegal Movement of Illicit Drugs (Decree 126-89).
Illicit arms trafficking	Listed in Article 3 AML Law, criminalized pursuant to Article 332 Criminal Code
Illicit trafficking in stolen and other goods	Illicit trafficking in stolen and other goods is not criminalized under Honduran law and is therefore not a predicate offense to money laundering.
Corruption and bribery	Bribery is covered by the catch all provision of Article 3 AML Law, criminalized pursuant to Articles 361-366 Criminal Code.
Fraud	Listed in Article 3 AML Law, criminalized pursuant to Articles 240 – 243 and 376 Criminal Code.
Counterfeiting Currency	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Articles 274-279 Criminal Code.
Counterfeiting and piracy of products	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Articles 248 and 250 Criminal Code.
Environmental crime	Covered by catch all provision of Article 3 AML

	Law, criminalized pursuant to Articles 191 A-D Criminal Code and Articles 87 Law on the Environment and the Forest.
Murder, grievous bodily injury	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Articles 116 to 123, 133 to 138, 179-A, and 179-B Criminal Code.
Kidnapping, illegal restraining and hostage-taking	Listed in Article 3 AML Law, criminalized pursuant to Articles 191, 192 and 197 Criminal Code.
Robbery or theft	Listed in Article 3 AML Law, criminalized pursuant to Articles 248-251, 217-221, 223-226, 370 and 376 Criminal Code.
Smuggling	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Articles 392 A – 392 D Criminal Code.
Extortion	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Article 222 Criminal Code.
Forgery	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Article 280-284 Criminal Code.
Piracy	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Article 320 Criminal Code.
Insider trading and market manipulation	Covered by catch all provision of Article 3 AML Law, criminalized pursuant to Articles 394 A – 394 Q Criminal Code.

117. Fiscal fraud is criminalized pursuant to Article 392-E and F Criminal Code and a predicate offense for money laundering based on the catch all provision of Article 3 AML Law.

118. The authorities' view that all criminal conduct under Honduran law may constitute a predicate offense for money laundering has been confirmed through case law.

119. However, what remains unclear is whether the catch-all provision in Article 3 AML Law only extends to conduct that is criminal in nature or whether criminal liability for money laundering may also be incurred if the underlying act would not constitute a criminal offense but any other form of unlawful conduct, including civil law or administrative law violations.

120. In discussions with representatives of the judiciary as well the PPO it was stated that due to the reference to assets, proceeds or instrumentalities that have "no justification for their origin", Article 3 AML Law could be applied even to conduct that is not specifically criminalized under Honduran law. It was further stated that in practice, this situation has never occurred and it was questionable whether the judges would in fact interpret the scope of Article 3 AML Law to be that

broad. In the absence of any case law on this point, however, it remains unclear to what underlying conduct Article 3 AML Law may be applied to.

121. While an application of the money laundering provision to underlying conduct other than criminal acts are not in violation of the FATF standard, such wide interpretation could potentially be problematic as it would leave too much room for abuse of the money laundering provision. The assessors therefore recommend amending Article 3 AML Law to be restricted in scope to underlying conduct that is criminal in nature.

#### **Threshold Approach for Predicate Offences (c. 1.4):**

122. As outlined above, while Honduras follows a combined approach, listing specific certain predicate offenses for money laundering and in addition providing for a catch-all provision, in practice this means that any unlawful conduct may constitute a predicate offenses for money laundering. The only category of predicate offense not covered under Honduran law is “illicit trafficking in stolen and other goods.”

#### **Extraterritorially Committed Predicate Offences (c. 1.5):**

123. Article 3 AML Law does not address extraterritorial application. However, pursuant to Article 5 Criminal Code, Honduran courts have jurisdiction over any crimes committed abroad if the accused is in Honduras and, amongst others, based on international conventions to which Honduras is a party to. The authorities stated that this provision in combination with Articles 6 Palermo Convention would be used to prosecute money laundering based on extraterritorially committed crimes in Honduras.

124. The authorities stated that it was not required that the underlying conduct was criminalized in the country where it occurred, as long as the act would have constituted a predicate offense in Honduras or would have fallen under the catch all provision.

125. In some cases a conviction for ML was obtained based on the catch all provision, whereby the court assumed that the underlying conduct had been committed abroad. However, so far there has been no case where it has actually been proven that the underlying conduct occurred abroad and the authorities’ interpretation that Article 3 AML Law also applies to conduct that occurred extraterritorially therefore has not yet been confirmed through case law.

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

126. Article 3 AML Law criminalizes money laundering regardless of whether the predicate offence has been committed by the money launderer or a third party.

127. Article 6 AML Law states that in cases where money laundering has been committed with other illicit activities, the penalties for the other illicit activity shall also be imposed on the perpetrator of the money laundering offense. It would therefore appear that Article 6 specifically provides for the application of the money laundering provision to the self launderer.

128. Self-laundering is therefore criminalized for all acts constituting money laundering. This was also confirmed in *Honduras vs. Bertilio Avila Castillo* (TSTR 33-2004) and *Honduras vs. Angela Platero Guarez* (27604). In both cases the conviction was obtained for both the predicate offense and the money laundering offense.

### **Ancillary Offences (c. 1.7):**

129. Ancillary offenses to money laundering are defined through Articles 8-11 AML Law. In addition, the general sections of the Criminal Code define ancillary offenses applicable to all criminal offenses as outlined below:

130. Article 32 Criminal Code provides that every person (1) who is directly involved in the commission of a crime, (2) who forces or incites another to commit a crime and (3) everybody who provides assistance in the commission of a crime is liable as a main perpetrator of the crime. However, accessories to the crime are liable as a main perpetrator pursuant to Article 32 Criminal Code only if the act would not have been committed without the assistance.

131. Accomplices to money laundering may be sanctioned pursuant to Article 8 AML Law. The scope of Article 8 AML Law is defined through Article 33 Criminal Code to include everybody who assists in carrying out a money laundering crime but is not criminally liable as main perpetrator pursuant to Article 32 Criminal Code. The provision therefore seems to extend to any person who facilitates aids, abets, or counsels the commission of a money laundering offense.

132. Article 8 AML Law further makes it an offense to “attempt to commit” money laundering, whereby Article 15 Criminal Code defines “attempt” as the carrying out of “unequivocal acts [...] with the intent to commit a specific crime” and the crime is subsequently “not accomplished for reasons unrelated to the will of the person committing the offense.”

133. Persons committing any of these offenses pursuant to Article 8 AML Law may be sanctioned with the penalty provided in Article 3 AML Law, reduced by 1/3 (imprisonment for approximately 10 to 13.5 years). Any person serving as an accomplice of a person who attempts to commit money laundering may be sanctioned with the penalty provided for in Article 3 AML Law, reduced by 2/3 (imprisonment for approximately 5-6.8 years).

134. Furthermore, any person not criminally liable pursuant to the outlined provisions but who conceals that any acts of money laundering have occurred may be sanctioned pursuant to Article 9 AML Law with the penalty provided in Article 3 AML Law, reduced by 1/3 (imprisonment for approximately 10 to 13.5 years).

135. Article 10 AML Law provides that anybody who “associates or conspires to commit” money laundering may be held criminally liable and be sanctioned with imprisonment of six to ten years. Persons who promote or lead such an association or conspiracy may be sanctioned with imprisonment of ten to fifteen years. Article 17 Criminal Code further provides that “conspiracy” is punishable if expressly provided for in the law, whereby “conspiracy to commit a crime” is committed if two or more persons agree to commit a crime.

136. Therefore, Honduras has criminalized all ancillary offenses for money laundering in line with the Vienna and Palermo Conventions.

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

137. As outlined under criterion 1.5, extraterritorial application of the ML provision is not addressed in the AML Law. However, the authorities stated that it was not required that the underlying conduct was criminalized in the country where it occurred, as long as the act would have constituted a predicate offense in Honduras would have fallen under the catch all provision. This view has not yet been confirmed through case law.

**Liability of Natural Persons (c. 2.1):**

138. The language of Article 3 AML Law does not require a specific purpose when carrying out any acts constituting money laundering, nor does it require a specific knowledge with respect to the property laundered.

139. While the money laundering provisions as provided for in the Vienna and Palermo Conventions require that the acts of money laundering are carried out with a specific purpose, i.e. to conceal or disguise the illicit origin of the property or to help another person evade the legal consequences of his/her action, Article 3 AML Law goes beyond the standard on this point in that it does not set out a purpose requirement.

140. There is also no requirement that the perpetrator knew at any given point that the property involved is the proceeds of crime.

141. With respect to predicate offenses specifically listed, the authorities stated that while the prosecution would indeed not be required to prove a specific knowledge element with respect to the property involved, it was not possible to get convicted for money laundering if the accused had no knowledge about the illicit origin of the proceeds involved, as the defendant would have a defense and therefore a right to acquittal in cases where he had no knowledge of the criminal origin of the property involved. While Honduran law does not contain a statutory provision granting the accused a defense if he can prove lack of knowledge of the criminal origin of the proceeds involved, the authorities stated that this principle was set out in case law. The assessors requested but were not provided with a copy of the relevant case.

142. It is reassuring that knowledge is still required to obtain a conviction for money laundering based on a listed predicate offense. However, to eliminate any uncertainty on this point the assessors recommend that the relevant part of the AML Law is being revised to either add a specific knowledge



requirement that has to be proven by the prosecution or to provide the accused with a statutory defense of “lack of knowledge” and, upon proving the defense, a right to acquittal.

143. While Article 3 AML Law goes beyond and is therefore not in violation of the FATF standard on this point, an application of the money laundering provision to persons that had no knowledge of the fact that the property transferred, used, acquired, possessed or administered qualifies under Article 3 AML Law would be problematic as it would leave too much room for abuse of the money laundering provision.

144. Furthermore, it is unclear how the “knowledge requirement” would be applied in the context of the catch-all provision, as in such cases the court merely needs to be convinced that there was not legal economic cause or justification for the property involved.

#### **The Mental Element of the ML Offence (c. 2.2):**

145. Article 3 AML Law does not expressly foresee that the intentional element of the offense of ML may be inferred from objective factual circumstances. However, Honduras, as confirmed by the authorities, relies on the principle of free evaluation of evidence by the judiciary (codified by Articles 199 and 202 Criminal Procedures Code), which enables the judge to make this inference. In accordance with this principle, the intentional element of any crime may therefore be inferred from factual circumstances as required by the Vienna and Palermo Conventions.

#### **Liability of Legal Persons (c. 2.3 )**

146. Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings & c. 2.4): As a general principle, Honduran criminal law does not currently provide for criminal liability of legal persons. Article 34 Criminal Code provides that the natural persons acting on behalf of a corporate entity may be held criminally liable. However, legal persons may be subject to civil liability only.

147. For money laundering offenses, however, the authorities were adamant that criminal liability may also be incurred by legal persons.

148. Pursuant to Article 12 AML Law legal persons involved in money laundering are subject to sanctions, including the liquidation of the company and a fine of one hundred percent of the property laundered, irrespective of the criminal responsibility incurred by the company’s directors, managers, or administrators.

149. While Article 12 AML Law does not specify whether the sanctions applicable to legal persons are criminal or administrative in nature, the authorities held the view that this provision would imply that legal persons may be held criminally liable for money laundering. This assertion has not been confirmed through case law.

#### **Sanctions for ML (c. 2.5):**

150. As outlined above, Honduras sanctions money laundering with imprisonment of fifteen to twenty years or two to five years in the case of negligent money laundering pursuant to Article 11 AML Law. Sanctions set out for ancillary offenses as well as sanctions for legal entities are described

under criterion 1.7. and 2.3. above. In addition, confiscation is a mandatory sanction for money laundering.

151. Article 105 Criminal Code further provides that any person criminally liable for an act is also subject to civil liability, and Article 107 sets out the civil sanctions available, including restitution, redress for physical and psychological damage and compensation for any loss incurred by the victim or any third party.

152. In comparison, the sanctions for other serious crimes under Honduran law are imprisonment of three to ten years for counterfeiting currency, six to nine years for trafficking of human beings, six months to six years for fraud, three to nine years for extortion and five to nine years for bribery.

153. The sanctions actually imposed by Honduras for main perpetrators of money laundering ranged between 15 and 16 years of imprisonment and a fine.

154. Overall, the sanctions applicable for money laundering are proportionate, dissuasive and effective.

#### **Analysis of Effectiveness**

155. According to statistics maintained at the Special Prosecutorial Office against the Organized Crime, between 2003 and the end of 2007, a total of 502 cases of money laundering were investigated.

156. Statistics maintained at the Supreme Court indicated that of all cases investigated, 73 cases were prosecuted and subsequently filed with the courts. The authorities stated that the majority of cases investigated were triggered by STRs, as all STRs submitted to the PPO would necessarily lead to the initiation of an investigation for money laundering.

157. Of those 73 cases, 24 cases led to a conviction for money laundering and eight cases led to an acquittal. In the remaining 41 cases, the case is still pending before the courts or has been terminated or suspended by the court.

158. Of the 73 cases for money laundering, 42 cases related to illicit drug trafficking, seven cases to trafficking of human beings, two cases to vehicle theft, one case to illicit arms trafficking, two cases to embezzlement, five cases to kidnapping and one case related to fraud. In ten cases the charges were filed based on the catch-all provisions, whereby in one of the cases the underlying offense was specified as illicit sales in lottery tickets. In 3 cases the underlying conduct was not specified.

159. While the overall number of ML cases investigated, prosecuted and tried before the courts seems to be quite high, many cases, particularly those that have been initiated years ago, are still pending. The authorities indicated that this was due to the fact that the judges would often order a permanent termination or a temporary suspension of the proceedings based on a lack of understanding of how to apply the money laundering provisions. In many of these cases, the judge's decision was appealed by the prosecution before the Court of Appeal. However, as the courts are generally understaffed, the appeals process would take up two years, resulting in considerable delays in the trials and a large number of cases pending.

ML Cases Investigated – Supreme Court Data

2003	2004	2005	2006	2007	TOTAL
97	142	136	69	58	502

ML Cases Prosecuted and Tried – Supreme Court Data

2003	2004	2005	2006	2007	TOTAL
9	17	24	13	10	73

ML Sentences and Acquittals – Supreme Court Data

	2003	2004	2005	2006	2007	TOTAL
CONVICTIONS	8	6	4	4	2	24
NUMBER OF PERSONS CONVICTED	8	6	5	5	2	26
ACQUITTALS	0	5	3	0	0	8
NUMBER OF PERSONS ACQUITTED	0	7	3	0	0	10

### 2.1.2. Recommendations and Comments

160. Criminalize the “concealment or disguise of the true nature or rights with respect to” proceeds of crimes to cover all material elements of the money laundering offense as defined in the Vienna and Palermo Conventions.

161. Criminalize “illicit trafficking of stolen and other goods” to make such conduct a predicate offense for money laundering.

162. Amend the law to ensure that Article 3 AML Law may be applied to all predicate offenses committed abroad.

163. Amend Article 12 AML Law to clarify that legal persons may be held criminally liable for money laundering under Honduran law.

164. To eliminate any room for abuse of the ML provision, the authorities should consider amending the catch all provision in Article 3 AML Law to extend to underlying criminal conduct only.

165. To eliminate any doubt that a conviction for money laundering can only be obtained in cases where the perpetrator knew that the proceeds involved were illicit, the authorities should consider

amending Article 3 AML Law to either add a specific knowledge requirement to be prove by the prosecution or to provide the accused with a statutory defense of “lack of knowledge” of the unlawful conduct and, upon proving the defense, a right to acquittal.

166. Provide training for the judiciary specifically on the application of the Honduran ML provisions to ensure that the ML cases are adjudicated in a timely fashion and without undue delays.

### 2.1.3. Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating <sup>2</sup>
<b>R.1</b>	<b>LC</b>	<p>The “concealment or disguise of the true nature or rights with respect to” proceeds of crimes is not criminalized in line with the Vienna and Palermo Conventions.</p> <p>“Illicit trafficking of stolen and other goods” are not criminalized under Honduran law and are therefore not a predicate offense for money laundering.</p> <p>In the absence of any statutory provisions or case law, it is unclear whether Article 3 AML Law may be applied to all predicate offenses committed abroad.</p> <p>The number of convictions obtained for ML suggests that the ML provisions are applied effectively but in many cases there are considerable delays in the adjudication process.</p>
<b>R.2</b>	<b>LC</b>	<p>It remains unclear whether legal persons may be held criminally liable for money laundering under Honduran law.</p>

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<sup>2</sup> These factors are only required to be set out when the rating is less than Compliant.

## **2.2. Criminalization of Terrorist Financing (SR.II)**

### **2.2.1. Description and Analysis**

#### **Legal Framework:**

167. Terrorism financing is criminalized through Articles 335-A to 335-E of Decree 23-2008, which amended the Criminal Code and was issued on April 24, 2008.

168. It is worth noting at the outset that due to the very recent enforcement of Decree 23-2008, no cases of TF have ever been investigated by Honduras, nor have the terrorism financing provision been tested before the courts. Any discussion as to its interpretation by the prosecuting and judicial authorities therefore has not been confirmed through case law.

169. Honduras has ratified the International Convention for the Suppression of the Financing of Terrorism (“TF Convention”) on November 11, 2002 and seven of the nine treaties listed in the TF Convention’s annex. It has not ratified the Protocol to the Maritime Convention and the Fixed Platform Protocol.

#### **Criminalization of Financing of Terrorism (c. II.1):**

170. Article 335-A of the Criminal Code criminalizes the provision or collection of funds, directly or indirectly and by any means, or the provision or attempt to provide financial or other services with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to finance acts of terrorism or terrorist organizations, even where such acts are not committed or intended to be committed in Honduras.

171. Article 335-B of the Criminal Code makes it a criminal offense to facilitate the commission of unlawful activities related to terrorism, or to provide financial assets, financial services, lodging, training, documentation or false identification, communication equipment, facilities, weapons, lethal substances, explosives, personnel, means of transportation or any other type of material or personal support. While the terms “any other type of material or personal support” is not defined in the law, the authorities stated that the term would be interpreted broadly to include any form of support. The provision of lodging or means of transportation only constitutes a criminal offense if the person providing it had knowledge of or an intention to commit terrorism financing.

172. Article 335-B Criminal Code further stipulates that it is an offense to facilitate the commission of unlawful activities related to terrorism by transferring, administering, holding in safekeeping, or concealing material support to persons or organizations, knowing that such support has been or is intended to be used in the commission of terrorist acts.

173. Article 335-C Criminal Code criminalizes the participation in real or simulated acts or contracts to disguise or conceal assets so that they may be used or that are intended to be used to finance terrorist acts or terrorist organizations.

174. Article 335 – D Criminal Code further makes it an offense to organize the commission of, or order others to commit any act classified as the offense of terrorism financing.

175. Article 335-E Criminal Code makes it a crime to contribute to a terrorist organization with the knowledge or the intention that the organization will commit one or more acts classified as terrorism financing pursuant to Articles 335-A to 335 D Criminal Code.

176. “Terrorism” is defined through Article 335 Criminal Code as “the attempts to commit a criminal act against the security of the State [for political reasons] by committing any of the following acts [...]:

- [...] Act[ing] as crew of any kind of aircraft in flight over the national air space or bound for a port of the Republic who rise up against the commander or captain thereof, taking possession of it or of its cargo;
- [...] Storm[ing] and tak[ing] possession of an aircraft, whether in flight or on land, whether or not it has a crew and passengers, and redirect it away from its destination, remove it from its position, or detain it against the will of its owners, commander, or captain, by forcing them to carry out acts against their will;
- [...] Without lawful authority, manufacture, market, traffic in, or use any kind of firearm, explosives, detonating devices, inflammable materials, and communication equipment and devices, uniforms and any other equipment for the exclusive use of the Armed Forces of Honduras;
- [...] Carry[ing] out acts aimed at sabotaging and destroying enterprises that contribute to the economic development of the country;
- [...] Plan[ning], organiz[ing], coordinat[ing], or participat[ing] in the kidnapping of persons;
- [Being a] member of armed teams, gangs, or groups that invade or attack towns, rural or urban properties, highways or public roadways, hospitals, banks, business centers, work places, temples, and other such places, causing death, fires, or damage to property, or use violence on persons, or by threats seize livestock, vehicles, or any other property, and force owners, possessors, or administrators to deliver them up or demand contributions on the pretext of guaranteeing, respecting, or defending the life or rights of persons;
- [...] Caus[ing] damage to property through the use of bombs, explosives, chemical or inflammable or like substances;
- [...] By the use of threats or violence or [by] pretending to exercise official authority or to enforce a false order of a public authority, and [...] to obtain a benefit for themselves or for a third party, force another to deliver up, send, deposit, or place at their disposal, property, money, or documents capable of producing legal effects; and
- [...] Fore[ing] another person to sign or destroy documents or securities certificates that are under their control.

177. The term “political reasons” is not defined in the Criminal Code. Equally, the term “terrorist organization” is not defined under Honduran law.

178. Special Recommendation II requires that the terrorist financing offense extends to any person who provides or collects funds by any means, directly or indirectly, with the intention that they be used (1) for terrorist acts as defined in the TF Convention, (2) by a terrorist organization or (3) by an individual terrorist. The latter two situations should be covered regardless of whether or not the funds are provided with the intention or the knowledge that the individual terrorist or terrorist organization will commit a terrorism act with it:

*Financing of Terrorist Acts as defined in the TF Convention:*

179. Pursuant to Article 2 TF Convention, the definition of “terrorist acts” should include (1) offences as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention (to the extent that Honduras has acceded to those Conventions and Protocols) and (2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”

180. Under Honduran law, “terrorism” as defined through Article 335 Criminal Act extends to very specific conduct that is committed for political reasons. Acts other than those listed in Article 335 Criminal Code that are committed with the intention to cause death or serious bodily injury to civilians, or to any other person not taking an active part in the hostilities in a situation of armed conflict, and committed with the purpose to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act, would not constitute “terrorism” under Honduran law.

181. With respect to the second aspect of the definition of “terrorist acts”, namely the extension of the definition to all offences as defined in the Conventions and Protocols listed in the Annex to the FT Convention and to which Honduras has acceded to, Article 335 Criminal Code covers many albeit not all aspects. In particular, not all offenses as defined in the Unlawful Seizure Convention, the Diplomatic Agents Convention, the Nuclear Material Convention, and the Maritime Convention are covered by Article 335 Criminal Code.

182. In addition, Article 335 Criminal Code only covers acts that were carried out for “political reasons”. The term “political reasons” is not defined in the Criminal Code but the authorities stated that “political offenses” as defined in Article 13 A Criminal Code would give guidance as to how the term should be interpreted. In accordance with this Article, any crimes carried out against state security, against the president of Honduras, crimes that endanger peace and domestic security, the dignity of the nation, crimes against the rights of people, crimes against the set form of government, terrorism, rebellion and rebellion against state would qualify as “political offenses.” The authorities further stated that in their view, any acts listed in Article 335 Criminal Code would therefore only qualify as acts of terrorism if they were committed as “political offenses” pursuant to Article 13 A Criminal Code.

183. In the absence of a “generic” terrorism offense under Honduran law as well as the fact that not all offenses as defined in the nine Conventions and Protocols listed in the Annex to the FT Convention are covered, including in situations where any such offense was committed for reasons

other than political ones, it would therefore appear that the scope of Article 335 Criminal Code does not fully comply with the definition of “terrorist acts” as defined in the TF Convention.

*Financing of Terrorist Organizations pursuant to Special Recommendation II:*

184. Article 335-A Criminal Code provides that the terrorism financing offense has been committed if a person provides or attempts to provide financial or other services or collects or provides funds with the intention that the funds or services are being used to finance terrorist organizations, whereby it is expressly stated that it is not required that the funds were actually used in the commission of a terrorist act. Article 335-E Criminal Code further makes it a crime to contribute to a terrorist organization with the knowledge or the intention that the organization will commit one or more acts of terrorism or terrorism financing.

185. The term “terrorist organization” is not defined in the Criminal Code. However, the authorities stated that the definition of “criminal organization” as defined in the Palermo Convention would be applied in the context of TF, therefore covering “any structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing [a terrorist act pursuant to Article 335 Criminal Code]”. In the absence of any case law on FT, however, this view could not be confirmed.

186. Therefore, while the financing of terrorist organizations is criminalized both in situations where the person provided or collected the funds without the intention to finance a specific act (Article 335-A) and where the funds were collected for or provided to a terrorism organization with the intention to finance a specific act (Article 335-A and Article 335-E), in the absence of a definition of “terrorist organization” or any case law on this point, it is unclear whether Honduras criminalizes the financing of terrorist organizations fully in line with the international standard.

*Financing of Individual Terrorists pursuant to Special Recommendation II:*

187. Neither Article 335-A nor any other provisions outlined above contains a reference to individual terrorists. While in situations where funds or property is given to an individual terrorist with the intention to finance a specific terrorist act seem to be covered by Articles 335-A and 335-B Criminal Code, funds or property or services provided to merely support the individual but not a specific terrorism act would not be covered under Honduran law. For example, a person providing shelter or food to an individual terrorist that he knows has carried out terrorist acts in the past but does not have any imminent plan to carry out such acts in the future, could not be held criminally liable for terrorism financing.



Funds:

188. The terms “funds” and “financial or other services” pursuant to Article 335-A Criminal Code are not defined anywhere in the law.

189. Article 335-B Criminal Code lists a wide range of items which, if provided to support terrorism, are considered to constitute terrorism financing, including financial assets, financial services, lodging, training, documentation or false identification, communication equipment, facilities, weapons, lethal substances, explosives, personnel, means of transportation or any other type of material or personal support. It therefore appears that the terrorism financing offenses can be applied with respect to a wide range of assets and property.

190. The authorities further stated that the definition of “funds” as contained in the FT Convention would be directly applicable by the Honduran courts in the context of FT cases. In the absence of any case law on FT, however, this view has not yet been confirmed by the courts.

191. In the absence of a clear definition of “funds” and “financial or other services” or any applicable case law, the assessors could not determine whether the terrorism financing offenses would in all situations extend to the provision of both legitimate as well as illegitimate funds and to assets of every kind, whether tangible or intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, letters of credits, as required by the FT Convention.

Ancillary Offenses pursuant to Article 2 (5) TF Convention:

192. The provisions in the general part of the Criminal Code, defining ancillary offenses, apply to all crimes, including terrorism financing. As outlined in great detail under Recommendation 1, element 7, Article 15 Criminal Code criminalizes attempt and Article 33 Criminal Code extends criminal liability to any person acting as accomplices in the commission of a crime.

193. Furthermore, Article 335- D Criminal Code makes it a crime to organize the commission of or order another person to commit any act classified as terrorism financing. Article 335-E Criminal Code further makes it a crime to contribute to a terrorist organization with the knowledge or the intention that the organization will commit one or more acts classified as terrorism or terrorism financing pursuant to Articles 335 and 335-A to 335 D Criminal Code.

194. All ancillary offenses as defined in Article 2 (5) TF Convention are therefore covered under Honduran law.

### **Predicate Offence for Money Laundering (c. II.2):**

195. Terrorism financing is not expressly listed in Article 3 AML Law. However, due to the inclusion of the “catch-all” provision, all crimes pursuant to Honduran Law, including terrorism financing, may constitute predicate offense for money laundering. At the time of the onsite visit, there has been no money laundering cases based on terrorism financing.

### **Jurisdiction for Terrorist Financing Offence (c. II.3):**

196. Article 335-A Criminal Code provides that the provision applies regardless of whether the financed acts are committed or intended to be in committed in Honduras or not. Article 3 Criminal Code further stipulates that Honduran law applies to any person who commits an offense in Honduras and to any acts committed abroad if the acts is an offense against the public health, the public credit, the economy or the external or internal security of Honduras. Furthermore, Article 5 Criminal Code provides for Honduran jurisdiction over acts committed on board of a Honduran vessel or aircraft.

197. In all other cases, Honduran citizens are subject to criminal liability for terrorism financing under Honduran law only if they are either located in Honduras or if they have financed an act against the domestic security of Honduras. Therefore, there is no general jurisdiction by Honduran courts for Honduran citizens that have committed a terrorism financing offense abroad as required by Article 7 (1)(c) of the FT Convention.

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

198. Article 335-A Criminal Code, which sets out the main terrorism financing offense, requires that the perpetrator acts with the “intention that [the funds] be used or in the knowledge that they are to be used to finance terrorism acts or a terrorist organization.

199. Terrorism financing pursuant to Article 335-B Criminal Code requires a specific intent or knowledge only if the support provided is in form or lodging or means of transportation. The conclusion could therefore be drawn that in all other situations covered by Article 335-B such knowledge would not be required. However, the authorities stated that it would not be possible in practice to prosecute and convict a person for terrorism financing pursuant to Article 335-B Criminal Code if the person did not know that the funds or items would be used for terrorism or had no intention to finance terrorism. In the absence of any case law or statutory provision on TF, this view has not yet been confirmed by the courts. To eliminate any uncertainty on this point the assessors recommend that Article 335-B Criminal Code is being revised to require that specific knowledge by the offender has to be proven in all situations covered by Article 335-B Criminal Code.

200. Articles 335-A and 335-B Criminal Code do not expressly foresee that the intentional element of the offense of ML may be inferred from objective factual circumstances. However, Honduras, as confirmed by the authorities, relies on the principle of free evaluation of evidence by the judiciary (codified by Articles 199 and 202 Criminal Procedures Code), which enables the judge to make this inference. In accordance with this principle, the intentional element of any crime may therefore be inferred from factual circumstances as required by the FATF standard.

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

201. As outlined under Recommendation 2, Honduran law does not currently provide for criminal liability of legal persons. However, pursuant to Article 335-G Criminal Code, legal persons may be subject to administrative sanctions, including closure of the company, dissolution and liquidation and publication in the media of the decision to close, dissolve or liquidate the company.

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

202. With two exceptions, all terrorism financing offenses as outlined above may be sanctioned with imprisonment of 20 to 30 years and a fine of one to five million HNL (approx. 52,660 to 263,300 USD). For the offense of “organizing the commission” pursuant to Article 335-D Criminal Code, the imprisonment sanction is the same as for all other offenses but the fine is limited to one to two million HNL (approx. 52,660 to 105,849 USD). For “contribution to a terrorist organization” the fine is limited to one million HNL (approx. 52,660 USD).

203. In comparison, the sanctions for other serious crimes under Honduran law are imprisonment of three to ten years for counterfeiting currency, six to nine years for trafficking of human beings, six months to six years for fraud, three to nine years for extortion and five to nine years for bribery. Jurisdictions comparable to Honduras’ sanction terrorism financing with a fine and imprisonment of six to forty years.

204. The sanctions available for terrorism financing seem to be proportionate and dissuasive. In the absence of any case law, however, it is impossible to establish whether they are also effective.

#### **Analysis of effectiveness**

205. Due to the very recent enactment of the FT provisions, at the time of the onsite visits there have been no inquests, investigations or trials related to terrorism financing. Assessors were therefore not in a position to draw any conclusions regarding the effective implementation of the provisions.

### **2.2.2. Recommendations and Comments**

206. Amend the definition of “terrorism” pursuant to Article 335 Criminal Code (1) to cover all terrorism offenses as defined in the Conventions and Protocols listed in the Annex to the FT Convention and ratified by Honduras, regardless of whether the act was carried out for “political reasons” or not and (2) to extend to any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”

207. Amend Article 335-A Criminal Code to expressly include a reference to “individual terrorists” to ensure that the financing of individual terrorists may also be prosecuted in cases whether the offender did not have the intent to finance a specific act and define “individual terrorist” in line with the FATF standard.

208. Define the term “terrorist organization” in line with the international standard to clarify the extent to which Articles 335-A and 335-E Criminal Code criminalize the financing of such

organizations.

209. While it appears that the terrorism financing offenses can be applied with respect to a wide range of assets and property, to eliminate any doubts on this point the assessors recommend defining the terms “funds” and “financial and other services” in line with the definition of “funds” as provided for in the TF Convention.

210. Article 335-B Criminal Code should be revised to require that specific knowledge by the offender has to be proven in all situations covered by Article 335-B Criminal Code.

211. Article 3 Criminal Code should be amended to give Honduras jurisdiction over all terrorism financing offenses committed by Honduran citizens abroad.

212. Amend the law to provide for criminal liability of legal entities.

### 2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<p>The definition of “terrorism” pursuant to Article 335 Criminal Code does not cover (1) all terrorism offenses as defined in the Conventions and Protocols listed in the Annex to the FT Convention, including in situations where the act was carried out for other than “political reasons” and (2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.</p> <p>In the absence of a reference to “individual terrorists” in Article 335-A Criminal Code the financing of individual terrorists does not seem to be covered in situations whether the offender did not have the intent to finance a specific act.</p> <p>In the absence of a definition of “terrorist organization,” it is unclear to what extent Articles 335-A and 335-E criminalize the financing of such organizations.</p> <p>In the absence of a definition of “financial means” it remains unclear whether the terrorism financing offense extends to any legitimate or illegitimate funds as defined in the TF Convention.</p> <p>Honduras does not seem to have jurisdiction over terrorism financing offenses committed by Honduran citizens abroad in all cases.</p> <p>There is no criminal liability of legal entities.</p> <p>Effectiveness could not be measured as the law was only amended near the end of the mission.</p>

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

### 2.3.1. Description and Analysis

#### Legal Framework:

213. Articles 55 and 64 Criminal Code provide for a conviction based confiscation of property and are applicable with respect to all criminal offense under Honduran law. Article 2 AML Law further provides for a definition of “confiscation” applicable with respect to money laundering offenses only.

214. Articles 2 and 15 to 19 AML Law contain provisions relating to the freezing and seizure of property in the context of ML investigations and prosecutions. Additional powers to search premises and persons, and seize property and information for evidentiary purposes are provided for in the Criminal Procedures Code.

**Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1); Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):**

#### Property relating to the predicate offense:

215. With respect to all crimes under Honduran Law, including money laundering, Article 64 Criminal Code provides that a conviction and sentence shall include forfeiture and payment of personal costs, costs related to the trial and costs occasioned by the judgment where this is applicable. Confiscation under Honduran law is therefore conviction based.

216. Article 55 Criminal Code further defines forfeiture as “the loss of the proceeds of a felony or misdemeanors, and the instruments by which they are carried out, unless they belong to a third party not liable for the offense”. While the confiscation provision pursuant the Criminal Code extends instrumentalities actually used in the commission of a crime, it does not extend to “instrumentalities intended for use”. This view was also confirmed by the authorities.

217. Article 64 Criminal Code does not discriminate between property owned or merely held by the defendant. The authorities confirmed that Article 64 Criminal Code could indeed be used to confiscate any property found by the defendant as well as property held or owned by a third party if the prosecution can prove that the property is the proceeds of or instruments that were used in the commission of a crime committed by the defendant. For example, in the past the provision has been used to confiscate stolen cars from a car dealer who was attempting to sell the car for the defendant.

218. Article 55 Criminal Code does not contain a reference to the confiscation of equivalent value. The authorities confirmed that the provision could not be used to confiscate legitimate assets amount to an equivalent value to the criminal proceeds or the instrumentalities used in the commission of the crime. Only illegitimate property including converted proceeds would be covered by the provision.

219. The term “proceeds” is not defined anywhere in the Criminal Code. The authorities stated that in the past, the term has been interpreted broadly by the courts to extend to any property derived directly or indirectly from proceeds of crime, including income, profits or other benefits from the proceeds of crime. However, in the absence of a definition of the term “proceeds” as used in the

Criminal Code, it remains unclear whether the confiscation provisions pursuant to Article 55 Criminal Code may be applied to all property as defined in the FATF standard.

*Property relating to ML:*

220. For money laundering offenses, the provisions of the AML Law apply in addition to the Criminal Code. In particular, Article 2 AML Law defines “confiscation” as “the permanent deprivation or loss of property, proceeds, instrumentalities, and effects of the [money laundering offense]” but expressly exempts property that is owned by a third party who was not involved in the offense.

221. “Proceeds” is defined through Article 2 AML Law to include any property derived directly or indirectly from the commission of the money laundering offense and therefore extends to any income, profits and other benefits from the proceeds of crime.

222. While confiscation for money laundering is issued pursuant to Article 64 Criminal Code, the scope of the measure is broader with respect to ML cases as the definition of “confiscation” in the AML Law trumps the definition contained in the Criminal Code, as the former is *lex specialis* in relation to the latter. Unlike the definition of “confiscation” provided in Article 55 Criminal Code, the definition in Article 2 AML Law not only covers “proceeds and instrumentalities used” but also extends to the money laundered through reference to the “property of the ML offense and any effects” thereof.

223. As in the case of other crimes, however, instrumentalities intended for use in the commission of the money laundering offense are not covered by the confiscation provision.

224. Article 19 AML Law provides that lawfully acquired assets may be confiscated if they have become intermingled with those acquired unlawfully. In all other circumstances, however, equivalent value confiscation is not possible.

Property relating to TF:

225. As in all other cases, proceeds of or instrumentalities used in the commission of a terrorism offense may be confiscated based on conviction pursuant to Article 64 Criminal Code.

226. In addition, pursuant to Article 335-H Criminal Code, assets used or intended to be used in the commission of a terrorism financing offense, objects of the terrorism financing offense as well as proceeds of terrorism financing may be confiscated based on a conviction for the offense. If it is impossible to identify the assets to be confiscated, the order may be executed towards assets of equivalent value to such assets.

227. Unlike the provisions applicable for ML and predicate offenses, Article 335-H Criminal Code therefore extends to all types of property as required by the FATF standard, including the money used to commit the offense, proceeds of and instrumentalities used or intended for use in the commission of the offense, as well as property of equivalent value to such property.

228. However, “proceeds” is not defined anywhere in the Criminal Code and it is therefore unclear whether the confiscation provision of Article 335-H may be applied to any property derived directly or indirectly from proceeds of crime, including income, profits or other benefits from the proceeds of crime, in line with the FATF standard.

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

Provisional Measures Available in ML cases:

229. Article 2 AML Law defines “preventive attachment” as the “precautionary measure consisting of the temporary ban on the transfer, conversion, alienation, encumbrance, or removal of property, of the custody or temporary control thereof, by order of the competent judicial authority of the Office of the Public Prosecutor” and “freezing or seizure” as the “temporary ban on the possession, use, or removal of property, proceeds, instrumentalities, or objects what were used or might have been used in committing” the offense of money laundering.

230. As outlined above, “proceeds” is defined through Article 2 AML Law to include any property derived directly or indirectly from the commission of the money laundering offense and therefore extends to any income, profits and other benefits from the proceeds of crime.

231. Article 15 AML Law provides that seizing orders or any other precautionary or preventive measures shall be issued by the judicial body or the Public Prosecutor Office (PPO) immediately and without delay if notification of any acts that would constitute money laundering has been received. The authorities stated that this would allow them to apply provisional measures at any stage of the proceedings. It is not required that a formal prosecution has been initiated.

232. With respect to investigations or prosecutions for money laundering, Article 15 in combination with Article 2 AML Law therefore allows for the seizing and freezing of money laundered as well as the proceeds from, instrumentalities used or intended for use in the commission of the offense.

233. In cases where lawfully acquired assets have been intermingled with those acquired unlawfully, the judicial body or the PPO may enforce provisional measures against those intermingled assets up to an amount equal to the amount of the offense committed. However, where no commingling has taken place, provisional measures may not be applied to property of equivalent value that is clearly legitimate.

234. While as a general rule a court order would be required prior to the taking of any provisional measures provided for in Article 15 AML Law, whereby it is expressly stipulated that prior notification or a court hearing is not required for the taking of provisional measures. In urgent cases the PPO is allowed to apply the measures even in the absence of a court order but the court. However, the judicial body has to be informed within 24 hours and provided with an explanation as to the grounds for taking such measures. The court should then confirm or overturn, in whole or in part, the measure by way of an order.

235. Provisional measures are ordered for an indefinite time and stay in place until a confiscation order or an acquittal has been issued. Property subject to such measures has to be deposited with the Office for the Administration of Confiscated Property (OABI) at the PPO's.

*Provisional Measures available in FT Cases or Cases relating to Predicate Offenses:*

236. In cases not covered by the AML Law, including FT and all predicate offenses, law enforcement authorities may apply to the court for issuance of a seizing warrant pursuant to Article 219 Criminal Procedures Code "if they have knowledge of the "existence of things that should be seized due to their relation with a crime" and to "protect those [things] to avoid their concealment, subtraction or destruction."

237. While the law does not define exactly what types of property or assets may be seized pursuant to Article 219, Article 218 Criminal Procedures Code provides for a list of things that are expressly excluded from the seizing power under Article 218, namely laboratory exams performed under professional oath, and notes and communications between the defendant and his attorney. The authorities stated that all things not expressly excluded by Article 218 could therefore be subject to provisional measures pursuant to Article 219 Criminal Code. Provisional measures covering proceeds of, instrumentalities used or intended for use in the commission of any crime under Honduran law are therefore available.

238. As in the case of money laundering, legitimate assets of equivalent value to proceeds or instrumentalities may not be seized pursuant to Article 219 Criminal Procedures Code.

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

239. As stated above, provisional measures pursuant to Article 15 AML Law and Article 219 Criminal Procedures Code may be taken based on a court order and in urgent cases related to ML also based on an order by the PPO.

240. Article 15 expressly provides that the measure may be taken without prior notice and in the absence of a court hearing. Article 219 Criminal Procedures Code requires that the judge immediately



decides on the application of the provisional measures but the authorities confirmed that no court hearing or prior notice to the party concerned is required.

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

241. As outlined in great detail under Recommendations 27 and 28 of this report, Honduran law enforcement authorities have been provided with a range of investigatory powers to identify and trace property that may become subject to confiscation.

242. In particular, with respect to confidential information held by financial institutions supervised by the Commission, Article 28 AML Law provides that the PPO, after opening an investigation for ML, may request information from those institutions through the FIU. Pursuant to the AML Law, requested institutions have to respond to the request within five days. In the case of non-compliance with this provision, the requested institution is subject to sanctions under the AML Law. Information obtained through Article 28 AML Law may be used as evidence in court.

243. In cases other than ML, law enforcement authorities may get access to confidential information pursuant to Article 274 Criminal Procedures Code, whereby the measure is subject to a court order.

244. Furthermore, Article 273 Criminal Procedures Code allows law enforcement authorities to conduct onsite inspections of files, accounting records, documents at public or private offices if they have knowledge that an act which could constitute a crime has been carried out. The authorities stated that the provision could be used to get access to information covered by professional secrecy laws, for example for information held by lawyers. A court order is not required.

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

245. Property subject to provisional measures pursuant to Article 17 AML Law has to be returned to a claimant if the claimant can establish that he/she was not involved in any way in the offense being investigated, that he had no knowledge that the property involved was unlawful, and that he has not acquired any rights with respect to such property for the purpose of avoiding precautionary measures or confiscation in such circumstances.

246. With respect to provisional measures taken pursuant to Article 219 Criminal Procedures Code, bona fide third parties are not protected. In the absence of or prior to a final confiscation order pursuant to Article 64 Criminal Code for such property, bona fide third parties may therefore not appeal a seizing measure.

247. Once a conviction has been issued, the rights of bona fide third parties are protected pursuant to Article 55 Criminal Code and Article 2 AML Law, which expressly exclude property belonging to a third party that was not involved in the commission of the offense in respect to which the confiscation was issued. The determination as to whether a party is bona fide is made pursuant to Article 17 AML Law as outlined above, whereby the burden of proof is on the party.

248. For assets confiscated based on a conviction for terrorism financing, Article 335-H Criminal Code provides that within one year from the date of the notification of the judgment, bona fide third

parties may object to the confiscation order to the court which pronounced it. The judge should then rule on the matter within three days.

**Power to Void Actions (c. 3.6):**

249. Article 17 AML Law gives an implied power to void actions meant to avoid confiscation of assets. The provision stipulates that as a general rule, the judicial authority or PPO has to return property subject to provisional measures to a rightful claimant. However, the property does not have to be returned in cases where it can be assumed that the claimant has acquired any rights with respect to such property from the person being tried for the purpose of avoiding precautionary measures or confiscation in such circumstances.

250. With respect to property involved in terrorism financing, Article 335-I Criminal Code provides that any contracts, arranged either inter vivos or mortis causa, pursuant to which assets were transferred merely to prevent implementation of a confiscation order shall be null and void.

**Additional Elements (Rec 3)—Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):**

251. Honduran law does not currently provide for civil forfeiture of property. However, the authorities stated that a law providing for such confiscation even in the absence of a conviction would currently be in the draft stage.

**Analysis of Effectiveness:**

252. With respect to provisional and confiscation measures issued for money laundering, the assessors were provided with a large amount and very detailed statistics by the OABI.

253. For provisional and confiscation measures issued for predicate offenses no statistics have been provided by the authorities.

254. According to statistics maintained by the OABI, as of 2007 almost 100 cases of ML led to the application of provisional measures pursuant to Article 15 AML Law. Both Honduran Lempiras (HNL) and US Dollars (USD) were seized, resulting in assets totaling a sum of HNL 99,672,826 (equivalent to USD 5,275,456) administered by the OABI. In addition, a large number of moveable items (331), such as cars and motorbikes, and a number of immoveable items (71), such as real estate, were seized and are administered by the OABI.

255. In only 7 cases, however, the assets and items were eventually confiscated and distributed by the OABI to various government agencies, resulting in a total value of HNL 2,648,542 (equivalent to USD 140,181).

TOTAL VALUE OF HNL AND USD SEIZED IN ML CASES AND ADMINISTERED BY THE OABI

YEAR	HNL	USD
2003	644,386	369,355
2004	34,565	2,592,367
2005	1,861,786	166,965
2006	569,243	118,270
2007	683,884	34,56
TOTAL CAPITAL ADMINISTERED	38,325,189	3,246,991

ITEMS SEIZED IN ML CASES AND ADMINISTERED BY THE OABI

YEAR	MOVEABLE ITEMS	IMMOVEABLE ITEMS
2003	24	2
2004	123	34
2005	53	11
2006	80	11
2007	57	13
TOTAL	339	71

VALUE OF HNL AND USD CONFISCATED IN ML CASES

YEAR	USD	HNL	VERDICT
2003 (1 case)	376,741	34,348	Convicted
2004 (1 case)	421,930		Convicted
2005 (4 cases)	440,190	45	Three cases terminated, one case confiscation through death of defendant
2006 (no cases)			
2007 (1 case)	145,500		
TOTAL	138,361	34,393	

256. Overall, the number of ML cases in which provisional measure have been applied and property been seized is impressive. However, as outlined under Recommendations 1 and 2 of this report, many of the initiated cases are still pending before the courts or have been suspended and it is therefore unclear, how many of those provisional measures will indeed result in a permanent deprivation of the criminal proceeds or instrumentalities.

257. In the absence of statistics for provisional and confiscation measures applied with respect to predicate offenses, the assessors could not determine the effective implementation of Articles 219 Criminal Procedures Code and Articles 55 and 64 Criminal Code.

258. Equally, due to the absence of any cases for FT, it cannot be established whether the provisional and confiscation measures would also be applied effectively in cases involving property used or proceeds from terrorism financing offenses.

### 2.3.2. Recommendations and Comments

259. Confiscation measures pursuant to Articles 55 and 64 Criminal Code should be extended to instrumentalities intended for use in the commission of the offenses as well as to property of equivalent value to proceeds from or instrumentalities used or intended for use in the commission of the crime. In the context of ML, equivalent value confiscation should be possible also in situations where there was no comingling with illicit property.

260. To ensure that the confiscation provisions pursuant to Article 55 and 335-H Criminal Code may be applied to all property as defined in the FATF standard, including property derived directly or indirectly from proceeds of the crime such as income, profits or other benefits, the Criminal Code should be amended to provide for a definition of the term “proceeds.”

261. Provisional measures pursuant to Article 219 Criminal Code and Article 15 AML Law should be extended to legitimate property of equivalent value to proceeds or instrumentalities of ML, FT or predicate offense or the money laundered or used to finance terrorism.

### 2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
<b>R.3</b>	<b>LC</b>	<p>Confiscation pursuant to Articles 55 and 64 Criminal Code does not extended to instrumentalities intended for use in the commission of the offenses or to property of equivalent value to proceeds from or instrumentalities used or intended for use in the commission of the crime. In the context of ML, equivalent value confiscation is not possible many situations.</p> <p>It is unclear whether confiscation provisions pursuant to Article 55 and 335-H Criminal Code may be applied to all property as defined in the FATF standard, including property derived directly or indirectly from proceeds of the crime such as income, profits or other benefits.</p> <p>Provisional measures pursuant to Article 219 Criminal Code and Article 15 AML Law do not cover legitimate property of equivalent value to proceeds of or instrumentalities used or intended for use in the commission of ML, FT or predicate offense or the money laundered or used to finance terrorism.</p>

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

### 2.4.1. Description and Analysis

262. Under Special Recommendation III, countries should have laws and other procedures in place that enable them to freeze without delay funds and other assets of persons designated pursuant to United Nations Security Council Resolutions (UNSCR) 1267 and 1373. Laws and other measures should also provide for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation. Such freezing should take place without delay and without prior notice to the designated persons involved. In practice, countries should designate a specific authority responsible for receiving and disseminating the UNSCR 1267 lists and the requests made under UNSCR 1373.

#### Legal Framework:

263. Honduras does not have a legal framework that would allow the country to freeze terrorist assets in accordance with UNSCR 1267 or to consider lists issued by other countries in accordance with UNSCR 1373. Honduras has never issued its own designations pursuant to UNSCR 1373, nor does it have a process in place to do so, should the case arise.

264. At the time of the mission, no property related to terrorism or terrorism financing has ever been frozen, seized or confiscated and no matches with lists issued pursuant to UNSCR 1267 or 1373 have ever been identified.

265. Outside of the contexts of UNSCR 1267 and 1373, assets relating to domestic terrorism financing cases may be seized pursuant to Article 219 Criminal Procedure Code and subsequently confiscated pursuant to Article 335-H Criminal Code. However, in the absence of criminal liability of legal entities for FT, those measures could only be taken with respect to individuals suspected of being terrorists or financing terrorists and not with respect to property held by legal entities and suspected to be used for FT purposes. Furthermore, such measures may only be taken based on a domestic court order.

### **Freezing Assets under S/Res/1267 (c. III.1); Freezing Assets under S/Res/1373 (c. III.2):**

266. Honduras has not established an adequate response to its obligations under UNSCR 1267 and 1373. No laws and procedures are in place to ensure that terrorist funds or other assets of persons designated by the UN in accordance with UNSCR 1267 or of persons designated in the context of UNSCR 1373 can be frozen without delay and without prior notice to the person involved.

267. Pursuant to Resolutions 1230/30-11-2004 and 052/2002, supervised institutions and insurance and reinsurance institutions are required to “check lists of natural or legal persons who represent a significant risk of committing acts of terrorism that pose a threat to national and international security” and, in case of a match, immediately inform the FIU by phone so that the PPO may immediately request securing of the accounts involved. However, to take any measures pursuant to Article 219 Criminal Procedure Code, the PPO would have to initiate a domestic investigation for terrorism financing pursuant to Article 335 A or B Criminal Code. The measure would not be available purely on the basis of a designation by the UN Security Council, Honduras or another country but would in any case require a domestic court order.

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

268. Freezing measures taken by other countries in a domestic context may be implemented in Honduras through Article 274 Criminal Procedures Code. However, the measure requires a court order and is therefore based on criminal proceedings in the foreign country.

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

269. No freezing measures pursuant to UNSCR 1267 and 1373 are in place under Honduran law.

270. In the absence of a definition of “things” pursuant to Article 219 Criminal Procedure Code, it remains unclear whether seizing measures applied pursuant to Article 219 Criminal Procedure Code in a domestic case of terrorism financing would extend to “funds or other assets wholly or jointly owned or controlled, directly or indirectly” by a suspected terrorist or terrorist financier as well as to “funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly” by a suspected terrorist or terrorist financier.

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

271. No freezing measures pursuant to UNSCR 1267 and 1373 are in place under Honduran law. The assessors were not informed of any formal mechanisms or other systems for the authorities to disseminate lists issued in accordance by UNSCR 1267.

272. While the authorities stated that in practice, lists pursuant to UNSCR 1267 have been submitted to the financial supervisors via the Ministry of Foreign Affairs, who in turn have forwarded them to supervised institutions, it is unclear what measures could be taken in case of a match with the lists, as Honduran law does not provide for any freezing or seizing mechanisms with respect to TF outside the context of domestic proceedings against natural persons suspected to be involved in terrorism or terrorism financing.

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

273. No guidance has been issued to financial institutions on how to handle such lists. In the absence of freezing measures, either in a domestic context or pursuant to UNSCR 1267 and 1373, the criterion cannot be assessed.

**De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7); Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8); Access to frozen funds for expenses and other purposes (c. III.9); Review of Freezing Decisions (c. III.10):**

274. In the absence of legal framework to implement UNSCR 1267 and 1373, there are no mechanisms for delisting, for unfreezing or for allowing access to funds for basic expenses or similar, for challenges to freezing decisions..

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

275. With respect to domestic cases, property may be confiscated based on a conviction for terrorism financing pursuant to Article 335-H Criminal Code, as described and analyzed in great detail under Recommendation 3 of this report.

276. Furthermore, seizing measures pursuant to Article 219 Criminal Procedures Code may be taken by the PPO based on a court order if a person is suspected of terrorism or terrorism financing.

277. However, in the absence of criminal liability of legal entities for FT or terrorism, both the confiscation and provisional measures outlined above may not be taken against legal entities suspected to be involved in terrorism or terrorism financing.

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

278. With respect to domestic cases, a confiscate or assets based on a conviction for terrorism financing may appealed by bona fide third parties within one year from the date of the notification of the judgment. However, in the absence of legal framework to implement UNSCR 1267 and 1373, the criterion cannot be fully assessed.

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

279. In the absence of legal framework to implement UNSCR 1267 and 1373, the criterion cannot be assessed.

**Additional Element (SR III)—Implementation of Measures in Best Practices Paper for SR III (c. III.14):**

280. In the absence of legal framework to implement UNSCR 1267 and 1373, the criterion cannot be assessed.

**Additional Element (SR III)—Implementation of Procedures to Access Frozen Funds (c. III.15):**

281. In the absence of legal framework to implement UNSCR 1267 and 1373, the criterion cannot be assessed.

**2.4.2. Recommendations and Comments**

282. Honduras should put in place adequate laws and procedures to ensure that terrorist funds or other assets of persons designated by the UN in accordance with UNSCR 1267, in the context of UNSCR 1373 or of persons subject to an investigation or prosecution under domestic law can be frozen without delay and without prior notice to the person involved. The laws and procedures should address all requirements under UNSCR 1267, 1373 and SR III. In particular:

283. The laws and procedures should ensure that freezing actions initiated under the mechanisms of other jurisdictions can be examined and, where appropriate, be implemented.

284. The freezing mechanisms should extend to all funds and assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations and as well as any funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by such persons or organizations.

285. Procedures should be established to ensure that all freezing actions taken pursuant to Resolutions 1267 and 1373 and SR III are immediately being communicated to the financial sector.

286. Financial institutions and other persons or entities that may be holding targeted funds or assets should receive clear instructions and guidance regarding their obligations under the established freezing mechanisms.

287. The laws and mechanisms should provide for effective procedures for considering de-listing request and for procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures. Both procedures should be made public and be in line with UNSCR 1267 and 1373.

288. The laws and mechanisms should provide for clear procedures for access to funds in accordance with UNSCR 1452.

289. The laws and mechanisms should provide for procedures to challenge any freezing measures.

290. The authorities should ensure effective monitoring of compliance with the obligations under SR III and provide for sanctions for noncompliance by financial institutions or other entities that may be holding targeted funds or assets.



**2.4.3.****Compliance with Special Recommendation III**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.III</b>	<b>NC</b>	No adequate laws and procedures are in place to ensure that terrorist funds or other assets of persons designated by the UN in accordance with UNSCR 1267, in the context of UNSCR 1373 or of legal persons subject to an investigation or prosecution under domestic law can be frozen without delay and without prior notice to the person involved.

**2.5. The Financial Intelligence Unit and its Functions (R.26)****2.5.1.****Description and Analysis****Legal Framework:**

291. Decree 45-2002, (the Anti-Money Laundering Law) and specifically Article 44, created the Honduras Financial Intelligence Unit as division- level entity, part of the Banking Supervisory element of the National Banking and Insurance Commission (CNBS) The head of the FIU, appointed by the President of the Commission, reported to the Vice-president of the Commission. The Law also provided for the presence in the Unit of a representative of the Ministerio Publico, and required the FIU to forward copies of STRs to the Ministerio Publico within 5 days of receipt. A March 2008 amendment of the AML Law changed a number of the provisions governing the mandate and responsibilities and accountability relationship of the FIU.

292. In March 2008, the National Congress passed amendments to the AML Law, broadening the coverage of the Law to include a number of entities not previously covered, and also amended Articles 44 and 45, thereby changing the reporting relationship of the FIU to the CNBS as well as altering its mandate. The Director of the FIU is now accountable directly to the President of the CNBS. The amendments also eliminate the requirement for the FIU to forward all STRs automatically to the Ministerio Publico; and, the amendments also provide that the large cash transaction reports previously sent by reporting entities to the Commission now be sent directly to the FIU. As these changes were legislated several months after the on-site assessment, their implementation could not be assessed, though it is reported by the FIU that a number of them have not yet been implemented.

**Establishment of FIU as National Centre (c. 26.1):**

293. Under the Law, as it stood at the time of the assessment, the mandate of the FIU was the receipt, analysis, and consolidation of the information reported by institutions supervised by the Commission about “atypical transactions” (STRs) and large cash transactions (over \$10,000 or Lempira equivalent), and storing and managing them in an electronic data base. “Atypical” transaction reports (STRs) were required to be reported to the Fiscalia immediately. Threshold transaction reports were reported monthly to the CNBS. The FIU was (and remains) the only entity in Honduras mandated to receive suspicious transaction reports relative to the matter of money

laundering. As terrorism financing was not criminalized at the time of the assessment, the FIU did not receive STRs related to TF. Article 44 also established that the FIU is a means by which the Ministerio Publico, or a competent judicial body, may obtain from reporting entities the information it considers necessary in the investigation of offences identified in the AML Law.

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

294. The FIU has no formal role in providing guidelines to financial institutions. That function is the responsibility of the CNBS supervisory department. Nevertheless, the FIU informally contributes to formulation of guidelines, and provision of training, to financial institutions. Recently the FIU has begun to send an FIU analyst to accompany the Commission's compliance teams when the latter conduct on-site examinations of reporting entities.

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

295. In its analysis, the FIU has recourse to its own transactions databases and supplementary information obtained from financial reporting entities. The FIU does not have explicit authority to access administrative data bases, for example registries of property or corporations. (In any case, such access would be difficult as those data bases have not yet been automated.) In practice, the FIU asks the Fiscalia to obtain such information for it, but because of the lack of automation the time delays in obtaining such information are sometimes considerable. There is also no provision for the FIU to obtain or access data on cross border currency declarations or seizure of undeclared funds by Customs. Those declarations are not routinely copied to the FIU, and Customs has indicated that it does not provide this information to the FIU, nor does it receive queries about this information from the FIU.

296. The FIU does not have statutory authority to obtain law enforcement information but the authorities have stated that the FIU can access law enforcement information through the representative of the Ministerio Publico in the FIU in the context of an agreement between the Fiscalia and the Commission President's office concluded in 2006. Assessors recently received a copy of this agreement. It makes no explicit mention of access to law enforcement information, although it does enumerate a number of other state bodies from whom the FIU may obtain information (but must do so through the Ministerio Publico's representative within the FIU). During the onsite assessment in December 2007, the team visited most of the listed entities, and in most instances the records of those agencies were not computerized, and the information from their holdings could only be accessed through a slow and painstaking manual search of hard-copy records.

297. There is no explicit authority for the FIU to access commercially or publicly available information sources.

#### **Additional Information from Reporting Parties (c. 26.4):**

298. The FIU can require financial institutions to provide additional financial information in respect of persons or transaction that have been reported to it. In addition, as noted above, the Ministerio Publico can require the FIU to obtain from financial institutions information relevant to the investigation of offences identified in the AML Law, (even if the person or transaction has not been the subject of an STR).

#### **Dissemination of Information (c. 26.5):**

299. As noted above, at the time of the on-site visit, the FIU was required to provide the reported transaction information and any other relevant information to the Ministerio Publico within 5 days of the receipt of the STR from financial institutions. Legislative amendments of March 2008 removed the requirement for automatic, immediate transmission of all STRs to the Ministerio Publico. The Ministerio Publico can also task the FIU to search its databases for information relevant to persons or entities that are being investigated by the prosecutorial service, even if no STR has been submitted in respect of such persons or entities

300. The FIU, as provided by the AML Law, conducts analyses of the information it receives and discloses information to the Ministerio Publico, the entity authorized to initiate and direct investigations of suspected money laundering. In addition, the FIU can also be required to disclose information to judicial authorities in relation to judicial proceedings. The FIU is not empowered to disseminate information to any other state bodies.

#### **Operational Independence (c. 26.6):**

301. The head of the FIU directs the work of the FIU as provided for in the AML Law, and is responsible to the President of the Commission. The Unit is housed in the premises of the Commission, and its security and other administrative requirements, including IT systems, are provided by the Commission. The FIU does not have a separate budget; its budget is part of the budget of the larger Commission. The FIU has informal input into the budget setting process. Its expenditures must be approved by the President of the Commission. The staff of the FIU is employed by the Commission, and consists of 14 persons (of whom 9 are analysts) including the head of the Unit. The FIU discloses the results of its analyses to the Ministerio Publico (the body authorized by the AML Law to conduct and direct investigations), but is not required, nor permitted, to report that or similar information to any superior body, neither in the Commission, nor elsewhere. Apart from the Ministerio Publico, no other state body has right of access to the FIU's information holdings. Judicial authorities may require the disclosure of FIU information to judicial proceedings.

302. The AML Law provides for the permanent presence in the FIU of a prosecutor from the Ministerio Publico. A review of the MOU concluded between the CNBS and the Ministerio Publico showed that the Fiscalía's representative was extensively involved in the analysis and decision making of the FIU and in some instances could over-ride the decision of the Director of the FIU in relation to the disposition cases. However, the March 2008 amendments of the AML Law give significantly greater independence to the FIU in conducting its analyses and determining which cases will be disclosed to the Fiscalía.

303. As already noted above, the FIU can be, and is, tasked by the Ministerio Publico to conduct searches of its data bases and provide the information to the Ministerio, as well as tasking the FIU to obtain financial information from financial institutions about persons or accounts of interest to the Ministerio Publico. Response to this tasking is mandatory for the FIU. Information contained in the FIU's data bases must be provided within 24 hours. Information from reporting entities must be provided within 5 days.

304. There have been some indications from the management of the FIU at the time of the on-site assessment that there are constraints upon the FIU's decision to initiate a case analysis, but current management states that there are no constraints.

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

305. IT and information management services are provided to the FIU by the Information Technology department of the CNBS. The FIU's information holdings are held on a server in the Commission's IT department, with the same level of security as the Commission's own information holdings. Access to the FIU's information is limited to the staff of the FIU and some designated members of the data management staff of the Commission's IT department. The FIU itself is housed in the same building as the Commission. While there appears to be access control to the Commission's building, it does not appear to be rigorous, nor does there seem to be adequate control of access to the FIU premises within that building.

**Publication of Annual Reports (c. 26.8):**

306. At the time of the on-site visit, the FIU did not issue its own annual report, nor publish statistics and typologies that would serve to inform other partners and the general public, but its report was contained in the annual report of the National Banking and Insurance Commission..

**Membership of Egmont Group (c. 26.9):**

307. The Honduras FIU has been a member of the Egmont Group of Financial Intelligence Units since 2005.

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

308. The FIU is authorized, by the AML Law, to exchange information with foreign FIUs, provided an MOU for that purpose has been concluded. It can respond to requests, or disclose information spontaneously, and it can also make information requests to those FIUs. Since 2002, the Honduran FIU has concluded information exchange MOUs with 15 foreign FIUs (list below). In the period 2004-2007, the FIU received 19 information requests from foreign FIUs, and itself made 17 requests to other FIUs.

**Adequacy of Resources to FIU (c. 30.1):**

309. The FIU has a total complement of 14 staff, including the head of the FIU and 3 administrative support staff. The small staff appears reasonably well qualified, although the diversity of staff skills could be expanded and more training provided in analytic methods and research skills. Because relevant governmental data bases are not yet automated, there is no technical capacity for online access to such data bases that are relevant to case analysis. FIU staff are employed by the CNBS, and assigned to work in the FIU. The FIU's requirement to respond to information demands from the Ministerio Publico places considerable demands on the FIU, and that work needs to be adequately funded. Additional resources would seem to be required to meet such mandatory requirements and to permit the FIU to perform a stronger, proactive, case analytic role in respect of suspicious transaction and other reports, and also to conduct more strategic research and analysis on the scope and trends of money laundering in Honduras. The resource requirement will be more acute as a result of the legislated mandate enhancements of March 2008 which expand the FIU's analytic role, and which will also lead to increased levels of reporting to the FIU by a substantially larger number of reporting entities.

**Integrity of FIU Authorities (c. 30.2):**

310. Staff of the FIU, employed by the CNBS, are recruited and screened in the same way as other staff of the Commission. There is no additional requirement for enhanced screening of FIU staff in light of the high sensitivity of the information that flows to the FIU. The head of the FIU is appointed by the President of the CNBS, for an indeterminate term, at the pleasure of the President of the Commission. Staff is assigned by the Commission to work in the Unit. FIU staff is paid well, in relation to other public servants in similar agencies, but below external market levels. There are no special restrictions on extra-curricular political or business activities. Management level staff must make annual declarations of assets.

311. The FIU's budget is not under the control of the FIU, but is a specified part of the Commission's budget, and FIU expenditures must be approved by the President of the Commission.

312. The Ministerio Publico has a representative in the FIU who is involved in the FIU's analysis and decisions about disposition of cases. The Ministerio Publico can and does task the FIU provide information from its data bases and/or require the FIU to obtain information from financial institutions.

**Training for FIU Staff (c. 30.3):**

313. The FIU provides ongoing training to its staff, as well as playing an active role in respect of training in reporting entities as well as law enforcement and prosecutorial authorities. Detailed information was not provided as to the nature of the training already provided to staff, but the management observed that additional skills development would be desirable.

**Statistics (applying R.32 to FIU):**

314. The FIU adequately maintains statistics as to the numbers and types of reports received, from which reporting entities, as well as on the number of reports analyzed and disseminated to the Ministerio Publico. It also maintains statistics on the number of information requests received from the Ministerio Publico, as well as from foreign FIUs.

## Analysis of effectiveness

315. The Honduras FIU is an established and contributing member of the larger AML community. It has strong leadership and a small staff that appears reasonably well qualified for its tasks, although the diversity of staff skills could be improved. The FIU has been making a strong effort to function as well as it can within the framework of its mandate and circumstances. As already noted above, the FIU does not have direct or easy access to law enforcement information, nor can it readily access other governmental data bases or external information sources to facilitate its work and strengthen its analysis. Such access is obtained through the representative of the Fiscalia in the FIU. The FIU also lacks explicit authority to access commercially or publicly available information sources.

316. In light of the extensive use of cash in the Honduran economy, and given the available information about the extent of drug trafficking and other economic crime, the reporting levels of suspicious transactions seem rather low. Table 1, below shows the level of suspicious transaction reporting from the 85 reporting entities for the period 2004-2007.

**Table 1. “Atypical” Transaction Reports Received**

2004	45
2005	64
2006	94
2007	121
Total	324

Source: FIU

317. In 2007, as of October 31, the FIU had received only 64 suspicious transaction reports from 20 out of 85 reporting entities. Of these reports, 38 were submitted by banks, 9 by financieras, 12 by cooperatives, and 5 came from other entities. In that period, 7 out of 18 banks had not submitted a single STR. By the end of the calendar year, the total reports had reached 121, but no breakdown by reporting entity type is available for the full year’s reporting.

318. It is not clear why reporting levels are so low, but it is possible that the reporting entities’ awareness of the automatic flow-through of STRs to the Ministerio Publico is a factor that inhibits their reporting except in cases that are egregiously suspicious.

319. The role of the FIU was constrained by the intrusive role of the Fiscalia in the FIU’s business that was imposed by the AML Decree of 2002, with the requirement that copies of all incoming STRs be forwarded immediately to the Fiscalia and the requirement of the FIU to respond in very short time frames to the information requirements of the Fiscalia. Moreover as per a MOU concluded between the Fiscalia and the CNBS, the Fiscalia’s representative in the FIU plays an inordinately large role in the analysis of transaction reports received by the FIU, and can over-ride decisions of the FIU Director regarding the disposition and/or dissemination of analyses conducted by the FIU..

320. The requirement to provide all STRs immediately to the Fiscalia has been eliminated by the amendments to the AML Law that were passed in March 2008. However, the change has not yet

been fully implemented. The MOU between the CNBS and the Fiscalía referred to has not been revised to take account of the greater freedom for the FIU provided by the amendments to the AML Law.

321. The Fiscalía can and does make information requirements upon the FIU for financial information about persons or cases of interest to the Fiscalía, irrespective of whether it has received an STR on the subject. It can also require the FIU to seek such information for the Fiscalía from the financial reporting entities. This Fiscalía-driven work load is considerable, especially given the mandatory need to respond and the small resources of the FIU, and it limits the FIU in doing the more intensive analysis of transaction reports that it should be undertaking, and the strategic analysis that would be helpful to its partners. Nevertheless, the FIU, as can be seen in Table 3 below, has provided an appreciable, though declining, number of case reports to the Ministerio Publico in the period 2004-2007.

**Table 2. Information Requests to the FIU from Prosecutors in Ministerio Publico**

2004	166
2005	71
2006	57
2007	36
Total	330

Source: FIU

**Table 3. Total Case Reports from FIU to Ministerio Publico**

2004	344
2005	253
2006	255
2007	188
Total	1040

Source: FIU

322. The FIU attributed the decline in the overall number of reports to the Ministerio Publico in 2007 to a shortage of resources, in part the result of staff changes during the year.

323. Tables 4 and 5 below reflect the extent of the FIU's exchange of information with foreign FIUs.

**Table 4. Information Requests from and to Foreign FIUs**

	From	To
2004	1	6
2005	2	7
2006	10	-
2007	6	4*
Total	19	17

Source: FIU

\*2007 results to October 31

**Table 5. Memoranda of Understanding with Foreign FIUs**

Argentina	Guatemala
Belize	Haiti
Bolivia	Mexico
Cayman Islands	Panama
Colombia	Peru
Costa Rica	St. Kitts
Dominican Republic	St. Vincent
El Salvador	

Source: FIU

324. Assessors believe that the capacity to protect the FIU's information holdings could usefully be strengthened through a combination of technical and personnel security measures, and more stringent access control to premises and systems.

325. March 2008 amendments to the AML Law have addressed a number of concerns noted above. They have improved the mandate of the FIU and have removed the requirement for automatic and immediate transmittal of all STRs to the Ministerio Publico. The amendments provide for the FIU to conduct its research and analysis and, when that has been completed, to report to the Ministerio Publico transactions and information that may be related to money laundering. (These changes have not yet been implemented.) The amended Law also significantly expands the range of entities required to report suspicious transactions, and will likely increase the numbers of reports submitted to the FIU once those provisions are implemented.

326. The amendments do not, however, provide explicit authority for the FIU's access to law enforcement information, or other governmental information, or information from commercially or publicly available sources.

327. The March 2008 amendments came into effect after the on-site visit, and it is not possible to assess their effectiveness and degree of implementation.



### 2.5.2.

#### Recommendations and comments

328. The capacity to protect FIU information and processes should be strengthened by a combination of personnel, technical and physical security measures. Consideration should be given to enhanced screening of FIU staff and management, given the sensitivity of the information assets of the organization. This could include explicit restrictions on extracurricular business or political activities, and post employment activities. Consideration should be given to bringing the FIU's data servers within the FIU's premises, and bringing the systems administrator(s) under its own control and screening them to the same enhanced levels recommended for all staff. Physical access controls to the FIU's premises should be strengthened. More stringent information management systems and processes within the FIU would also enhance the FIU's capacity to protect its information holdings.

329. The mandate of the FIU should be further clarified by providing explicit authority in the AML Law to access law enforcement information, and to authorize the FIU also to access governmental and non-governmental (commercially or publicly available) data bases for the purpose of its analytic work.

330. The operational independence of the FIU should be further strengthened in the AML Law by giving it sole authority to determine its processes and by providing it with its own budget and empowering it to make its own expenditure decisions. The relationship of the Director to the President of the CNBS should also be further clarified in the Act. The Fiscalia's grip on the FIU and its role in the internal processes of the FIU, and its use of the FIU to collect information should be clarified to ensure that the FIU is not co-opted into the investigative process, at the expense of its mandate to receive, analyze and disseminate financial intelligence about suspected money laundering or terrorism financing and to provide more strategic research and analysis.

331. The reasons for low reporting levels should be studied by the FIU jointly with the financial sector supervisory unit of the CNBS. AML compliance, including transaction reporting, by reporting entities is key to ensuring that the FIU receives a sufficient quantity of information from all reporting entities to permit it to maximize the quality, scope, and value of its analysis and disclosures to the Fiscalia.

332. The mandate and role of the FIU in outreach and compliance should be enhanced to help ensure compliance and to encourage increased reporting levels of STRs.

333. The FIU is under-resourced, and should receive additional funding for an expanded mandate, and to equip it to undertake more comprehensive case analysis, and more strategic analysis, as well as respond expeditiously to the prosecutors' information requests. It also needs to acquire more analytic and information management tools for both functions.

334. The FIU should publish its own Annual Report, including statistics and information about money laundering and terrorism financing trends and typologies and information on its work and performance.

### 2.5.3.

#### Compliance with Recommendation 26

	Rating	Summary of factors underlying overall rating
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<b>R.26</b>	<b>PC</b>	<p>The FIU does not have explicit access to law enforcement information. Nor does it have effective and timely access to information from other governmental and non-governmental sources, thus limiting its analysis.</p> <p>The FIU does not have sufficient operational independence, and there is significant influence exercised over its work by the Fiscalía (Ministerio Publico).</p> <p>The FIU does not preside over its own budget and its expenditures need to be approved by the CNBS.</p> <p>Insufficient resources have a limiting influence on effectiveness.</p> <p>STR reporting levels are very low.</p> <p>The FIU does not issue an annual report nor publish statistics and typologies that would serve to inform other partners and the general public.</p>
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## **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**

#### **Legal Framework:**

335. Decree No. 45-2002 (the “AML Law 45-2002”), was designed to correct deficiencies in earlier legislation. The AML Law 45-2002 expanded the law enforcement tools for money laundering investigation by increasing the scope and application of ML crimes, expanding the list of predicate offenses for ML, authorizing broad and expeditious confiscation, seizure and freezing of property, proceeds and instrumentalities of crime, designating the responsibilities of law enforcement personnel. It also created the FIU as the central recipient and repository of suspicious and other transaction reporting and analysis. And it streamlined the process for police and prosecutors to obtain financial information in aid of their money laundering investigations and prosecutions.

336. Article 47 of the AML Act authorizes the Ministerio Publico to use as essential measures for investigations of ML offences the investigation methods and techniques contained in international conventions signed and ratified by Honduras. Ministerio Publico prosecutors note that this provision authorizes the use of special investigation techniques, and state that it has in fact been used by the Ministerio Publico to authorize such techniques and methods.

337. Honduras ratified the Vienna Convention on December, 11, 1991. The Central American Convention for the Prevention and Repression of Money Laundering Offences Associated with Illegal Traffic in Drugs and Narcotics was signed on July, 11, 1997 and ratified on November 12, 1999. The Palermo Convention was ratified in 2003 via the Decree 108-2003. In addition, on February, 27, 2004, the National Congress approved Decree 5-2004, the legal instrument containing the Inter-American Convention against Terrorism. In the case of the Vienna Convention, one article that seems not to have been included in Honduran legislation is the one dealing with “controlled delivery”. Assessors were informed that draft proposed legislative amendments have been prepared that include, among other special techniques, the provision authorizing controlled delivery. At the time of the on site visit this draft legislation had not yet been introduced in the National Congress.

338. The AML Act provides authority to the Ministerio Publico to obtain bank records, account information and other records maintained by banks and other institutions subject to the AML law, through formal requests to the FIU, which is obliged to seek this information from reporting entities and provide it to the Ministerio Publico within 5 days of the request being made.

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

339. Article 13 of the AML Law provides the Ministerio Publico with the authority to carry out and direct investigations of money laundering offences and to charge and prosecute persons in relation to those offences. As there was no terrorism financing offence, there was no explicit authority to investigate and prosecute terrorism financing. (Legislative amendments addressing the offence of terrorism financing were passed in April 2008, but their implementation has yet to be assessed.) The AML Unit of the Ministerio Publico is one of 5 elements of the Office of the Special Prosecutor for Organized Crime. There are 12 staff (of which 3 are prosecutors) dedicated to the AML Unit (out of a total complement of some 480 prosecutors in the Ministerio Publico).

340. The General Directorate of Special Investigative Services, a part of the Ministry of Security, is the entity that has been given responsibility to investigate money laundering offences and to provide the results of its investigations to money laundering prosecutors in the Ministerio Publico. In particular, it is the Anti Money Laundering Division of that agency that has the responsibility for these investigations. It consists of 19 staff, of which 13 are in the capital, 4 in Ceiba, and 2 in San Pedro Sula. It can only undertake investigations that are initiated by the Ministerio Publico. Staff of the AML unit of the Ministerio Publico also carry out some investigative and analytic functions in ML cases.

341. In addition to the Ministerio Publico, the FIU, and the General Directorate of Special Investigative Services, assessors met with, and were informed by, several other entities about their role in money laundering investigations and prosecutions:

- the uniformed members of the **Preventative Police**, who are the first responders to reports of criminal activity. Their role is, essentially, to secure a site and protect the evidence until the appropriate investigative units arrive
- the **Centre for Joint Information**, a tactical and strategic criminal intelligence unit that is part of the Preventative Police. Among other duties, it provides criminal intelligence support and some investigative support to the AML investigators and to the AML prosecutor;
- the **Interpol Liaison unit of the Preventative Police**, which consists of 22 persons and which, among its wider responsibilities, provides support to AML investigations by seeking intelligence and information from a wide range of foreign law enforcement agencies in relation to subjects of ongoing investigations in Honduras.
- in addition, the **Anti Narcotics Trafficking Directorate (a National Police Unit)** conducts money laundering investigations as part of its anti-drug trafficking work, tasked by a different section of the Ministerio Publico. This Directorate is comprised of 85 persons, (70 detectives and 12 analysts) some of whom are dedicated to AML investigations. This unit can conduct about 3 case investigations at any given time.

- the **Armed Forces of Honduras**, which in some instances, on request, provide tactical and logistical support to law enforcement bodies (e.g. in border areas or for large operations in remote areas). The Armed Forces have no police or investigative powers.

342. The AML prosecutor determines whether an investigation of suspected money laundering will be undertaken. This may be based on transaction reports received from the FIU or, more frequently, on information received from other sources and/or police units. The prosecutor can and does assign investigative tasks to the AML Division of the National Police (as noted above) and may authorize the special investigative techniques noted above. The prosecutor also requires the FIU to obtain transaction, account and other information from the financial reporting entities that are subject to the requirements of the AML Act.

343. Assessors were informed that the FIU cannot communicate directly with the AML Division of the National Police, and that the latter can only obtain the FIU's financial information through the prosecutor. The AML Division noted that its members work closely with the prosecutor until the disposition of their cases.

344. The Anti Narcotics Trafficking Directorate has its own AML investigative unit and carries out ML investigations that are related to the Directorate's narcotics trafficking investigations. It, too, can only obtain FIU information through a request to the prosecutor.

345. When investigation are completed and submitted to the Fiscalía, the prosecutor determines whether the case will be taken forward to trial.

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

346. Assessors were informed that there is authority for the Ministerio Publico to postpone or waive arrests or seizures for the purposes of facilitating or expanding an investigation. No further information was available.

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

347. As noted above, ratified conventions are published and their provisions become part of Honduran law. Article 47 of the AML Law explicitly permits the Ministerio Publico to use those special measures and techniques in the investigation of money laundering offences. Special investigative techniques contained in those conventions can be and are used by police, as authorized by the Ministerio Publico. (Note the exception of controlled delivery.) The Ministerio Publico has drafted legislation to imbed those authorities in domestic law and to provide greater precision to the conditions under which they may be used, but to date these amendments have not been enacted by the Congress.

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

348. As noted in the preceding paragraph, special investigative techniques can be and are used in investigations of money laundering or terrorism financing.

#### **Additional Element—Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):**

349. The AML Division of the National Police is a specialized and dedicated money laundering investigative unit. There is no specific law authorizing it to cooperate in international investigations, but the different international treaties and conventions are regarded as sufficient authority to provide or request such cooperation. (See section 6.3 on Mutual Legal Assistance later in this report.)

**Additional Elements—Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):**

350. Assessors could not find any studies that have been done to provide some measure of the scope and extent of money laundering in Honduras, or any money laundering trends.

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

351. Articles 28 and 29 of the AML Law provide the authority for prosecutors, having initiated an investigation, to obtain necessary information from reporting entities about financial records and related information. The prosecutor has the authority to require the FIU to search its databases and provide relevant material within 24 hours. If the required information is not found in the FIU's databases, the FIU must obtain the information directly from the institutions supervised by the CNBS, which must provide it in no more than 5 days. Failure by those institutions to provide the information is subject to sanctions as set out in Article 68 (1) of the Law on Financial Institutions.

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

352. The authorities (police, prosecutors) have the powers to take witnesses' statements.

**Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):**

353. The functions of investigating and prosecuting money laundering and terrorism financing are seriously underfunded. There are significant shortages of personnel, material, operating budgets, special equipment, vehicles, security systems, data systems, training, etc. Investigative units lack vehicles to take investigators to crime sites or to retrieve evidence; they lack cameras, and computers for their work. The office of the AML prosecutor also does not have sufficient resources to meet the demands of its case loads. Three prosecutors cannot cope with several hundred case referrals that come their way each year. . There is no capacity in the overall AML/CFT system for strategic research and analysis.

**Integrity of Competent Authorities (c. 30.2):**

354. Corruption is of concern in Honduras, including among law enforcement authorities. To guard against that, the AML Division of the National Police carefully screens and selects investigators entering the unit..

355. Case files are not fully computerized (due to lack of resources) and are maintained in the unit's premises. Physical security of their premises is at best adequate and could be breached by persons who have or who gain access to the compound. There is perimeter security around the compound in which the unit and some other police elements are housed.

356. Prosecutors and staff of the Office of the Special Prosecutor for Organized Crime (of which the AML Unit is a part) are carefully screened and selected. No information was provided as to the security arrangements for personnel, premises or systems.

**Training for Competent Authorities (c. 30.3):**

357. Training of members by the National Police is only of a basic character. Some advanced training for ML investigators is obtained from other countries on a bilateral or multilateral basis, and some is provided by international organizations. More specialized training is needed for investigators and prosecutors, but lack of adequate funding is an impediment. The Police are also keen to obtain training for trainers in order to be able to broaden the base of training for their units, and to increase the depth of specialized skills within the police. The CNBS and FIU provide some training to financial reporting entities in respect of compliance with their record keeping and reporting obligations. Some innovative training events have been made available to all of the partners in the AML initiative. For example, while the assessors were in Honduras, a number of investigators, prosecutors, FIU staff, CNBS staff, even judges, participated in a multi-day training exercise in Mexico (based on the conduct of a mock trial of money laundering charges).

**Additional Element (Rec 30) - Special Training for Judges (c. 30.4):**

358. It is reported that many judges are not very familiar with the Anti Money Laundering Law, nor with the complexities of money laundering and other financial crimes, and that training is needed to strengthen their capacities to address such cases..

**Statistics (applying R.32):**

359. While all of the elements were able to provide some quantitative information about their AML activities, the quantity and level of detail available varied widely from one organization to another. Data are not gathered to an agreed upon standard, and it is often difficult to compare or interpret the statistics that are generated.

### Analysis of effectiveness

360. There is no central point at which consolidated records are received or held, and each of the partners keeps records differently, which makes it difficult to portray the number of cases investigated and prosecuted and to assess the effectiveness of the overall effort. However, from information obtained from the various partners it is possible to present the following table's law enforcement activity in relation to money laundering.

**Table 6. "Atypical Transaction Reports" Submitted by Reporting Entities**

2004	45
2005	64
2006	94
2007	121
Total	324

Source: FIU and Ministerio Publico

**Table 7. Information Requests from Fiscalia to FIU**

2004	166
2005	71
2006	57
2007	36
Total	330

Source: FIU and Ministerio Publico

**Table 8. Total Case Reports to Ministerio Publico from FIU**

2004	344
2005	253
2006	255
2007	188
Total	1040

Source: FIU and Ministerio Publico

**Table 9. Investigations by DG Special Investigative Services and sent to Prosecutor**

2002	10
2003	78
2004	106
2005	73
2006	33
2007	17 (to mid year)
Total	317

Source: DGSIS

**Table 5. Funds seized by DGSIS**

2002-06	L 126.1 million US \$ 4 million
2007	L 33.8 million US\$ 37 thousand

Source: DGSIS

**Table 10. ML Case Analyses by Centre of Joint Information 2002-2007**

Sent to Fiscalia	20
Under Investigation	42
Total	62

Source: CEINCO

361. As can be seen from the tables below, the work of the law enforcement bodies has resulted in an appreciable number (73 cases) of money laundering charges going to trial in the period 2003 up to and including 2007. 24 cases have resulted in convictions. Nine cases resulted in acquittals, and 41 cases are still pending or have been terminated or suspended by the court. In several cases the judge's decision was occasioned by mistreatment or mishandling of evidence and not because of substantial matters. The poor quality of this technical element and procedural element, i.e., improper handling of evidence by public officials, is jeopardizing the successful rate of prosecutions and is a cause of concern.

**ML Cases Investigated**

2003	2004	2005	2006	2007	<b>TOTAL</b>
97	142	136	69	58	<b>502</b>

**ML Cases Prosecuted and Tried**

2003	2004	2005	2006	2007	<b>TOTAL</b>
9	17	24	13	10	<b>73</b>



### ML Sentences and Acquittals

	2003	2004	2005	2006	2007	TOTAL
<b>CONVICTIONS</b>	8	6	4	4	2	<b>24</b>
<b>NUMBER OF PERSONS CONVICTED</b>	8	6	5	5	2	<b>26</b>
<b>ACQUITTALS</b>	0	5	3	0	0	<b>9</b>
<b>NUMBER OF PERSONS ACQUITTED</b>	0	7	3	0	0	<b>10</b>

362. As already noted earlier, the legislative framework within which Honduran law enforcement and prosecutorial authorities operate is essentially that which was established in 2002, with some recent (2008) amendments whose implementation cannot yet be assessed. Within this framework, the entities that are involved in the anti-money laundering initiative are struggling to cope with the responsibilities of investigating and prosecuting ML offences.

363. Individually, the elements that make up the system are doing their best to make it work effectively. However, there is a significant lack of strategic direction and policy and operational coordination of the AML effort. There does not appear to exist a strategic assessment of the risk and scope of money laundering and terrorist financing in and through Honduras. There does not appear to be any centralized process for developing a strategic plan or setting priorities for the participants in the AML/CFT initiative. Agencies often have to work with inadequate information as to what other agencies are doing. Information sharing is poorly developed, and sometimes subject to overly cumbersome procedures. There does not appear to be a plan for strengthening the capacities of critical elements of the initiative, nor does there appear to be coordinated effort to provide training to those elements.

364. The entire AML system is seriously underfunded. The police suffer from severe shortages of personnel, material, operating funds, special equipment, vehicles, IT systems, training, etc. The office of the AML prosecutor also does not have sufficient resources to deal with its work load. Three prosecutors cannot effectively and efficiently deal with the several hundred case referrals that come their way each year.

#### 2.6.2. Recommendations and Comments

365. To address the issue of leadership and coordination, assessors recommend that the government designate a high level official to take the leadership role in relation to the fight against money laundering and terrorism financing. Authorities noted that such a function had been created earlier, in January 2005, and a senior level committee had been struck under the chairmanship of the CNBS, but that it had fallen into disuse and had not met for several years. Senior officials of several agencies named as members of that body seemed unaware of the existence of the body. Assessors

recommend that this function be recreated and re-energized, and a committee or commission of high level representatives of all the entities involved in the fight against money laundering and terrorism should be re-established.

366. This high-level body should be clearly tasked to ensure that all necessary policy, regulatory and legislative initiatives are prepared and brought forward expeditiously to the appropriate body for approval. It should also work to set strategic direction and priorities for the initiative, advise on the allocation and need for resources and training and development, and where necessary also provide a means of ensuring operational coordination. It should also commission a study of the extent and scope of money laundering and terrorism financing in Honduras.

367. The assessors also recommend that the government provide an infusion of resources to support and advance the work of the AML community in the face of what appears to be a growing risk of money laundering. More prosecutors and staff to support them are needed. More police officers, and more equipment, material and training to make their work more effective and productive, will ensure that they keep abreast of the problem.

### 2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
<b>R.27</b>	<b>LC</b>	Significant insufficiency of resources, inadequate leadership and coordination, inadequate information sharing, need for more training, including for judges.
<b>R.28</b>	<b>C</b>	

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

### 2.7.1. Description and Analysis

#### Legal Framework:

368. Honduras has implemented a declaration system for the detection of cross-border transportation of currency and bearer negotiable instruments.

369. Article 5 of the AML Law 45-2002 establishes that all persons entering or leaving the country must declare whether they are bringing in or taking out with them currency or bearer negotiable instruments in excess of the level set by the Central Bank of Honduras. The Decree also establishes that the discovery of any undeclared or falsely declared funds that exceed the threshold established by the Central Bank leads *ipso facto* to the seizure of such funds by officers or employees of Customs.

370. The Central Bank has issued Regulation 325/9-2003 in relation to declaration of cross border currency movement and the current reporting level is set at \$10,000 or the equivalent amount in Lempiras.

371. The Direccion Ejecutiva de Ingresos is the entity responsible for receiving declarations and determining whether travelers have complied with the declaration requirement. In addition to the

legal requirements identified above, work of the entity is based on Articles 37 and 88 of the Código Aduanero Uniforme Centroamericano (CAUCA) requiring travelers to present themselves to Customs authorities and comply with control measures, and Article 209 of the CAUCA Regulations requiring travelers to make a customs declaration on a form issued by the Customs authorities.

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

372. The Dirección Ejecutiva de Ingresos has issued Circular DL No 123-2008, Procedures for the Application of Article 5 of Decree 45-2002 “Ley Contra el Delito de Lavado de Activos”, giving detailed guidance to Customs officers at ports of entry in relation to the procedures to be followed in receiving and verifying currency declarations.

373. The Dirección Ejecutiva de Ingresos is the entity responsible for administering the currency declaration requirement of the AML Law. It is a large unit with a staff of about 250 persons, but their work also includes other Customs responsibilities. The Director stated that, as a matter of course, they screen 40 percent of persons entering the country, and 1 percent of those leaving. They also monitor incoming and outgoing cargo at ports, checking for shipments of currency or monetary instruments. They have acquired some new technology to conduct gamma ray inspection of incoming and outgoing shipments at locations at which the equipment is deployed.

374. Controlling entry and exit from Honduras, and the movement of illicit cargo or the physical movement of currency, presents challenges. While there is strong Customs presence at Airports, official land crossings (only 4) and main ports, there is an abundance of opportunity to evade scrutiny. There are a number of small customs posts along the land border that are only staffed during daylight hours.

375. There are about 750 kilometers of uncontrolled frontier, much of it in terrain that makes it easy to traverse the border, often in regular SUVs, or even in cars, during the dry season. In many instances there are roads leading to and across the border. In addition, assessors were informed by Military Intelligence that there are over 50 clandestine landing strips in the relatively flat terrain of Northern Honduras (mainly built during the war of the 1980s and later abandoned, but still mostly usable), where small aircraft can come and go, largely undetected in real time and thus difficult to interdict. Moreover, there are many small fishing ports, and an abundance of coastal islands, that make it very difficult to monitor and control comings and goings by small craft.

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

376. Customs officers have the authority to enquire of travelers the source of the currency or bearer instruments in their possession and their intended use. When funds have not been declared, or the amount declared is less than the amount being transported, Article 5 of the AML Law provides for the automatic and immediate seizure of the undeclared funds.

**Restraint of Currency (c. IX.3):**

377. Customs officers are empowered to seize funds or instruments on suspicion of money laundering and/or on discovery of the attempted undeclared cross border movement of currency or instruments. When such funds are seized by Customs, there is an immediate notification to the police and to the Ministerio Publico. Customs officers do not have police powers, and the seized funds and persons are simply detained until the police arrive. Police, operating under the direction of the Fiscalia and in cooperation with Customs officers and other agents at the port of entry, determine the character and circumstances of the apprehended currency movement, and if suspected of being connected to criminal activity the Fiscalia may direct that the funds be seized and delivered to the Office for Administration of Seized Assets, created by the AML Law. This Office registers the assets and securely stores the funds and instruments which are deposited in a bank account pending final disposition of the case.

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

378. As Customs turns over the funds and persons to the police, it does not itself retain data of these seizures. OABI indicates that in some instances, for the preservation of the evidence, the seized funds and related information are received in sealed packets which are stored in bank vaults, rather than deposited to accounts.

**Access of Information to FIU (c. IX.5):**

379. Customs officials indicated to assessors that there is no direct relationship between Customs and the FIU and that copies of declarations or information about seizures are not sent to the FIU. Moreover, declarations are stored in hard copy in poorly organized boxes, so that manual access to the information of individual reports would be difficult and very time consuming

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

380. Investigative and enforcement action in these matters is directed by the Ministerio Publico which can engage all of the relevant authorities. According to Customs officers, in practice the investigation is carried out by the police in close cooperation with other agencies represented at ports of entry, such as Customs, Agriculture, Health and Immigration.

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

381. There is extensive cooperation among customs authorities on a regional basis as per a Central American agreement (CAUCA), relevant to the movement of people, vehicles and goods throughout Central America. It is not specific to the cross border transportation of currency, but in the course of examinations of traffic, currency movements are included in the scope of the activity.

382. Honduras does not have a legal framework governing or regulating the provision of mutual legal assistance. However, mutual legal assistance may be provided directly based on and with respect to requests coming from Member States to any international convention and treaty Honduras has acceded to, including the Vienna, Palermo and SFT Convention.

383. In addition, Honduras has signed bilateral treaties on MLA in criminal matters with Mexico, Brazil, Spain, Colombia, Paraguay and the USA, whereby the treaty with the USA is limited to drug trafficking offenses, as well as a multilateral treaty on MLA in criminal matters comprising all Central American states.

384. For requests coming from countries not a signatory to any of the applicable treaties with an MLA component, Honduras may provide assistance on the basis of a letter rogatory to the Honduran courts.

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

385. No information was obtained concerning sanctions for making false declarations apart from the provision that discovery leads to the automatic seizure of the undeclared funds. (Articles 3 and 4 of the AML Law provide for carceral sentences from 15 -20 years for the offence of money laundering, or participating or facilitating such an offence.)

**Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):**

386. As noted above, detection of undeclared or improperly declared transportation leads to ipso facto seizure of the detected currency and the initiation of an investigation directed by the Fiscalía into a suspicion of money laundering. Criminal penalties as described elsewhere in this report and confiscation are applied on conviction. No information was provided as to administrative penalties for false declaration.

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

387. As noted previously in this report, Articles 55 and 64 of the criminal code provide for conviction based confiscation of property and these measures are applicable to all criminal offences. Article 2 of the AML law provides a definition of confiscation applicable to money laundering. Articles 2 and 15 to 19 of the AML Law contain provisions related to freezing and seizure of property in the context of money laundering investigations and prosecutions. Additional powers to search premises and persons and seize property and information for evidentiary purposes are contained in the code of criminal procedure.

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

388. Honduras does not have a legal framework that would allow the country to freeze terrorist assets in accordance with UNSCR 1267 or to consider lists issued by other countries in accordance with UNSCR 1373. Honduras has never issued its own designations pursuant to UNSCR 1373, nor does it have a process in place to do so, should the case arise. At the time of the mission, no property related to terrorism or terrorism financing has ever been frozen, seized or confiscated and no matches with lists issued pursuant to UNSCR 1267 or 1373 have ever been identified.

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

389. Customs interlocutors indicated that this had not arisen, but that they would not expect to provide such notification.

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

390. Customs officials reported that hard copy reports are stored in boxes, not systematically organized, and organized differently from one on box to another. There are no particular safeguards in place for the use of the information.

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

391. No information provided.

**Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.15):**

392. Databases had not been computerized at the time of the on-site visit. Database of cross border currency declarations is in hard copy and for all practical purposes inaccessible as it is stored in hard copy, very poorly organized in boxes stored on Customs premises.

**Analysis of effectiveness**

393. Honduras has implemented a declaration system for the detection of cross-border transportation of currency and bearer negotiable instruments (but not including precious metals and gems). Screening of travelers and shipments entering the country at ports of entry is good, with Customs reporting that 40 per cent of persons entering the country are screened. Screening on exit, is low, at about 1 percent. While there is effective Customs presence at international airports, official land crossings and at ports, there is an abundance of opportunity to evade scrutiny. As noted above, there are about 750 kilometers of uncontrolled and easily traversable frontier and small customs posts are sparsely distributed and normally open only during daylight hours. There are a large number of “clandestine” airstrips at which small aircraft can come and go undetected in real time. This ease of informal entry or exit gives rise to concerns about the effectiveness of the implementation of the provisions for monitoring and controlling the import and/or export of currency and bearer negotiable instruments.

394. The Customs Service does not appear to be adequately resourced to respond to its mandate which is made especially challenging by the country’s geography. Customs officers do not have

police powers, are unarmed, and are only trained to address the shipment of goods and assessment and collection of customs and excise taxes. They have had no training directed at the interception of undeclared or suspect currency and monetary instruments.

395. No information about declarations and seizures is provided by Customs to the FIU.

396. No detailed statistics were available on numbers of declarations, searches, seizures and on value of seizures made since the provisions were implemented.

397. Assessors were informed that many of the weaknesses of the current arrangements (such as information flows to the FIU, formalizing domestic cooperation, retention of data, etc) are recognized and are to be addressed in proposed amendments to the law, but those changes had not been legislated at the time of the assessment, nor were draft legislative amendments provided the assessors.

398. Additional information sought in respect of SR IX.8,IX.9,IX.10 and IX.13 was not obtained from the authorities.

#### **2.7.2. Recommendations and Comments**

399. Honduras should increase its capacity to screen departing travelers for illicit transportation of currency, including training for Customs officers and intensification of monitoring unofficial border crossings.

400. Record keeping of currency declarations and currency seizures should be enhanced, computerized, made accessible to the FIU and other relevant authorities, and detailed statistics should also be provided to relevant authorities and partner agencies.

401. Like most other elements of the anti-money laundering initiative in Honduras, this element needs additional resources to strengthen its capacities.

402. Legislative amendments to correct deficiencies and to clarify and expand mandates should be finalized and taken forward as quickly as possible.

**2.7.3.****Compliance with Special Recommendation IX**

	<b>Rating</b>	<b>Summary of factors relevant to s.2.7 underlying overall rating</b>
<b>SR.IX</b>	<b>PC</b>	<p>The effectiveness of monitoring of cross border currency movements is inadequate, due to large sections of uncontrolled and easily traversable border.</p> <p>Insufficient resources and inadequate training to fully discharge mandate.</p> <p>No information reported to or accessible by FIU</p> <p>Inadequate recording of data about declarations, searches, seizures and disposition seized currency, etc.</p>



### **3. PREVENTIVE MEASURES —FINANCIAL INSTITUTIONS**

#### **3.1. Risk of money laundering or terrorist financing**

403. There continues to be a significant vulnerability to ML or TF in Honduras. The level of implementation, coverage and enforcement of international obligations across all financial and non-financial sectors of the Honduran economy do not appear to consider risk levels, and therefore, a more formalized approach to identifying risks and vulnerabilities, as well as a system for periodic reassessment and enhancement, may improve effectiveness and efficiency of the overall system.

404. There is concern that there is little compliance in the insurance industry and it is the mission's view is that it is being used launder money. The assessors heard anecdotal evidence during the mission that money laundering is occurring through insurance companies, in part, by fraudulent transactions.

405. The securities sector is small and not yet macro economically relevant, and the related ML/FT risk does not appear substantial to the assessors.

406. The Honduran authorities have demonstrated that they are willing to move further toward compliance and implementation with international norms by having passed legislation, some of which was passed at the end of the mission, but further refinement of the system is still needed, including addressing TF risks and increasing the scope of sectoral coverage of AML/CFT obligations.

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

##### **3.2.1. Description and Analysis**

###### **Legal Framework:**

407. The CNBS is empowered to issue regulations that FIs are obliged to comply with. Articles 6 and 13 of the Law of the CNBS grants it the authority to supervise private and public banks, insurers, re-insurers, finance companies, savings and loan associations, securities markets, exchange houses, pension funds, etc including any analogous institutions, including natural and legal persons providing money transfer services. Article 42 of Resolution 869 further sets forth that the staff of the CNBS supervise compliance with AML/CFT for all the institutions it supervises. All contents in this section on preventive measures deals with money laundering because the terrorist financing law was passed at the end of the assessment period.

408. The AML Law, Decree 45-2002, Ley Contra el Delito de Lavado de activos, is more comprehensive than the legal framework in place during the last assessment. It imposes preventive measures on both supervised and other financial institutions that are vulnerable to money laundering. Preventive measures include establishing formal AML policies and procedures, requiring appointment of a Compliance Officer and Compliance Committee, requiring substantial know-your-customer (KYC) policies and account opening procedures, requiring ongoing monitoring of clients and accounts, and mandating. Reporting to the UIF large transactions, and multiple transactions that exceed the limit imposed by the Central Bank, as well as unusual, or suspicious, transactions. Similar customer identification requirements are set forth in Resolution 1230/30-11-2004, Article 18 with

regard to insurers and re-insurers and in Resolution 1238/07-12-2004 with regard to securities markets.

409. Resolution 869 sets forth general guidelines for FIs regarding organization, policies, specific procedures and methodology for the identification of customers as well as the maintenance, availability of registration and notification of financial transactions originated regarding money laundering. Resolution 1238 sets out similar measures for the securities market. Resolution 1308 sets out guidelines regarding dealing with PEPs. The full set of laws and regulations are listed in Annex 3.

410. Decree 3-2008 was passed toward the end of the mission. It includes DNFBPs in reporting requirements. Lawyers were not included, except for those lawyers who are notaries. Decree 23-2008, also passed toward the end of the mission, specifically addresses terrorist financing.

#### **Prohibition of Anonymous Accounts (c. 5.1):**

411. Article 27 of the AML Law 45-2002 and Article 18 of the AML CNBS Regulation 869 prohibit anonymous, numbered and fictitious accounts or the opening of deposit accounts with false or encoded names or the use any means to conceal the identity of the account holder.

#### **When CDD is required (c. 5.2):**

412. Article 18 of Regulation 869 specifically requires customer identification for new and existing customers, at the time a relationship is established, or when a new service or product is provided.

- a. CDD is required at the onset of the business relationship and when that relationship changes, i.e. when the customer begins to use a new product/service.
- b. Carrying out occasional transactions above threshold of \$10,000:
- c. Carrying out occasional transactions:
- d. CDD requirements are applicable per Article 28 of Resolution 869 in cases when there are repetitive transfers or there is doubt as to legitimacy of the transfer. At account opening, commercial accounts need to verify their activities, address, commercial vehicles and any beneficiary. Information must be obtained on the business purpose and intended nature of the relationship. Per Article 19, client history needs to be verified, including commercial, financial and personal references. Further measures include visual verification of the place of business evaluating its ability to do business as well as the residence of the client.
- e. There is no specific requirement regarding verifying the accuracy of previously obtained KYC/CDD information or if there is doubt as to its veracity; however, FIs must do CDD annually.
- f. FIs are required to conduct ongoing due diligence in business relationships. CDD is required to be performed by FIs on an annual basis and documents are required to be kept up to date, per Art 37 of Resolution 869.

#### **Identification measures and verification sources (c. 5.3):**

413. The following procedures are required per Regulation 869:

- a. At account opening, clients need to provide their name and surname, number of their identity card, their civil status, their profession/occupation, nationality, domicile, telephone numbers, place of work, bank or commercial references; a photocopy of all personal identification documents will be maintained.
- b. Clients are required to present their national identity card (for citizens); foreigners must present their residence card, passport, and proof of residence. A photocopy will be taken of the passport page containing the entry seal into Honduras. FIs are specifically required to establish appropriate measures to detect and inform on atypical transaction of foreigners where ML is suspected.
- c. It is required to obtain and maintain information on the identity of persons on whose behalf an account has been opened, if an international transfer has been done, and in amount equal to or above the established limits. The identity of a person acting as an intermediary must be verified.
- d. All required information is to be maintained in a file.

414. Article 27 of the Law specifically requires the following of supervised institutions:

- a. Full identification is required of all depositors and clients and registers containing the relevant full information are required to be maintained.
- b. CDD requirements are applicable per Article 28 of Resolution 869 in cases when there are repetitive transfers or there is doubt as to legitimacy of the transfer. At account opening, commercial accounts need to verify their activities, address, commercial vehicles and any beneficiary. Information must be obtained on the business purpose and intended nature of the relationship. Per Article 19, client history needs to be verified, including commercial, financial and personal references. Further measures include visual verification of the place of business evaluating its ability to do business as well as the residence of the client.
- c. FIs are required to adopt reasonable measures to obtain and retain information on the identity of persons or in those cases where there is reasonable doubt that the clients are acting for their own benefit, especially for legal entities that do not carry out commercial, financial or industrial operations domestically in Honduras. Foreign companies operating in Honduras need to present their authorization to operate from the Secretary of State of Industry and Commerce (art 21.c)
- d. Persons authorized to transact within accounts must present the same information and all beneficiary information has to be presented as well.
- e. In the case of trusts, FIs are required to have evidence of incorporation and identification of key staff, directors, authorized staff, legal representatives, and clear information to enable identification of owners or beneficiaries of the trust, direct or indirect (869, Art. 30) (Art 18, g). FIs are required to obtain and maintain files of the identity of those persons on whose behalf an account was opened, each international transfer, or where there are transactions that are equal to or larger than the BCH limit of \$10,000.

415. Similar customer identification requirements are set forth in Resolution 1230/30-11-2004, Article 18 with regard to insurers and re-insurers and in Resolution 1238/07-12-2004 with regard to securities markets.

#### **Identification of Legal Persons or Other Arrangements (c. 5.4):**

416. It is required to obtain and maintain information on the identity of persons on whose behalf an account has been opened, if an international transfer has been done, and in amount equal to or above the established limits. The identity of a person acting as an intermediary must be verified. FIs

are required to adopt reasonable measures to obtain and retain information on the identity of persons or in those cases where there is reasonable doubt that the clients are acting for their own benefit, especially for legal entities that do not carry out commercial, financial or industrial operations domestically in Honduras. Foreign companies operating in Honduras need to present their authorization to operate from the Secretary of State of Industry and Commerce (art 21.c). Persons authorized to transact within accounts must present the same information and all beneficiary information has to be presented as well.

**Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):**

417. Resolution 869 does not require the identification of the beneficial owner, nor reasonable steps to verify its identity beyond the steps described in the paragraph above and the two preceding paragraphs (sub point c. in both). In particular, the Honduran laws and regulations do not include the definition of beneficial owner, leaving open the possibility for FIs to satisfy themselves with the first level of representation, without identifying who controls their customers.

**Information on Purpose and Nature of Business Relationship (c. 5.6): Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):**

418. Article 28 of Resolution 869 requires that at account opening, commercial accounts need to verify their activities, address, commercial vehicles and any beneficiary. Information must be obtained on the business purpose and intended nature of the relationship.

419. Per Article 19, client history needs to be verified, including commercial, financial and personal references. Further measures include visual verification of the place of business evaluating its ability to do business as well as the residence of the client. FIs are required to conduct ongoing due diligence in business relationships. CDD is required to be performed by FIs on an annual basis and documents are required to be kept up to date, per Art 37 of Resolution 869.

**Risk—Enhanced Due Diligence for Higher Risk Customers (c. 5.8):**

420. There is no requirement to implement enhanced due diligence for the categories of client that present characteristics of higher risk, as defined by FATF. The only requirement is the obligation to report all transactions above US\$10,000, or lempira equivalent.

**Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):**

421. There are no abbreviated or simplified customer identification or monitoring requirements. There are no simplified requirements for clients considered lower risk.

**Risk—Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):**

422. There are no abbreviated or simplified customer identification or monitoring requirements. There are no simplified requirements for clients considered lower risk.

**Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):**

423. There are no abbreviated or simplified customer identification or monitoring requirements. There are no simplified requirements for clients considered lower risk.

**Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):**

424. In Honduras, CDD requirements are applicable to all existing clients. However, the application of CDD is not consistent with a risk based approach. At the date of the mission, the authorities reported that the majority of banking clients had provided the necessary CDD background information. However, CDD has not yet been applied to a certain percentage of account holders. In particular, a noticeable number of accounts that existed before the enactment of the AML/CFT Law, of the order of magnitude of 10 per cent of the total number of accounts, have not yet been updated. The assessors are concerned that those accounts for which CDD has not been applied may pose a higher risk of ML and TF. The supervisor must take more forceful steps to ensure that they continue.

**Timing of Verification of Identity—General Rule (c. 5.13): Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 & 5.14.1): Failure to Complete CDD before commencing the Business Relationship (c. 5.15): Failure to Complete CDD after commencing the Business Relationship (c. 5.16):**

425. FIs are not permitted to accept clients or to permit clients to use their accounts before CDD are completed. The supervisors should clarify what specific CDD requirements are needed in non face-to-face transactions as now they have the same requirements as face-to-face transactions. There is no reference to treatment of exceptional circumstances.

**Existing Customers—CDD Requirements (c. 5.17):**

426. In Honduras, CDD requirements are applicable to all existing clients. At the date of the mission, the authorities reported that the majority of banking clients had provided the necessary CDD background information. However, CDD has not yet been applied to a certain percentage of account holders. In particular, a noticeable number of accounts that existed before the enactment of the AML/CFT Law, of the order of magnitude of 10 per cent of the total number of accounts, have not yet been updated. The assessors are concerned that those accounts for which CDD has not been applied may pose a higher risk of ML and TF.

427. The supervisor estimates that a large majority of banks are compliant with CDD requirements for new accounts – after a strong push from the bank supervisor - but there is concern about the bank

clients not yet covered under the requirements, or not yet updated when the accounts were open prior to the AML Law.

**Existing Anonymous-account Customers – CDD Requirements (c. 5.18):**

428. The authorities stated that there were no anonymous accounts.

**Foreign PEPs—Requirement to Identify (c. 6.1): Foreign PEPs—Risk Management (c. 6.2; 6.2.1): Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3): Foreign PEPs—Ongoing Monitoring (c. 6.4):**

429. There is no legal requirement on foreign PEPs, and no specific risk management of them.

**Domestic PEPs—Requirements (Additional Element c. 6.5):**

430. Resolution 1308/21-12-2004 addresses politically exposed Honduran persons (PEPS). The resolution requires institutions to have risk management systems to determine whether the customer or beneficiary is a Honduran PEPS. In addition, FIs must have processes to determine the level of risk posed by the operations and the sources of funds from PEPS. Senior management approval is required to establish a business relationship. Ongoing monitoring is required, since FIs need to verify PEPs information at least once a year. Institutions are required to monitor transactions with a higher degree of attention than normal. Reasonable measures are required to be taken to determine the origin of funds and the possible risk in the relationship. A higher level of oversight is required of these customers in regard to their commercial transactions. Each FI establishes different requirements for PEPS. The regulation should include a requirement to obtain senior management approval to continue a business relationship if an existing client is found to be a PEP.

**Domestic PEPs—Ratification of the Merida Convention (Additional Element c. 6.6):**

431. Honduras has ratified the Merida Convention.

**Cross Border Correspondent Accounts and Similar Relationships – introduction**

432. There are no specific enhanced due diligence requirements for foreign or domestic, cross-border correspondent banking relationships or relationships with institutions in countries not applying the FATF Recommendations, nor with correspondent banks that may be in countries that are not FATF compliant. In addressing the issue, the supervisors state that, in practice, the FIs deal only with AA rated banks.

**Requirement to Obtain Information on Respondent Institution (c. 7.1) :**

433. There are no specific enhanced due diligence requirements for foreign or domestic, cross-border correspondent banking relationships or relationships with institutions in countries not applying the FATF Recommendations nor with correspondent banks that may be in countries that are not FATF compliant. In addressing the issue, the supervisors state that, in practice, the FIs deal only with AA rated banks.

**Assessment of AML/CFT Controls in Respondent Institution (c. 7.2):**

434. This is not done.

**Approval of Establishing Correspondent Relationships (c. 7.3): Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4):**

435. Based on interviews with authorities, it is the assessment team's impression that some banks are implementing these measures by themselves, but it is not required by supervisory authorities.

**Payable-Through Accounts (c. 7.5):**

436. In Honduras, payable-through accounts have been eliminated.

**Misuse of New Technology for ML/FT (c. 8.1):**

437. Article 10(m) of Resolution 869 requires that institutions assure that newly developed products and services have the appropriate internal controls to prevent ML. Article 5 of Resolution 869 and Article 5 of Resolution 1230 require all supervised institutions to have compliance programs and to review them periodically to identify deficiencies in their operations or needed changes in laws and regulations. The intent of the article is to enable supervised institutions to adapt to new technologies to avoid being used for money laundering. Article 37 of Resolution 869 requires supervised institutions to have information systems that capture client information and monitor significant and cash transactions. A number of banks have bought commercial systems that monitor transactions for potential unusual transactions that may be ML or FT. Compliance with these regulations is assessed during annual on site inspections. The foreign banks have more experience in preventing the misuse of technology in ML and FT. The domestic banks need to develop more experience in this area and would benefit from training and receiving information on new developments so that they can update their awareness.

**Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1):**

438. Non face-to-face transactions are subject to the same level of policies and procedures for CDD as other transactions. There should be clearer requirements as to the type of information to be gathered in non face-to-face transactions, including wire transfers, for both the remitter and the recipient.

**Analysis of effectiveness**

439. Another element that demonstrates the lack of a risk based approach to AML/CFT is that although sanctioning powers are legally available to the authorities, they have not effectively used them, in particular against institutions displaying significant lack of compliance. Only one sanction has been applied to one casa de cambio. The absence of sanctions has a negative impact on the effectiveness of the entire system.

440. The laws and regulations that are in place are sufficiently broad to allow FIs to ensure that the key activities can address the possibility of ML and TF in their institutions. Some improvements and enhancements are needed and they are detailed further in the report. The most thorough implementation is in those banking institutions supervised by the banking commission. The requirements are detailed and on site examinations include a separate report that addresses

compliance with ML regulations. However, the efficacy of the regulatory oversight is weakened by lack of enforcement of penalties for non-compliance in the banking and insurance sectors. The sanction tools that the supervisory authorities possess to impose fines for non-compliance have only been used on one casa de cambio. At this time without consistent sanctioning for non-compliance, the incentives for FIs to comply with laws and regulations are significantly weakened. This also raises an important question-mark as to the actual level of implementation by FIs.

441. There has been significant progress in Honduras in customer due diligence and record keeping since the prior assessment, primarily in the banks. CDD and KYC policies and procedures have been established and have been used by the banks for a majority of their customers.

442. There is little in the way of implementation in CDD, KYC and record-keeping in the insurance sector. In the insurance sector, 80 percent of business originates through insurance brokers. Insurance brokers are required to be registered with the supervisory authority. However, after discussion with the supervisory authority and industry representatives, the assessors concluded that there is little enforcement and therefore not enough “hard evidence” that insurance brokers effectively comply with CDD requirements. The insurance association is working with the supervisory authority to develop CDD and KYC forms and reporting documents for use in the insurance industry. This is a positive step forward. Enforcement of implementation will be key as will applying sanctions for noncompliance

443. They are implemented and examined for to an extent in the securities sector, although the securities section is small. The authorities’ view is that, after significant efforts to foster compliance with the CDD requirements, the majority of banks are now implementing CDD, KYC and record keeping although this is not the case across the board for other FIs. AML and CFT requirements were expanded by the passage of laws within the timeframe of the mission.

444. Although progress has been made in terms of the development of laws and regulations with regard to CDD requirements, implementation needs to be strengthened across all entities covered by the law. Customer identification requirements are not consistently implemented. The banking sector has the highest level of compliance, especially for new customers. The actual risk profile for a noticeable percentage of bank customers having established relationships prior to the AML Law is unknown, as they have not been updated.

445. Although FIs that the mission met with stated they use a risk based approach in evaluating the CDD requirements for existing accounts, the assessors are not convinced that the supervisors have established a credible risk based framework and are therefore able to provide appropriate guidance to the FIs – all the more as the laws and regulations are not drafted with specific recognition to any risk-based approach. A risk based approach to AML/CFT compliance is still in development within domestic institutions. It is likely to be more advanced in the large, multinational banks with presence in Honduras as they have had many years of experience of compliance with AML/CFT laws and regulations in their home countries.

### **3.2.2. Recommendations and Comments**

446. The supervisory authority has sanction tools available to it to impose fines for noncompliance. However it has not effectively used them. The supervisory authority has only once



imposed a fine and it was on a casa de cambio. There is a need to extend their use to other supervised institutions. Incentives to comply with AML/CFT laws and regulations are significantly weakened without the fear of sanctions for non-compliance.

447. Regarding beneficial ownership, FATF requires a more proactive and in-depth approach on the part of financial institutions than what is currently in Honduran regulation, specifically Res. 869, Art 18. FATF requires the FIs to determine whether a customer is acting on behalf of another customer and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person. In addition, it requires that if customers are legal persons or legal arrangements, the FIs should understand the ownership and control structure of the customer and determine who are the natural persons who ultimately own or control the legal person.

448. Greater efforts need to be made in the supervision of the insurance industry, and in particular insurance intermediaries, to bring them in line with international standards.

449. The securities industry continues to be small and is not macro economically relevant, nor significant from an AML/CFT perspective. Compliance in the securities sector is not clear. However, the sector is small, being comprised of local companies whose issues are mostly bonds bought by other local companies. Bearer shares are permitted which continues to be a weakness that should be remedied (see recommendation 33).

450. Recently, the March 2008 reform in the AML law expanded supervisory oversight to more entities. However, there are still parts of the financial and non-financial sectors that are not covered by the regulations and therefore immediate action needs to be taken to include them in the requirements set forth in the AML law. This is most pressing in the case of money remitters. They may be being used to launder funds of crime especially through the real estate sector which is seeing significant growth.

451. CDD requirements apply to Honduran PEPs and should be expanded to include foreign PEPs. The supervisory authority should provide appropriate guidance in this regard to currently supervised institutions. The regulation should include a requirement to obtain senior management approval to continue a business relationship if an existing client is found to be a PEP.

452. There should be a higher level of requirements as to information gathered in non face to face transactions.

453. The authorities should include non-resident customers, private banking customers, arrangements such as trusts or other legal holding vehicles, and companies with shares in bearer form as higher risk categories. FIs and DNFBPs should be required to develop and enforce enhanced levels of due diligence for these higher risk customers and their transactions.

454. There are no regulations dealing with correspondent banks, and even less so with counterparts that may be in countries that are not FATF compliant. Regulations need to be developed to address this shortcoming. The supervisory authority should provide appropriate guidance in this regard to all supervised institutions.

**3.2.3.****Compliance with Recommendations 5 to 8**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.5</b>	<b>NC</b>	Absence of requirement regarding beneficial ownership Absence of implementation in the securities and insurance sector Still insufficient implementation of CDD requirement in the banking sector, in particular for pre-existing customers Absence of requirement of enhanced due diligence for high risk customers
<b>R.6</b>	<b>NC</b>	Absence of enhanced CDD requirements for foreign PEPs Absence of requirement of senior management approval for continuing business relationships with existing customers found to be PEPs.
<b>R.7</b>	<b>NC</b>	No specific regulations for foreign or domestic cross border correspondent banking relationships. The authorities do not request information concerning the independence of funds of audit and compliance from the correspondent relationships. The responsibilities for ML and TF are not available to for all corresponding institutions.
<b>R.8</b>	<b>NC</b>	Lack of clear requirements as to the type of information to be gathered in non face to face transactions, including in wire transfers

**3.3. Third Parties And Introduced Business (R.9)****3.3.1.****Description and Analysis****Legal Framework:**

455. Although introduced business is permitted, there is no requirement on how it is conducted.

#### **Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):**

456. The banking institutions the mission met with stated that they perform their own CDD and do not rely on third parties. When they do receive referrals and introduced businesses, the FIs the mission met with stated that they apply the same level of CDD to the ultimate customer as for non-introduced business. Similar information was been received from the banking supervisor.

457. The mission does not consider the securities industry, given its narrow scope and size, to be significant. The mission was told that the securities market consists largely of local corporate bonds bought by institutional investors and given the small size of the Honduran economy; the participants know each other well.

#### **Availability of Identification Data from Third Parties (c. 9.2):**

458. There is no legal requirement on introduced business covering the insurance sector.

#### **Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3):**

459. The mission was not provided with information on these elements.

#### **Adequacy of Application of FATF Recommendations (c. 9.4):**

460. Honduran authorities do not take into account information available on whether those countries where third party business originates, adequately apply the FATF Recommendations.

#### **Ultimate Responsibility for CDD (c. 9.5):**

461. The ultimate responsibility for CDD in banks is with the banks themselves. The issues relative to the insurance and securities sectors is described above in 9.1 and 9.2

#### **Analysis of effectiveness**

462. The effectiveness of implementation in the insurance and securities sector needs improvement due to the existing risks of ML. In the securities industry, the level of CDD performed by the principals could not be determined with certainty. Although the securities sector is not yet large enough to present significant ML or TF risks, controls should be implemented in advance of significant increases of these risks and to ensure they do not threaten the sector.

463. In the insurance sector, 80 percent of the business originates through insurance brokers. The supervisor and the industry both state that it has been difficult to get insurance brokers, who are registered with the supervisory authority, to comply with CDD requirements. The level of supervision of the insurance brokers exercised by the insurance supervisor does not appear to the assessors as commensurate with the ML/FT risks. In addition, the assessors received indications that when one FI's requirements are considered too severe, the insurance broker will often then take the business to another insurance company.

### 3.3.2. Recommendations and Comments

464. The supervisor should work together with the industry to address and improve compliance with AML requirements, in particular on introduced business. There is a need to ensure that all insurance and reinsurance companies enforce the CDD requirements for business they receive through insurance brokers – or that delegation of the CDD requirements are properly laid out and in line with Recommendation 9. There is currently a plan in place by CADHA, the insurance industry association, to create an official form to identify customers which the assessors reviewed. Implementing use of this form would at least be a step forward in the third party business compliance with CDD requirements

### 3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	<p>Absence of framework for the introduction of business, particularly in the securities and insurance sector</p> <p>Not all insurance companies enforce the CDD requirements for business they receive through insurance brokers</p> <p>Honduran authorities do not take into account information available on whether those countries where third party business originates, adequately apply the FATF Recommendations.</p>

## 3.4. Financial Institution Secrecy or Confidentiality (R.4)

### 3.4.1. Description and Analysis

#### Legal Framework:

465. There is no impediment to information sharing among competent authorities in Honduras. Article 10(f) of Resolution 869 requires Compliance Officers in financial institutions to establish lines of communication and cooperation with other supervised institutions. The supervisory authorities report that the banks have had no difficulties providing information as required and the banks confirmed this to the mission. As indicated in the supervision section, the CNBS has the legal capacity to access information in the entities it supervises. Article 28 of the AML Law explicitly states the obligation for all institutions, private or public, to provide any required information to the Ministerio Publico that may be necessary to establish of the offence of money laundering. Article 50 of the Law states that this Law takes precedence, with regard to secrecy and confidentiality issues over Article 956 of the Code of Commerce and Article 39 of the Income Tax Law.

466. Article 44 of the Law authorizes the FIU to collect information it deems necessary in the investigation of felonies in regard to ML and FT, but as noted above, the FIU cannot access all relevant databases (see Recommendation 26). The FIU however considers that it has met no barriers to access information they require to properly perform their functions in combating ML or FT. In the

assessors' view, this pertains more to the FIU issues than specifically to banking secrecy, all the more as ultimately, the Fiscalía can access all needed information. There are no impediments to sharing information internationally (see Recommendation 40).

#### **Inhibition of Implementation of FATF Recommendations (c. 4.1):**

467. Bank supervisors stated that they do not face hurdles in practice to access the needed information.

#### **Analysis of effectiveness**

468. Banking secrecy is not an impediment to the fight against ML and TF.

### **3.4.2. Recommendations and Comments**

### **3.4.3. Compliance with Recommendation 4**

	Rating	Summary of factors underlying rating
<b>R.4</b>	<b>C</b>	

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

### **3.5.1. Description and Analysis**

469. Record Keeping: Article 27 of the Law requires that FIs maintain records for a minimum of 5 years after the conclusion of a transaction. Article 29 of Resolution 1238/07-12-2004 requires supervised securities market participants to do the same. Article 20 of Resolution 1230 requires insurance sector participants to do the same as well. FIs are required to keep them longer if requested to do so by the FIU. These records must be kept so that financial transactions could be reconstructed. The requirement to keep records of all business correspondence is in the Commercial Code.

470. Wire Transfer rules (SR VII): The AML Regulation, Articles 28 and 29 of Resolution 869, requires supervised institutions performing electronic transfers to “include key and significant information<sup>3</sup> on the sender of an electronic transfer,” regardless of the amount remitted (Article 29). There is no distinction between domestic and international wire transfers. There is no minimum amount specified for required information for transfers; all transfers need to provide the required information.

471. Additionally, these articles oblige FIs to include full originator information for both cross-border and domestic wire transfers, as this information has been collected to comply with Honduras CDD requirements. However, at the time of the mission, money remitters had only just become

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<sup>3</sup> Name, identification number, domicile (address), telephone and account number

subject to supervision, and therefore the efforts undertaken to ensure compliance with these requirements could not be assessed by the mission.

472. There is no specific mention in the Law or Regulation on how to handle batch filing. During the on-site mission, the authorities indicated that the process for including originator information with batch files should remain consistent with the practice for sending individual wire transfers. That being said, each transfer order in the batch file should contain identical information that would be in an individual transfer.

473. When FIs in Honduras are acting as the intermediary or beneficiary institution in the payment chain, they are again required by law to ensure originator information is transmitted with the transfer by Article 27, numeral 3 of the AML Regulation. “They will adopt measures, to obtain and conserve information on the identity of the persons to whose benefit the account is opened, transfer is made or a transaction carried out...” These institutions under Article 27, numeral 4 of the AML Law “will maintain during the validity of any operation, and for at least five (5) years as of finalization of the transaction, registries on the information and documentation...”

474. Per Article 28 of the AML Regulation, supervised institutions must verify the commercial activity of the client prior to opening a letter of credit on their behalf. FIs need to pay special attention to those clients that fund their activities with cash or other instrument whose origin is in doubt. The authorities also contend that risk-based procedures are ingrained in Article 27, numeral 3 of the AML Law; however, the law does not provide recommendations, or a course of action to be taken, when the ordering financial institution fails to provide the required information.

475. Article 11 of the AML Law describes the sanctions imposed on natural and legal persons not complying with requirements under the AML Law, which includes requirements related to wire transfers. A further discussion of sanctioning can be found in section 3.10, Recommendation 17.

#### **Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):**

476. Article 27 of the Law requires that FIs maintain records for a minimum of 5 years after the conclusion of a transaction. Article 29 of Resolution 1238/07-12-2004 requires supervised securities market participants to do the same. Article 20 of Resolution 1230 requires insurance sector participants to do the same as well. FIs are required to keep them longer if requested to do so by the FIU. These records must be kept so that financial transactions could be reconstructed, but only if they exceed \$10,000. There is no explicit requirement to keep records of all business correspondence.

**Record-Keeping for Identification Data, Files and Correspondence (c. 10.2):**

477. The explicit requirement to keep records of all business correspondence is in the Commercial Code.

**Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):**

478. FIs are required to ensure that all customer and transaction records are available on a timely basis to domestic authorities. As such, in Honduras, the assessors were informed that FIs are required to provide the FIU with requested information within 5 days of a formal request. However, there is flexibility to the extent that some records may need to be retrieved from files that may not be readily accessible. The FIU reports that it has received requested information when requested, without undue delays.

**Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1): Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2): Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):**

479. Not all MTOs were supervised at the time of the mission. MTOs were only included in the legislation and subject to supervision beginning in March 2008. With regard to supervised FIs performing wire transfers (banks, exchange houses, savings and loan associations) the mission was not provided sufficient information to verify that said institutions are adhering to the law. There were indications from the private sector that only names and the amount of the transfer were being supplied and received when conducting or accepting wire transfers. Information regarding incoming foreign transactions is addressed in Art 28 of Res 869; specifically, “the remitting institution ... must be a known customer of the local institution. If this is not the case, maximum caution must be taken when documents received are copies or when the drawee insists in paying in case or with instruments of doubtful origin.

480. One supervised money remitter, a subsidiary of a bank, reported that they were receiving three to four on-site visits from the CNBS per year. The CNBS has performed on-site examinations at a number of co-operativas and casas de cambio. The full extent of the ML/TF component of the exams is not known by the assessors. The assessors noted that there was a perception in the banking community that smaller institutions, such as credit cooperatives and savings and loan associations were not being subjected to the same procedures.

**Maintenance of Originator Information (c.VII.4):**

481. Currently, transaction records are required to be maintained to permit reconstruction of individual transactions.

482. FIs keep records of transactions for longer than 5 years if requested to do so by the FIU. Chapter VII of the Law, Article 27 (4) refers to record keeping for all accounts irrespective of amount while (5) only refers to reconstruction of a transaction where an amount is to be specified – therefore the requirement for reconstruction of transaction is directly linked to transactions exceeding this amount.

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

483. No information was provided to the mission during the assessment.

**Monitoring of Implementation (c. VII.6):**

484. Legislative requirements are in line with SRVII, with the exception of monitoring of “non-supervised” entities. In legislation, non-supervised entities were brought under the umbrella of supervision to be undertaken by the CNBS or another competent authority upon the closing of the mission.

**Application of Sanctions (c. VII.7: applying c.17.1 – 17.4):**

485. The CNBS management stated that they have the authority to impose monetary penalties (per the Penal Code) for non-compliance calculated based on a fine computed on the basis of an average daily salary. Titulo Sexto of the Law of the Financial System and Article 11 of the AML Law describes the sanctions imposed on natural and legal persons not complying with requirements under the AML Law. Grounds for sanctioning can also be found under Article 43 of the AML Regulation. A further discussion on sanctions applied to MVT services can be found in Section 3.10, Recommendation 17. The CNBS stated that they have only once imposed any penalties or sanctions for noncompliance to date, towards a “casa de cambio”.

486. There is no specific mention in the Law or Regulation on how to handle batch filing. During the on-site mission, the authorities indicated that the process for including originator information with batch files should remain consistent with the practice for sending individual wire transfers. That being said, each transfer order in the batch file should contain identical information that would be in an individual transfer.

**Additional elements: elimination of thresholds (c. VII.8 and c. VII.9):**

487. No information was provided to the mission during the assessment.

**Analysis of effectiveness**

488. At the time of the on-site mission, the CNBS was responsible for the ongoing supervision of most of the financial institutions (banks, savings and loan institutions, credit cooperatives, and exchange houses) performing wire transfers. However, at the time of the mission, money remitters had only just become subject to supervision, and therefore the efforts undertaken to ensure compliance with these requirements could not be assessed by the mission.

489. At the time of the on-site visit, most requirements of SRVII were not being implemented. The legal provisions are in line with the requirements of Special Recommendation VII, but effective implementation is lacking.

**3.5.2. Recommendations and Comments**

490. Supervisors should ensure that FIs are sending and receiving the proper originator information with wire transfers. Additionally, the CNBS should start imposing sanctions on FIs not



meeting wire transfer requirements. In order to bring attention to wire transfers and the submission of STRs, the authorities may consider issuing guidelines to all FIs performing wire transfers. These guidelines may be used to remind FIs that STRs could be filed when full originator information is not provided or cannot be verified. The FIU should take all steps necessary to broaden its maintenance of statistics related to wire transfers.

491. Verification of customer information is required of FIs but there are still questions as to whether or not FIs are verifying that information, especially in the case of pure MTOs that are only recently licensed or supervised.

### 3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
<b>R.10</b>	<b>C</b>	
<b>SR.VII</b>	<b>NC</b>	<p>Sanctions are available for non-compliance but are not effectively utilized and therefore do not provide a deterrent for failure to comply with laws and regulations</p> <p>Supervision of pure MTOs not effectively implemented</p> <p>There is a lack of full implementation in FIs with regard to wire transfer rules found in the AML Law and Regulation</p> <p>Absence of requirements on beneficiary information when the information accompanying the wire is incomplete</p> <p>There are a low number of STRs submitted in relation to wire transfers</p> <p>Weaknesses in the verification of occasional customer, and general weaknesses on the customer information that travels with the wire given the pitfalls identified under R5.</p>

## 3.6. Monitoring of Transactions and Relationships (R.11 & 21)

### 3.6.1. Description and Analysis

#### Legal Framework:

492. Article 37 of the Law requires that FIs pay special attention to complex, unusual and significant transactions and those that do not correspond to normal transaction patterns, including those that are not significant but are periodical, but have no evident economic or legal foundation. They also require institutions to document the background and to make the information available to relevant authorities and auditors. The reporting requirements include reporting those transactions that have no apparent economic or visible lawful purpose. The same is required of insurance and reinsurance companies per Resolution 1230, Article 23 and for securities industry participants per Resolution 1238, Article 25. Article 38 in the Law requires FIs to report to the UIF atypical, suspicious or unusual transactions.

**Special Attention to Complex, Unusual Large Transactions (c. 11.1):**

493. Implementation in the banking sector is far ahead of implementation in the securities and insurance sector. Both the supervisory authority and the FI the mission met with stated that the supervised FIs give special attention and care to those transactions carried out which are complex, unusual, significant and do not respond to all habitual transaction patterns and transactions which are not significant but periodical, which have no evident economic or legal foundation.

**Examination of Complex & Unusual Transactions (c. 11.2):**

494. Financial institutions are required to document, investigate and examine transactions that have no apparent economic or visible lawful purpose.

**Record-Keeping of Findings of Examination (c. 11.3):**

495. FIs are required to keep findings available for the authorities for at least 5 years after the transaction at a level of detail that would enable the reconstruction of the transaction.

**Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):**

496. Financial institutions are not required to pay special attention to transactions originating in countries that do not or insufficiently apply FATF recommendations. There are no special measures to ensure that FIs are advised of weaknesses in AML systems of other countries. There is currently no ability to apply counter-measures against countries that do not apply FATF Recommendations sufficiently.

**Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):**

497. Financial institutions are not required to pay special attention to transactions originating in countries that do not or insufficiently apply FATF recommendations. There are no special measures to ensure that FIs are advised of weaknesses in AML systems of other countries. There is currently no ability to apply counter-measures against countries that do not apply FATF Recommendations sufficiently.

**Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):**

498. There are no special measures to ensure that FIs are advised of weaknesses in AML systems of other countries. There is currently no ability to apply counter-measures against countries that do not apply FATF Recommendations sufficiently.

**Analysis of effectiveness**

499. Monitoring of complex, unusual and significant transactions is implemented to a greater degree in the banking sector than in other sectors. This may have had the effect of encouraging money launderers to move their transactions away from banks and into less monitored sectors.

### 3.6.2. Recommendations and Comments

500. Implementation of the unusual transactions requirements needs to be more energetically enforced outside the banking sector. Money remitters need to have the same reporting requirements.

501. The authorities should put measures and requirements in place to require FIs to pay special attention to transactions coming from countries that are not sufficiently FATF compliant. In addition, the authorities should have the means by which to take countermeasures against these countries.

### 3.6.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	Lack of implementation outside the banking sector, especially with regard to money remitters.
R.21	NC	Absence of requirement that FIs pay special attention to countries that are not sufficiently FATF compliant.  Absence of capacity for the Authorities to apply countermeasures against these countries.

## 3.7. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 & SR.IV)

### 3.7.1. Description and Analysis<sup>4</sup>

#### Legal Framework:

502. Article 38 of the Law requires supervised FIs that detect transactions that could be considered illicit, atypical, complex, unusual, significant, or that do not respond to normal transactions of the client, or not significant but periodic, and/or those that have no fundamental economic or legal basis to be communicated immediately to the UIF. Honduras has chosen to define suspicious transactions as atypical. These reports should have all the information necessary to support the evaluation of the situation. Chapter 11, of the AML law (Decree 45, 2002) specifies the reporting requirement and it is broadly set at suspicion that funds are related to criminal activity, i.e. with the largest list of predicate offences. The reporting obligation described in article 38 of the Law covers institutions supervised by the CNBS – this reporting obligation is extended by article 43 of the Law inter alia to other institutions undertaking financial activities but not supervised by the Commission.

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<sup>4</sup> The description of the system for reporting suspicious transactions in section 3.7 is integrally linked with the description of the FIU in section 2.5 and the two texts need not be duplicative. Ideally, the topic should be comprehensively described and analyzed in one of the two sections, and referenced or summarized in the other.

503. Per Article 39 of Resolution 869, regarding the prevention of the financing of terrorism, when supervised financial institutions suspect or have reasonable indications of funds linked or relation or possibly used for the financing of terrorism, they are required to immediately inform the UIF.

**Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):**

504. Article 38 of the Law requires supervised FIs that detect transactions that could be considered illicit, atypical, complex, unusual, significant, or that do not respond to normal transactions of the client, or not significant but periodic, and/or those that have no fundamental economic or legal basis to be communicated immediately to the UIF. Honduras has chosen to define suspicious transactions as atypical.

**STRs Related to Terrorism and its Financing (c. 13.2):**

505. Per Article 39 of Resolution 869, regarding the prevention of the financing of terrorism, when supervised financial institutions suspect or have reasonable indications of funds linked or relation or possibly used for the financing of terrorism, they are required to immediately inform the UIF.

**No Reporting Threshold for STRs (c. 13.3):**

506. All suspicious transactions are required to be reported to the UIF regardless of their size. The law mentions that transactions to be reported are to have been realized (“efectuadas”), which the assessors understand as not covering attempted transactions.

**Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):**

507. Reports are to be made regardless of the whether they are tax related. There are no exceptions in this regard.

**Additional Element - Reporting of All Criminal Acts (c. 13.5):**

508. No information was provided to the mission during the assessment.

**Protection for Making STRs (c. 14.1): Prohibition Against Tipping-Off (c. 14.2): Additional Element—Confidentiality of Reporting Staff (c. 14.3):**

509. Protection for STR Reporting/Tipping off: Institutions supervised by the Commission, including its directors, proprietors, authorized representatives and employees are protected from civil and criminal liability when communicating a STR to the FIU (Article 39 of the AML Law). In relation to “non-supervised” entities, Article 43 of the AML Law states, “all dispositions referring to institutions supervised by the Commission related to felony of money or asset laundering, will apply to individuals or organizations, regular or irregular, not supervised by the Commission which carry out the following activities...”

510. During communications with the CNBS, officials stated that this Article would protect “non-supervised” institutions and their staff from civil and criminal liability when reporting STRs because the Article subsequently extends all obligations and protection found in the law to “non-supervised” entities; however, when referring back to Article 39, it clearly states that only “institutions supervised

by the Commission” will receive protection from liability. There is some confusion and doubt as to whether or not the language of this Article also protects “non-supervised” institutions. Based on the information received during meetings with the private sector, the assessors wonder whether this vagueness in the law with regards to protection for STR reporting may be playing a role in the tentativeness to submit STRs. The mission is satisfied with the authorities’ explanation but clarification of the law would eliminate legal risk around this issue.

511. Financial institutions, their directors, officers and employees are prohibited by law from disclosing information related to a STR. Article 30 of the AML Regulation prohibits any institution, including their directors, officers, and employees from disclosing to any person, “the fact that information has been requested by the competent authority or sent to this authority...” Article 30 of the AML Law also prohibits the disclosure of information by anyone related to the institution and imposes criminal penalties of three (3) to six (6) years in prison.

**Consideration of Reporting of Currency Transactions Above a Threshold (c. 19.1): Additional Element—Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):**

512. Article 31 of the Law requires supervised institutions to register with the CNBS in a format designated by the commission, transactions above an amount designated by the commission, which is \$10,000 or the equivalent in lempiras. The information is submitted and maintained in a computerized data base, available to competent authorities and it is subject to strict safeguards to ensure proper use. The FIU has access to all these reports

**Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):**

513. The FIU has access to all these reports

**Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.1) [Note: guidelines with respect other aspects of compliance are analyzed in Section 3.10]:**

514. . The FIU does not have access to law enforcement information nor does it have access to other governmental and non-governmental sources, thus limiting its analytic capacity. Insufficient resources further limit its effectiveness. There is a very low level of STR reporting The FIU has recently begun to send an FIU analyst to accompany bank supervisors during on-site AML examinations assist FIs to implement and comply with their respective AML/CFT requirements.

### **Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):**

515. There is no general feed-back (beyond acknowledgement of the receipt of the report) on STRs.

#### **Analysis of effectiveness**

516. There is a relatively low level of STR reporting in Honduras therefore the country cannot be considered to have an effective system. For the first 9 months of 2007, only 64 atypical transaction reports (STRs) were submitted to the FIU. Of the total, 30 were submitted by banks, 9 were submitted by one financiera, 12 were submitted by cooperativas, one was submitted by a money remitter, one by an insurance company and one by a credit card issuer. The major reason given by the authorities for the relatively low level of reports is that there is likely an overly rigorous screening by internal approval/compliance committees. In addition, more money laundering has moved from the FIs to outside the financial system given the heightened surveillance in the supervised sector, in a context where the scope of coverage of FIs by the supervisors is not complete and the DNFBP sector was only included in the legislation early in 2008.

#### **3.7.2. Recommendations and Comments**

517. Many of the requirements are in place and sufficiently address the FATF requirements with the exception of requirements for general feedback. The major issue is implementation of the requirements. Not all institutions that are required to submit STRs do so and money remitters and DNFBPS only recently became subject to the same reporting requirements. Financial institutions should be required to report attempted transactions on terrorist financing.

518. The CNBS needs to address the low level of STR reporting to ensure that all possible transactions are being captured and reported, including for money remitters.

519. Protection for STR Reporting/Tipping off: Protection of “non-supervised” institutions and their staff when submitting STRs to the authorities should be included in the law. Amending the language in Article 39 may serve to rectify this problem and provide “non-supervised” institutions the protection afforded to supervised entities

520. Feedback should be provided on STRs.

#### **3.7.3. Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Recommendation IV**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.13</b>	<b>LC</b>	The requirements are in place for supervised institutions but not all supervised institutions submit reports and the supervisory authority needs to ensure compliance Absence of requirement to report attempted transactions.
<b>R.14</b>	<b>C</b>	

<b>R.19</b>	<b>C</b>	
<b>R.25</b>	<b>NC</b>	There is no feedback to assist FIs apply ML and TF measures.
<b>SR.IV</b>	<b>C</b>	

### **3.8. Internal Controls, Compliance, Audit and Foreign Branches (R.15 & 22)**

#### **3.8.1. Description and Analysis**

##### **Legal Framework:**

521. Article 41 of the Law requires FIs to adopt, develop and implement programs to prevent ML and related crimes, which must include specific procedures to ensure the probity of staff and background checks for staff, training programs and auditing programs. Per Article 5 of Resolution 869, these programs need to be appropriate for the organization, structure, resources and complexity of the institution's operations. Article 6 of 869 sets out the minimum requirements for the composition of the Compliance Committee. Article 7 of 869 refers to the Compliance Committee, and lists its responsibilities as follows: evaluate the development of the Compliance Program; analyze unusual transactions in order to determine their nature and send a report to the UIF; keep the management committee informed, the president and the general management regarding changes in national legislation and international norms regarding AML; know about atypical cash transaction reports and other STRs; analyze and determine the communication of STRs to the UIF; evaluate and implement the corrective measures necessary for effectiveness in the filing of cash and other STRs. Article 10 of the same Resolution lists the 18 functions of Compliance managers.

522. Article 41 in the Law and Article 15 in Resolution 869 require that institutions establish an audit function that tests compliance with the ML and TF procedures and policies. Banks' internal audit functions are required to verify the compliance with internal processes, procedures, policies and controls. Part of the supervisory oversight is review of these reports by internal audit and compliance.

523. Article 41 in the Law and Article 12 in Resolution 869 requires that institutions implement training programs for their employees in ML and TF. Training programs are in place at the large banks the mission met with regarding CDD and the Law. The mission is not satisfied that all FIs have training programs for their staffs.

##### **Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2): Additional Element—Independence of Compliance Officer (c. 15.5):**

524. The regulation also details the required qualifications and responsibilities of the designated Compliance Officer, to be at a management level, and requires submission of the name and changes in designation of the Compliance Officer to the CNBS. Requirements for supervised institutions include formal Codes of Ethics, AML procedures manuals, formal systems of internal audit for AML, and institutional sanctions.

525. The AML regulation elaborates on KYC policies, minimum identification of clients and requirements for specific types of banking transactions, such as electronic submissions, ongoing monitoring and reporting of both new and unusual, i.e. suspicious, transactions. The compliance

officers at banks that the mission met with all stated that there were no issues with their having timely access to customer identification data, CDD information, transaction records, and any other relevant information when and as needed.

**Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):**

526. No information was provided to the mission during the assessment.

**Ongoing Employee Training on AML/CFT Matters (c. 15.3):**

527. Article 41 in the Law and Article 12 in Resolution 869 requires that institutions implement training programs for their employees in ML and TF. Training programs are in place at the large banks the mission met with regarding CDD and the Law. The mission does not know if all FIs have training programs for their staffs.

**Employee Screening Procedures (c. 15.4):**

528. The FIs are required to have processes to ensure that high personal standards of integrity are maintained by all staff, owners, and directors. The banks the mission met with all affirmed that they follow the procedures as directed by the resolution. The supervisory authority reviews actions, policies and procedures of the FIs it examines. Article 31 of Resolution 869 contains the “know your employees” requirements. Per Article 31 of Res 869, FIs must “carefully select and investigate its personnel and watch over their conduct, specially those with positions related to customer services, reception, administration, granting and investment of funds and information control, establishing appropriate principles, standards and controls. It instructs FIs to establish norms and related controls to select and investigate personnel carefully and observe their conduct, especially those that are charged with client relationships, administration, approval and investment of funds and control of information. It instructs FIs to pay special attention to those employees whose lifestyles do not correspond to their salaries and whose position would allow them to be associated, directly or indirectly, with the disappearance of funds of the institution.

**Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):**

529. There are no obligations for the institutions having overseas branches and subsidiaries to comply with AML/CFT requirements.

530. Although the mission was told that there are no other branches of other Honduran banks outside of the country, the mission later learned that there are Honduran banks with offshore operations in Belize. The mission did not receive information about those foreign operations, nor about the supervisory authorities’ assessment of compliance with AML/CFT obligations by those branches. One money remitter with overseas operations has operations in the United States which are subject to U.S. laws and regulations on AML/CFT.

**Requirement to Inform Home Country Supervisor if Foreign Branches & Subsidiaries are Unable Implement AML/CFT Measures (c. 22.2):**



531. There are no obligations regarding the compliance of branches and subsidiaries with AML/CFT requirements.

**Additional Element—Consistency of CDD Measures at Group Level (c. 22.3):**

532. No information was provided to the mission during the assessment.

**Analysis of effectiveness**

533. While large banks the mission met with stated that they were in compliance with this requirement, there is still a relatively low level of STR reporting in the system – which, given the ML/TF risk, may be an indication of remaining compliance gaps related to internal controls. Banks that have foreign parent banks have more experience in implementing their programs as their home country supervisors have required these programs for a number of years. For domestic banks, while they have made progress, their experience is only for the last few years. Periodically, the effectiveness of their compliance programs needs to be reviewed in order to identify any deficiencies or modifications that may be needed in laws, regulations or policies. Resolution 1230, Chapter 5 has the same requirements for the insurance industry. However, there is a low level of compliance overall in the insurance industry and that continues to leave the sector vulnerable to ML and TF.

534. At the time of the mission there was only one money remitter subject to supervisory oversight. It is a subsidiary of a Honduran bank. At the end of the mission, legislation was passed which included all money remitters as subject to supervisory oversight. The subsidiary is subject to supervision in Honduras as well as in the U.S. where its branches are located. The assessors met with the management of this entity during the mission and management confirmed that the supervisors are on site three to four times a year to ensure their compliance with procedures and regulations. As they are subject to the supervisory requirements of Honduran authorities, they are required to inform them if there is any obstacle to observing ML and TF measures in their overseas operations.

535. The requirements for Recommendation 15 are set out in the laws and regulations. The assessors met with FIs who confirmed that they implemented the laws and policies in this recommendation and that the annual supervisory inspections included assessing their compliance in this regard. It is not known if all the banks meet the criteria but there is little if any compliance in the insurance sector or the securities sector.

**3.8.2. Recommendations and Comments**

536. One key issue is the absence of supervision of the sum of entities under the AML/CFT framework, in particular money remitters. At the end of the mission, legislation was passed which included all money remitters as subject to supervisory oversight. Their supervision should begin as soon as possible. There is no credible evidence of compliance outside the supervised entities.

537. The authorities need to ensure that all foreign branches and subsidiaries of Honduran financial institutions observe AML/CFT measures consistent with those of Honduras and those of the local host country. FIs should be required to inform the Honduran supervisory authority if their foreign operations cannot observe appropriate AML/CFT measures.

**3.8.3.****Compliance with Recommendations 15 & 22**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.15</b>	<b>PC</b>	Absence of effective implementation in the insurance and securities sectors. Absence of effective implementation for the money remitters.
<b>R.22</b>	<b>NC</b>	There is no information available to the mission regarding the foreign branches or subsidiaries of Honduran banks and their compliance with AML/CFT laws and regulations. There are no obligations regarding the compliance of branches and subsidiaries with AML/CFT requirements.

**3.9. Shell Banks (R.18)****3.9.1.****Description and Analysis****Legal Framework:****Prohibition of Establishment Shell Banks (c. 18.1):**

538. Article 21 of Resolution 869 prohibits the operation of shell banks in Honduras. These are defined in Article 2 of the Resolution as those institutions that have no physical presence or doing only electronic business. They would be operating without authorization and thus outside of supervisory oversight. According to the CNBS there are no shell banks operating in Honduras.

**Prohibition of Correspondent Banking with Shell Banks (c. 18.2): Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):**

539. Art 21 of 869 states that direct or indirect financial relations with institutions which gather the characteristics of a shell bank are prohibited.

**Analysis of effectiveness**

540. Honduran law and bank's compliance with regard to shell banks is fully effective currently.

**3.9.2.****Recommendations and Comments**

541. The authorities should require FIs to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.

### 3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	Absence of requirement for FIs to satisfy themselves that respondent FIs 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. 17, 23, 25 & 29)

#### 3.10.1. Description and Analysis

##### **Legal Framework: Regulation and Supervision of Financial Institutions (c. 23.1):**

542. Honduras has a suitable legal framework for supervision including provision relating to authorization of FIs and their ongoing supervision. Article 245, item 31, of the Constitution stipulates that the President of the Republic exercises surveillance and control over financial institutions, through the CNBS. The CNBS started operations in 1996 prior to which the Central Bank was in charge of bank supervision. According to the 1995 reform of the CNBS law, the CNBS is no longer ascribed to the Central Bank, and has become a decentralized agency of the Presidency of the Republic with functional and budgetary independence. The CNBS is the overarching supervisory authority of the financial sector, entrusted with supervising the financial, insurance, pensions, securities and other activities associated with taking deposits or investments from the public.

##### **Designation of Competent Authority (c. 23.2):**

543. The CNBS is responsible for: supervising FIs; supervising their correct constitution; activities, closures and extension of their activities abroad; issuing prudential regulations of obligatory compliance by FIs; supervising compliance with the Constitution laws and regulations; applying sanctions for violations to laws and regulations, including in the event of intervention and liquidation of FIs.

##### **Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):**

544. While the CNBS assesses the suitability of organizers, major shareholders, directors and managers, there is no explicit reference in the laws or regulations to the ultimate beneficial owners and the transparency of the ownership structure of the bank and its wider group. The banks are required to report annually to the CNBS the list of their shareholders, indicating clearly the shares and their percentage ownership. These lists are reviewed during onsite examinations.

545. Transfer of shares of an FI requires the approval of the CNBS when they comprise ten percent of capital or if less than ten percent, but a change in control of the institution results from transfer of said shares, per Article 22 of the 2004 Law of the Financial System. The CNBS has the legal authority, per Art 22 of Decree 129-2004, to reject transfers of ownership, including the exercise of voting rights of a bank, if buyers are found to not be qualified.

**Application of Prudential Regulations to AML/CFT (c. 23.4):**

546. The authorities apply the AML/CFT regulatory measures in a way that are consistent with the Basel Core Principles for the supervised banks. This is not fully the case with insurers and insurance intermediaries and market intermediaries.

**Licensing or Registration of Value Transfer/Exchange Services (c. 23.5) : Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):**

547. Only one money transfer agent was supervised at the time of the mission; it is a subsidiary of a bank. The others were not supervised with regard to AML/CFT at the time of the mission.

**Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):**

548. The CNBS is responsible for: supervising FIs; supervising their correct constitution; activities, closures and extension of their activities abroad; issuing prudential regulations of obligatory compliance by FIs; supervising compliance with the Constitution laws and regulations; applying sanctions for violations to laws and regulations, including in the event of intervention and liquidation of FIs.

**Guidelines for Financial Institutions (c. 25.1):**

549. The CNBS has done a great deal of work with banks in order to familiarize them with the requirements of AML/CFT. There have been a number of training sessions, led by the FIU. There is a sentiment that the large players in the industry are relatively well informed. The FIU has also provided training to judges. There is a detailed inspection manual for the onsite inspection of banks and financiers. There is also a model report for the inspectors to use to guide them through the inspection process.

**Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1): Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):**

550. Supervisors in Honduras have adequate legal powers to monitor and foster financial institutions' compliance with AML requirements. Articles 6 and 13 of the Law of the CNBS grants it the authority to supervise private and public banks, insurers, re-insurers, finance companies, savings and loan associations, securities markets, exchange houses, pension funds, etc including any analogous institutions, including natural and legal persons providing money transfer services. Article 42 of Resolution 869 further sets forth that the staff of the CNBS supervise compliance with AML/CFT for all the institutions it supervises.

551. The CNBS has prepared a detailed and thorough inspection manual for financial sector examiners to be used in the on-site AML examinations. The supervisory authority has two examiners, which were increased to five dedicated supervisors in February, 2008, devoted to just doing ML compliance examinations as part of standard, annual onsite examinations of banks. The mission reviewed a template of AML report. The sample report appeared to be straightforward, thorough, analyzed actions taken in response to prior weakness noted by the supervisors and gave deadlines to the FI to address weaknesses. The reports have to include measures for improving compliance. The reports and the manual provide a good guide for examiners in carrying out their function. However,

the mission only saw an actual report after the dates of the mission and therefore was unable to analyze whether the supervisors use a risk based approach in their ML on site examinations,

**Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):**

552. The law empowers the CNBS to issue regulations that FIs are obliged to comply with. The CNBS law empowers the CNBS to require that FIs provide access to all information necessary to conduct its supervisory function.

**Powers of Enforcement & Sanction (c. 29.4):**

553. The CNBS management stated that they have the authority to impose monetary penalties (per the Penal Code) for non-compliance calculated based on a fine computed on the basis of an average daily salary. Titulo Sexto of the Law of the Financial System and Article 11 of the AML Law describes the sanctions imposed on natural and legal persons not complying with requirements under the AML Law. Grounds for sanctioning can also be found under Article 43 of the AML Regulation. A further discussion on sanctions applied to MVT services can be found in Section 3.10, Recommendation 17. The CNBS stated that they have only once imposed any penalties or sanctions for noncompliance to date, towards a “casa de cambio”.

**Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1): Designation of Authority to Impose Sanctions (c. 17.2):**

**Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3):**

554. See above. Sanctions can be imposed on natural and legal persons.

**Range of Sanctions—Scope and Proportionality (c. 17.4):**

555. The CNBS management stated that they have the authority to impose monetary penalties (per the Penal Code) for non-compliance calculated based on a fine computed on the basis of an average daily salary.

### **Adequacy of Resources for Competent Authorities (c. 30.1):**

556. The FIU, law enforcement and prosecution agencies, supervisors and other competent authorities involved in combating money laundering and terrorist finance are not adequately staffed or funded at the present time to effectively perform their functions. With the addition of DNFBPs, including money remitters, in the March 2008 law, there is additional supervisory oversight needed.

### **Integrity of Competent Authorities (c. 30.2):**

557. The authorities the mission met with appeared to be dedicated public servants who maintain high professional standards, including confidentiality and having appropriate skills.

### **Training for Competent Authorities (c. 30.3):**

558. The FIU provides training for judges in AML/CFT. The FIU participates in Egmont meetings. The CNBS is getting TA from the IMF for implementing a risk based approach to supervision, including for AML/CFT. The mission did not receive other information regarding other training for competent authorities.

### **Statistics (applying R.32):**

559. The Honduran authorities have not done a coordinated review of the effectiveness of their AML/CFT system. STR statistics and ML and RT investigations and prosecutions and convictions, frozen property, and seized and stolen property are discussed in more detail in the FIU section of this report.

### **Analysis of effectiveness**

560. Despite having powers to impose sanctions, the CNBS has not used its enforcement and sanctioning powers to compel compliance for AML. According to the supervisor, the industry is still in the process of becoming accustomed to increased monitoring in this area and there is a period of adjustment. Some banks are more compliant than others. The entry of foreign banks into the market, including Citibank and HSBC, has helped to raise awareness on the part of the public and domestic banks, of the need for more customer and transaction information that had been required in the past. The CNBS anticipates higher levels of compliance going forward, but has so far refrained from taking aggressive enforcement action.

561. Overall, the supervisory powers available to the CNBS, even if falling short of the standard, should allow it to be more forceful in ensuring compliance with the AML requirements by the FIs it supervises. So far, the CNBS has only focused on the banking sector, and even there, has only adopted a “moral suasion” approach. The assessors consider this to reflect a lack of effectiveness of the regime.

562. Supervision of the banking sector has advanced much further than supervision in other parts of the financial sector. The CNBS has done a great deal of work with banks in order to familiarize them with the requirements of AML/CFT. There have been a number of training sessions, led by the FIU. There is a sentiment that the large players in the industry are relatively well informed. There is a

detailed inspection manual for the onsite inspection of banks and financiers. There is also a model report for the inspectors to use to guide them through the inspection process.

563. However, as indicated above, with regard to enforcing compliance, the banking supervisor has only used moral suasion so far. The supervised banks indicated being well aware of what is required of them both in terms of reporting unusual transactions and CDD requirements. The approach of the CNBS should be extended to provide the same level of supervision to the other sectors. Similar measures need to be taken in the insurance industry. For the insurance sector in particular, it has been difficult to compel insurance agents to fulfill CDD requirements. The CNBS is working with the industry to address this shortfall. Only one money transfer agent is supervised at the present time; it is a subsidiary of a bank. The others were not supervised with regard to AML/CFT at the time of the mission.

564. The securities industry is extremely small and consists mostly of a few bond issues bought among local companies. At the present time, the securities market does not pose much risk in terms of money laundering but the securities supervisors are aware that should the market grow in the future, increased diligence will be required.

### **3.10.2. Recommendations and Comments**

565. Supervisory powers should be more forcefully used to ensure compliance. Not all supervised FIs are in compliance with the laws and regulations and only one sanction has been meted out although the law allows for sanctions for noncompliance.

566. Although there has been significant progress since the last assessment in the authority and the supervisory oversight activities of the CNBS a number of additional powers would significantly expand its authority to effectively oversee the financial sector with regard to AML/CFT. The CNBS must ensure that it effectively and consistently uses the sanctioning powers that are legally available to them.

567. Honduras needs to broaden the scope of its sanctions beyond the current level of from 10 to 100 times the minimum monthly salary of the region in which the noncompliance occurred, and needs to more forcefully have recourse to these sanctioning powers in cases of non-compliance.

568. The CNBS should be more involved in the initial licensing of FIs. It is currently tasked with only reviewing the operational and accounting manuals of banks applying for bank licenses. The authorization process for new banking licenses is carried out by the Studies Division. There should be a prior review of risk management and internal control policies with regard to AML/CTF.

569. The authorization process should be revised to ensure that the following aspects are assessed prior to granting a license to an FI:

- Identification and evaluation of the ultimate beneficial owners of the bank
- Assessment of the transparency of the ownership structure of the bank and its wider group. To this end, the CNBS should collect information on the related parties to all shareholders prior to authorizing a bank license.
- Assessment of policies regarding risk management and internal controls, including for AML/CFT

- Assessment to ensure that the Board collectively understand the risks of the activities the bank intends to conduct.
- Directors and senior managers of FIs should be evaluated on the basis of “fit and proper” criteria

570. The CNBS should have the legal authority to have access to the ultimate beneficial owners of FIs. This will enable them to prevent criminals or their associates from holding or being the beneficial owners of significant or controlling interests in FIs or holding management positions, etc.

571. Natural and legal persons providing a money or value transfer service, or a money or currency changing service should be licensed or registered.

572. In light of the additional entities subject to AML/CFT supervision and the inclusion of CFT as a criminal offence in early 2008, the authorities need additional staff and resources to take on the additional work required.

### 3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors underlying rating
<b>R.17</b>	<b>NC</b>	Absence of effective, dissuasive and proportionate sanctions for non-compliance with laws and regulations. Absence of use of the sanctioning powers.
<b>R.23</b>	<b>NC</b>	The law does not explicitly state that the CNBS should have access to information regarding the ultimate beneficial owners of a financial institution. There is no prior review of risk management and internal control policies with regard to AML/CTF during the licensing process. There is no CNBS prior approval and fit and proper assessment required in a transfer of ownership, beneficial ownership, or the exercise of voting rights of a bank. Not all natural and legal persons providing a money or value transfer service or a currency changing service is licensed or registered or subject to effective systems for monitoring and ensuring compliance with national requirements to combat ML and TF. Absence of mobilization of the supervisory powers to foster compliance with the AML/CFT requirements outside the banking sector. Insufficient efforts by the supervisor to ensure effective implementation of the AML requirements, in particular outside the banking sector.
<b>R.25</b>	<b>NC</b>	Lack of effectiveness as the supervisor does not use its powers of enforcement and sanction in the event there is failure to comply with or properly implement AML and CFT requirements in financial institutions.
<b>R.29</b>	<b>PC</b>	In light of the additional entities subject to AML/CFT supervision and the inclusion of CFT as a criminal offence, the authorities are not adequately staffed at the present time to take on the additional work required.



### **3.11. Money or Value Transfer Services (SR.VI)**

573. This section should very briefly summarize and cross-reference the description and analysis that has been made elsewhere in section 4 on money or value transfer services. It should then set out in full any recommendations or comments, and the material concerning the compliance rating.

#### **3.11.1. Description and Analysis (summary)**

##### **Legal Framework:**

574. AML law-Decree 45-2002 (2002), Law of Exchange Houses (1992), Regulation for the Prevention and Detection of Undue Use of Financial Services and Products (2002), Law of the CNBS (1995), and Law of the Institutions of the Financial System (2004).

##### **Designation of Registration or Licensing Authority (c. VI.1):**

575. Five types of financial institutions are recognized by the CNBS that perform money or value transfer (MVT) services: (i) banks, (ii) savings and loan associations, (iii) exchange houses, and (iv) pure MTOs. Licensing of banks and savings and loan associations is assigned to the CNBS; however, exchange houses are licensed by the Central Bank and pure MTOs are neither licensed nor registered. The legal basis for licensing can be found in Article 6 of the Law of the Institutions of the Financial System.

##### **Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):**

576. Application of relevant FATF Recommendations and monitoring of MVT operators (c.VI.2 and VI.3): A more detailed discussion of the applicable FATF Recommendations and FIs performing MVT services can be found in Section 3, in particular Section 3.2 (CDD and other requirements) and Section 3.5 (wire transfer rules).

577. Fit-and-proper tests for main shareholders and top management are included in the initial licensing process, but there is no ongoing system in place for periodic tests. Upon transfer of shares with voting rights, if the transferee is found to have committed one of a number of violations listed in Art 22 of the 2004 Law, the DNBS has the legal authority to deny the transfer and commence an investigation into the sources of funds for the acquisition. Per Art 116 of the 2004 Law, the CNBS has the legal authority to cancel or revoke a license to operate an FI. All natural or legal persons performing MVT services are recorded with the Chamber of Commerce.

578. Supervision (c. VI.3): At the time of the on-site mission, the CNBS was responsible for the ongoing supervision of most of the financial institutions (banks, savings and loan institutions, credit cooperatives, and exchange houses); however, specialized MTOs are considered “non-supervised” entities and are not subject to supervision by any competent authority. A further discussion on supervision can be found in Section 3.10, Recommendation 23.

##### **Monitoring of Value Transfer Service Operators (c. VI.3):**

579. In Honduras, MVT service operators are subject to several AML requirements, but there is no monitoring / supervision system in place to ensure compliance (outside those undertaking this business while already being supervised – see above).

**List of Agents (c. VI.4):**

580. The mission received no information as to whether the MVT service operations maintain a current list of their agents.

**Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):**

581. Article 11 of the AML Law describes the sanctions available to the authorities to impose on natural and legal persons not complying with requirements under the AML Law. Grounds for sanctioning can also be found under Article 43 of the AML Regulation. A further discussion on sanctions applied to MVT services can be found in Section 3.10, Recommendation 17. However, as noted above in 17, there is an absence of effective, dissuasive and proportionate sanctions as well as an absence of use of the sanctioning powers.

**Additional Element—Applying Best Practices Paper for SR VI (c. VI.6):**

582. No information was available to the mission during the assessment.

**Analysis of effectiveness**

583. The lack of oversight and supervision of MTV services results in an ineffective system.

**3.11.2. Recommendations and Comments**

584. The assessment team recommends that “non-supervised” MVT service operators be brought under the umbrella of supervision without delay. The CNBS should issue guidance to MVT service operators and start imposing sanctions on those institutions not meeting AML requirements found in the Law. Furthermore, Honduras should take all necessary action to guarantee the correct implementation of international standards by MVT service operators, in particular, implementation of Recs. 5-8 and SR VII. Clarification is needed in the AML Law on the protection of “non-supervised” entities when submitting STRs. The authorities should consider extending fit-and-proper tests beyond inception and first change of ownership to include all changes in senior management and directors and during any additional changes in ownership.

**3.11.3. Compliance with Special Recommendation VI**

	Rating	Summary of factors underlying rating
SR.VI	NC	Pure MTOs are not supervised and fall outside the sanctioning regime, and are not under either a registration or licensing regime. There is a lack of implementation in FIs performing MVT services with regard to wire transfer rules.  No requirement for MVT service operators to verify identification information

		<p>on occasional customers.</p> <p>Weaknesses identified for Recommendations 5-11, 13-15 and 21-23 apply.</p> <p>Absence of monitoring of MVT compliance with AML/CFT requirements.</p>
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## **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**

##### **Legal Framework:**

585. Honduras issued an amendment to the AML Law in Decree 3-2008 towards the end of the mission, and dated March 14, 2008. Prior to that amendment, only casinos, as a DNFBP, were specifically included in the AML Law. However, the new amendment still does not include lawyers. However, Dec. 3-2008 includes real estate agents, the gaming industries, car, antique, art, stamp dealers, precious metals dealers, money transfer agents, etc.

##### **CDD Measures for DNFBPs in Set Circumstances (Applying c. 5.1-5.18 in R. 5 to DNFBP) (c. 12.1): CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R. 6 & 8-11 to DNFBP) (c.12.2):**

586. No oversight or supervision of the recently included DNFBPs had yet taken place at the end of the mission. Although casinos had been previously included as reporting entities under Article 43 of the AML Law, which states all obligations set forth in the law for supervised entities, “will apply to individuals or organizations, regular or irregular, not supervised by the Commission which carry out the following activities - operations carried out in the casinos and game establishments which function within the territory.” The CNBS acknowledged that although they are included in the AML Law, no action has been taken to implement requirements or supervise these casinos. The casino visited during the on-site mission had little knowledge of its obligations under the AML law and expressed a need to be informed about the duties of the casino. The casino does not allow Hondurans to gamble in the casino. Only foreigners who display a passport are granted entry.

##### **Analysis of effectiveness**

587. Although the recently passed law is a step in the right direction, lack of implementation renders the system of oversight largely ineffective.

#### **4.1.2. Recommendations and Comments**

588. The above referenced amendment is intended to set forth requirements for DNFBPs to meet the international standards for Recommendations 5, 6, 8, and 11 on customer due diligence and record-keeping requirements. The authorities should conduct risk assessments in line with FATF requirements to determine the appropriate CDD and record keeping thresholds for the respective sectors. In particular, measures are needed for real estate agents and automobile sales, as anecdotal evidence shows these areas are of great concern for ML and TF. Lawyers were not included in the amendment and this continues to be a weakness in the regime.

589. Honduras should also ensure that the proper authorities who will be conducting supervision of these newly introduced DNFBPs are adequately resourced to do so. These supervisory authorities

should prepare sector regulations, guidelines, and conduct outreach for each sector to assist with the transition and compliance with the AML Law.

#### **4.1.3. Compliance with Recommendation 12**

	<b>Rating</b>	<b>Summary of factors relevant to s.4.1 underlying overall rating</b>
<b>R.12</b>	<b>NC</b>	<p>There is no implementation of AML requirements for casinos by the authorities or within the gaming industry</p> <p>Other DNFBPs, included under the legal AML regime, through Decree 3-2008 at the end of the mission need to implement AML requirements.</p> <p>Lawyers, who are not notaries, and accountants are still excluded from the legal requirements of the AML regime.</p>

#### **4.2. Suspicious Transaction Reporting (R.16)**

##### **4.2.1. Description and Analysis**

590. There were no STRs submitted by this sector at the time of the mission.

##### **Legal Framework:**

591. Honduras enacted legislation in March, 2008, through Decree 3-2008 that obliges DNFBPs to report STRs. Employees of all the DNFBPs all need to receive training. There is no implementation of the AML Law by the competent authorities or within the industry at the closing of the mission.

##### **Requirement to Make STRs on ML and TF to FIU (applying c. 13.1 & IV.1 to DNFBPs):**

##### **STRs Related to Terrorism and its Financing (applying c. 13.2 to DNFBPs):**

##### **No Reporting Threshold for STRs (applying c. 13.3 & IV.2 to DNFBPs):**

##### **Making of ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying c. 13.4 and c. IV.2 to DNFBPs):**

##### **Additional Element—Reporting of All Criminal Acts (applying c. 13.5 to DNFBPs):**

##### **Protection for Making STRs (applying c. 14.1 to DNFBPs):**

##### **Prohibition Against Tipping-Off (applying c. 14.2 to DNFBPs):**

##### **Additional Element—Confidentiality of Reporting Staff (applying c. 14.3 to DNFBPs):**

##### **Establish and Maintain Internal Controls to Prevent ML and TF (applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPs):**

##### **Independent Audit of Internal Controls to Prevent ML and TF (applying c. 15.2 to DNFBPs):**

**Ongoing Employee Training on AML/CFT Matters (applying c. 15.3 to DNFBPs):**

**Employee Screening Procedures (applying c. 15.4 to DNFBPs):**

**Additional Element—Independence of Compliance Officer (applying c. 15.5 to DNFBPs):**

**Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):**

**Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):**

**Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):**

592. None of the above were performed at the time of the mission.

**Analysis of effectiveness**

593. Due to lack of implementation, this aspect of the AML regime is ineffective.

**4.2.2. Recommendations and Comments**

594. Honduras should take all necessary steps to implement the minimum requirements for DNFBPs found in Recommendations 13-15 and 21 and properly apply them to DNFBPs. Those tasked with supervision should conduct outreach within the DNFBP sector and thoroughly explain the new obligations. Training on money laundering typologies should be given to DNFBPs so they will be able to detect suspicious transactions. All consideration should be made to exclude STR obligations for legal professionals in situations that are subject to legal privilege.

**4.2.3. Compliance with Recommendation 16**

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
<b>R.16</b>	NC	STR requirements for DNFBPs are not fulfilled and are not monitored or sanctioned by the competent authorities yet.

### 4.3. Regulation, Supervision, and Monitoring (R.24-25)

#### 4.3.1. Description and Analysis

##### Legal Framework:

595. Honduras enacted legislation in March, 2008, through Decree 3-2008 that obliges DNFBPs to report STRs. Employees of all the DNFBPs all need to receive training. There is no implementation of the AML Law by the competent authorities or within the industry at the closing of the mission.

##### **Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3): Monitoring Systems for Other DNFBPs (c. 24.2 & 24.2.1): Guidelines for DNFBPs (applying c. 25.1):**

596. Honduras does not have a system in place that subjects DNFBPs to supervision or sanctioning since they are only recently covered by the law. The only exception are casinos which are obliged to comply with the AML Law (Article 43) but the authorities have acknowledged that nothing has been done to ensure implementation by the gaming industry. No supervision or regulation of casinos has occurred. As a result, no guidelines have been established by the authorities or a relevant SRO, nor any feedback provided to these institutions by the UIF. No STRs have been filed by a casino operating in Honduras.

##### Analysis of effectiveness

597. As there was no supervision in the DNFBPB sector at the time of the mission, this part of the AML/CFT regime is ineffective.

#### 4.3.2. Recommendations and Comments

598. Honduras should take all necessary steps to implement Decree 3-2008 to include DNFBPs under the AML regime to impose all international requirements on this sector. All the minimum requirements for DNFBPs found in Recommendations 24 and 25 should be applied to this sector.

#### 4.3.3. Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
<b>R.24</b>	<b>NC</b>	There is no supervision of DNFBPs, including casinos. No sanctions are applied to DNFBPs, including casinos.
<b>R.25</b>	<b>NC</b>	No guidelines or feedback have been provided to DNFBPs, including casinos.

#### **4.4. Other Non-Financial Businesses and Professions—Modern-Secure Transaction Techniques (R.20)**

599. The Methodology provides the following examples of businesses or professions to which countries “should consider” applying the FATF Recommendations: dealers in high value and luxury goods, pawnshops, gambling, auction houses and investment advisers.

##### **4.4.1. Description and Analysis**

###### **Legal Framework:**

600. In March, 2008, the Congress of Honduras passed Decree 3-2008. The decree extends the AML/CFT reporting requirements to the previous unsupervised sectors of the economy that are highly vulnerable to money laundering. The other non-financial business sectors specified in the law include car dealers, real estate agents, the gaming industries, car, antique, art, stamp dealers, precious metals dealers, money transfer agents, trusts, etc. The decree states that they must report to the FIU any transactions that are illegal or are considered unusual or suspicious. The Decree does not include attorneys, except those acting as notaries, all of whom are required to be lawyers..

###### **Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17 &21 c. 20.1): Modernization of Conduct of Financial Transactions (c. 20.2):**

601. The Honduran authorities included the sectors listed above in the legislation as they consider them to be vulnerable to money laundering. Honduras is still largely a cash based society and the sectors above often deal in cash. As of the mission date, the authorities have taken no measures to encourage the use of modern and secure financial techniques, and to foster less reliance on cash.

###### **Analysis of effectiveness**

602. As implementation of the new decree had not yet commenced at the closing of the mission, it was not possible to assess its effectiveness.

##### **4.4.2. Recommendations and Comments**

603. As the change in the law is relatively recent, it will take some time and additional resources to familiarize and train participants in the listed businesses with the new reporting requirements. As current resources may already be stretched, additional resources may need to be allocated to the task. In addition to training, oversight and supervision to ensure effective compliance needs to be undertaken.

##### **4.4.3. Compliance with Recommendation 20**

	Rating	Summary of factors underlying rating
<b>R.20</b>	<b>NC</b>	Absence of measures to encourage the use of modern and secure financial techniques

#### **5. 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS**



## **5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)**

### **5.1.1. Description and Analysis**

#### **Legal Framework:**

604. The main law regulating legal entities is the Commercial Code.

#### **Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):**

605. Legal entities under Honduran law may be set up through registration with the Merchant's Registry, which is supervised by the Property Institute.

606. The Honduran Merchant Registry is not operating on a centralized basis but consists of 23 regional offices, only 5 of which keep information in electronic form. It is therefore unclear how many companies are established under Honduran law.

607. Pursuant to Article 394 Commercial Code, upon formation companies have to provide the Merchant Registry with information relating to their legal representatives, the founding members and the object and purpose of the company. It is not required that information on the managers, beneficiaries and, for companies other than joint-stock companies, the managers or directors is provided.

608. Information subject to the registration requirement has to be updated pursuant to Article 394 Commercial Code. While there is no timeframe within which a change has to be registered, the changes are only enforceable once they have been registered with the Merchant Registry. There are no sanctions for violations of the updating requirement.

609. In addition to information held at the registry, pursuant to Article 137 joint stock companies are required to keep shareholder registers for nominee shares only. Transfers of shares, in particular bearer shares, seem to be valid regardless of whether or not the transfer has been registered with the company. Representatives of the Merchant's Registry confirmed that therefore in most cases it would be very difficult if not impossible to determine the real shareholders of joint stock companies.

#### **Access to Information on Beneficial Owners of Legal Persons (c. 33.2):**

610. All information held at the Merchant's Registry is publicly accessible. However, information held by regional offices of the Merchant's Registry is mostly maintained in form of hardcopies. Only five out of the 23 regional offices maintained some parts of the registered information electronically. In practice, it may therefore prove somewhat challenging to find information relevant to a specific company and to ascertain which regional office is keeping information for a specific legal entity.

611. Shareholder registries or any other information held by the companies may be accessed by law enforcement authorities only on the basis of a court order pursuant to Article 274 Criminal Procedure Code. In practice, such information may therefore only be accessed in the course of domestic proceedings for a crime.

612. In any case, as there is not legal requirement to keep shareholder registries updated, or to keep records on all managers, directors and beneficiaries, it is questionable how accurate information kept by legal entities would really be. Also, as there is no requirement to maintain a local office, in cases relating to bigger and internationally active companies records may not even be kept in Honduras.

#### **Prevention of Misuse of Bearer Shares (c. 33.3):**

613. The only company form that may issue shares in form of securities are joint stock companies. Article 117 Commercial Code provides that shares shall always be issued on bearer, unless the shares have not be paid in full yet, in which case they shall be issued as registered shares. Furthermore, Article 136 of the Commercial Code provides that shares may be issued on bearer or name.

614. While shareholder registers therefore have to be maintained by the company, the validity of transfers or the execution of any rights associated with bearer shares is therefore not dependent on registration with the company registry.

615. No other safeguards are in place to ensure that bearer shares may not be misused for ML or FT purposes. In the absence of a centralized Merchant Registry, the authorities could not provide information on the total number of joint-stock companies established under Honduran law.

#### **5.1.2. Recommendations and Comments**

616. Put in place measures to ensure that accurate, complete and timely information on the owners, managers, directors, controllers and beneficiaries of all forms of legal persons is obtained and can be accessed by competent authorities in a timely fashion by, for example, requiring all forms of legal entities to register and, in case of any changes, update the names, addresses and other information of such persons. With respect to shareholders, the measure could also be to require companies to maintain a complete and updated shareholder register that is accessible by law enforcement authorities.

617. Put in place measures to ensure that bearer shares are not misused for money laundering and terrorism financing purposes. For example, the authorities could prohibit the issuance of new bearer shares and require that rights linked to existing bearer shares may only be exercised upon registration of the bearer with the company register and only by the registered bearer. In such cases, the shareholder register maintained at the company should be accessible by law enforcement authorities.

618. The authorities should consider putting in place an electronic live-time database linking all regional offices of the Merchant's Registry and thus providing the public as well as financial institutions and law enforcement authorities with quick access to all information maintained at the Registry.

#### **5.1.3. Compliance with Recommendations 33**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.33</b>	<b>NC</b>	No measures are in place to ensure that accurate and complete information on

		<p>the founders, owners (incl. shareholders), managers, directors, controllers and beneficiaries of legal persons is obtained and maintained and can be accessed by competent authorities in all cases and in a timely fashion.</p> <p>While bearer shares seem to be used in Honduras, no measures are in place to ensure that bearer shares are not being misused for ML and TF purposes.</p>
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## 5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

### 5.2.1. Description and Analysis

#### Legal Framework:

619. The only form of legal arrangement recognized under Honduran law is the trust pursuant to Article 1033 Commercial Code, which defines “trust” as a “legal arrangement by which the bank authorized to act as trustee is granted proprietary ownership in respect of certain goods, with the obligatory restriction of limiting itself to solely those acts required for the performance of the lawful and specific purpose for which they are intended.”

620. It is not possible to set up trusts that have a trustee other than a bank. Honduran law does not provide for the registration of trusts.

621. Honduras is not a signatory to the Hague Convention on Laws Applicable to Trusts and on their Recognition.

#### Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

622. As set out above, only trusts administered by banks may be established under Honduran law. Banks, in their capacity as trustees, are subject to the general CDD obligations as described and analyzed under Recommendation 5 of this report.

623. However, Article 17 of Resolution 869 neither defines “beneficial owners” nor requires banks to identify all beneficial owners of the trusts they administer and to verify and maintain such information.

624. Therefore, under Honduran law no measures are in place to ensure that information on the trust settlor, the trust protectors or any other persons having control over the trust arrangement, and the beneficiaries of the trust is being obtained, verified and maintained in all cases.

#### Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

625. Banks are subject to the supervision by the CNBS. Representatives of the CNBS have stated that based on their role as supervisor, they may obtain access to all information held by banks, including on the beneficial owners of trusts, and share such information with law enforcement authorities.

626. However, as noted above, in the absence of a legal requirement to obtain, verify and maintain information on beneficial owners of trusts, it is questionable to what extent banks would even be able to provide such information if requested by the CNBS.

### 5.2.2. Recommendations and Comments

627. While it would generally be an appropriate measure to only allow trusts to be administered by banks, thus applying the general CDD measures to all trusts and granting law enforcement access to such information through the FMC, in the Honduran context the measure cannot be considered to sufficiently ensure that trusts are not abused for money laundering or terrorism financing purposes.

628. In the absence of a reference to or a definition of “beneficial owner”, Article 17 of Resolution 869 does not seem to require banks to identify all beneficial owners of the trusts they administer, including the trust settlor, the trust protectors or any other persons having control over the trust arrangement, and the beneficiaries of the trust.

### 5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	The measures in place do not sufficiently ensure that legal arrangements established under Honduran law cannot be abused by money launderers.

## 5.3. Non-Profit Organizations (SR.VIII)

### 5.3.1. Description and Analysis

#### Legal Framework:

629. Civil Associations (NPOs) operating in Honduras include schools managed with foreign funds, NGOs and other development associations, foundations, community boards, churches, local water administration boards, private financial development funds and private development organizations. In addition, international NGOs are operating in Honduras.

630. While a registry has been set up under the Ministry of Interior for all types of legal entities qualifying as NPOs, there is no law governing or regulating the establishment or organization of such legal entities. Legal personality is granted to NPOs through a decision by the Ministry of Interior.

631. The NPO sector in Honduras is quite significant (about 9500 NPOs), whereby most NPOs commenced their operations in 1998, after the devastating effects of Hurricane Mitch.

#### Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

632. Pursuant to Decree 024-2002, a special unit within the Ministry of Interior called the “Unit for the Registration and Monitoring of Civil Associations” (URSAC) has been tasked with “the registration of all forms of civil associations and for monitoring them to ensure that they remain focused on the aims and objectives for which they were established”.

633. In addition, Executive Decree 770-A-2003, which was issued by the Minister of Interior provides that to fulfill its mandate, URSAC can require from civil associations any information it deems necessary, including financial statements, balance sheets, and other accounting documents,

reports, evaluations on the programs and projects developed, the staff of and any contracts entered into by the civil associations. Article 4 further provides that all civil associations would have to file annual activity reports with the URSAC, including details of their activities, their financial statements and balance sheets.

634. Representatives of URSAC stated that in accordance with Decree 770-A-2003, NPOs would be requested to file the above referenced documents on an annual basis. However, due to the fact that the unit has been set up through an executive decree rather than a law, it has no enforcement powers or coercive powers available to conduct its function. Noncompliance by NPOs with the filing requirements can therefore not directly be sanctioned by the URSAC.

635. NPOs set up before the issuance of Decree 700-A-2003 are not subject to the registration requirement. Therefore, there is also no legal basis for the URSAC to request any documents from those NPOs. Representatives of the URSAC stated that it is unclear how many pre-2003 NPOs are operating in Honduras.

636. Representatives of the URSAC informed the mission that the majority of NPOs would operate as schools (about 4000), followed by NGOs and other development associations (about 1500) and churches (other than the Catholic Church). While the foundation was not amongst the most popular forms of NPOs (only about 400 NPOs operate in form of a foundation), representatives of the URSAC stated that foundations as well as churches were the NPOs administering the majority of all assets of the NPO sector. Only about 20 international NPOs would operate in Honduras. It was not clear, however, exactly which foundations or churches were the ones holding the majority of assets.

637. Representatives of the URSAC stated that the unit had neither the resources nor the skills to conduct a sector specific review of NPOs for FT purposes. It would therefore be unclear what types of NPOs would be specifically vulnerable to abuse for ML/FT purposes.

### **Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):**

638. Neither the URSAC nor any other government body in Honduras has conducted any outreach activities for the NPO sector to increase awareness of the risks of ML and TF and to inform NPOs about how to mitigate that risk. No written guidelines have been issued on that subject.

### **Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c. VIII.3):**

639. As mentioned above, the URSAC is the responsible body for registering all NPOs set up after 2003 and for obtaining information and documents from those NPOs.

640. While Article 5 Decree 770-A-2003 stipulates that URSAC may “carry out investigations by law or at the request of the party”, due to the fact that the Decree is not a legal act but a decision by the Minister of Interior, Article 5 does not actually confer any enforcement powers on the unit. This was also confirmed by the URSAC.

641. Beyond the requesting and receiving of such documents and information from NPOs, the URSAC has therefore not been granted any supervisory or oversight powers, including for those NPOs that have a significant portion of resources under their control or conduct international activities.

### **Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):**

642. As indicated above, NPOs are not regulated by any law. Therefore, there is no obligation for NPOs to keep information on their purpose and objectives, on the identity of persons who own or control or direct their activities, and to make that information publicly available or available to the law enforcement authorities.

### **Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):**

643. While URSAC has the power to request and receive documents and information by NPOs, due to the lack of enforcement powers granted to the URSAC any non compliance with such requests by NPOs may not be directly sanctioned and in practice has never been sanctioned.

644. While in theory, the URSAC could recommend to the Ministry of Interior that the legal personality is revoked in cases where an NPO does not comply with the annual filing requirement, the Ministry is not bound by the recommendation. In practice, no license has ever been revoked.

### **Licensing or registration of NPOs and availability of this information (c. VIII.3.3):**

645. All NPOs set up after 2003 are required to register with the URSAC. Upon registration, such NPOs have to provide a founding document, setting out the NGO's objectives as well as providing information on the identity of the persons who govern its activities. In addition, they are required to annually file financial statements, updated bylaws, information of the NPO's directors and management, as well as general activity reports.

646. In practice, however, only a very limited number of NPOs comply with this requirement. For example, it is estimated that only about 400 of all registered NPOs provided information on the

directors and management and it is unclear whether that information is updated. . The authorities stated that this lack of compliance with the filing requirements was mainly due to the fact that so far there have been no cases where the Ministry of Interior revoked legal personality of an NPO as a sanction for non compliance with the registration or filing requirements.

647. Representatives of the URSAC stated that information on the purpose and object of the NPOs would be maintained in all cases, as the Ministry of Justice would require this information to even consider granting legal personality. Therefore, for all companies set up after 2003, information on their purpose and object is available.

648. While Article 4 of the Decree requires that annual activity reports include details of the NPOs activities, representatives of the URSAC stated that in practice those annual financial statements that have been received would not contain any detail on the transactions carried out by NPOs, or on accounts held by NPOs but merely indicate the annual loss and profit.

649. All information registered with URSAC is publicly available. The register is maintained both in electronic form and in hardcopy.

**Maintenance of records by NPOs, and availability to appropriate authorities (c. VIII. 3.4):**

650. As indicated above, NPOs are not regulated by any law. Therefore, there is no obligation for NPOs to keep records on domestic or international transaction conducted or received.

**Measures to ensure effective investigation and gathering of information (c. VIII.4): Domestic cooperation, coordination and information sharing on NPOs (c. VIII.4.1):**

651. URSAC was not been granted with any enforcement or coercive powers. They can therefore not investigate any misconduct by NPOs for any crimes.

652. The only measure available to URSAC would be to review financial statements received and upon suspicion of any wrongdoing, request the high tribunal of accounts to audit a specific NPO. Depending on the outcome of the audit, the URSAC may make a recommendation to the Ministry of Interior to revoke the license of the NPO. This measure has never been applied in practice.

653. In all other circumstances, the only recourse available against NPOs would be to report a suspicion to the law enforcement authorities, which would be able to utilize the general law enforcement powers outlined in Recommendations 27 and 28 of this report to conduct an investigation for ML and FT. Representatives of the URSAC stated that in practice there have never been any cases in which the URSAC reported an NPO to the law enforcement authorities.

**Access to information on administration and management of NPOs during investigations (c. VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):.**

654. All information held by URSAC is available to the public and any public authorities. NPOs are not subject to any record keeping requirements. No other government body maintains information on NPOs, including the tax authorities. Information on NPOs held by banks that is covered by

banking secrecy may be accessed by the prosecuting authority either through the FIU based on Article 28 of the AML Law or on the basis of a court order pursuant to Article 274 Criminal Procedures Code.

**Responding to international requests regarding NPOs - points of contacts and procedures (c. VIII.5):**

655. Representatives of the URSAC stated that no international requests regarding NPOs were ever received. However, requests would most likely be channeled to the URSAC through the MOFA, as the URSAC is the only body maintaining information on NPOs.

**5.3.2. Recommendations and Comments**

656. Honduras should undertake a review of its NPO sector with a view (1) to determine the overall number of NPOs operating in Honduras, including those set up prior to 2003 and (2) to gather complete information on the activities, size and other relevant features of the NPO sector and to identify the features and types of NPOs most vulnerable to be misused for ML/TF purposes. Both reviews should be reassessed and updated periodically to ensure that the information obtained and conclusions derived are being kept relevant and updated.

657. Conduct outreach activities to educate NPOs about the risk of abuse for terrorist financing purposes.

658. Review the information available on NPOs at URSAC and other agencies to identify NPOs with international funding or which account for a significant size of the sector and promote effective supervision or monitoring of those NPOs.

659. Establish mechanisms to ensure that information on all operating NPOs, including those set up before 2003, is available in all cases, on the identity of persons who own, control or direct their activities.

660. Provide the URSAC with sanctioning power for noncompliance by NPOs with the annual filing requirement.

661. Require all NPOs established before 2003 to register with URSAC.

662. Require all NPOs to maintain, for a period of at least five years, and make available to competent authorities records or domestic and international transactions that are sufficient to verify that funds have been spent in a manner consistent with the purposes and objectives of the organization.

663. Develop investigative expertise and capabilities necessary to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.

**5.3.3. Compliance with Special Recommendation VIII**



	Rating	Summary of factors underlying rating
<b>SR.VIII</b>	<b>NC</b>	<p>The relevant reviews of the domestic non-profit sector have not been conducted.</p> <p>No outreach to the NPO sector has been undertaken with a view to protecting the sector from TF abuse.</p> <p>Other than the annual filing requirement for NPOs set up after 2003, no steps have been taken to promote effective and active supervision or monitoring of all relevant NPOs as the URSAC does not have any enforcement or sanctioning powers for noncompliance by NPOs with the annual filing requirements.</p> <p>No mechanism in place to ensure that relevant control information on NPOs set up before 2003 is available. The mechanism in place for NPOs set up after 2003 is not enforced effectively.</p> <p>No registration or licensing requirement for NPOs set up before 2003.</p> <p>No requirement for NPOs to maintain detailed records of transactions to verify that funds have been spent consistent with purpose and objectives.</p> <p>There is no investigative expertise and capabilities to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.</p>

## **6. NATIONAL AND INTERNATIONAL COOPERATION**

### **6.1. National co-operation and coordination (R.31)**

#### **6.1.1. Description and analysis**

664. There is no legal basis or informal arrangements to foster domestic coordination in Honduras. The assessors were informed that a policy-level and operational level coordination committee was set up some years ago, but has never been functioning. At the time of the on-site, there was no mechanism formal or informal for domestic coordination. As indicated in several parts of the report (in particular FIU and law enforcement sections), ambiguities in the definitions of responsibilities and accountabilities of some key institutional players are strong incentives de facto against an effective domestic coordination

#### **6.1.2. Recommendations and Comments**

665. Honduras should set up as quick as possible a policy-level domestic coordination mechanism, and should review the current arrangements and practices regarding operational coordination.

#### **6.1.3. Compliance with Recommendation 31**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.31</b>	<b>NC</b>	Absence of effective domestic coordination mechanisms, either at the policy or operational level  Lack of clarity of the respective mandates of the FIU, Fiscalia and law enforcement

### **6.2. The Conventions and UN Special Resolutions (R.35 & SR.I)**

#### **Description and Analysis**

666. As a general rule, Honduras publishes in the National Gazette every International Convention using a Decree and considers them, once published, as a part of the domestic legal system. As a consequence, any of them could be directly invoked and enforced where necessary. Per Article 47 of Law 45-2002, the Ministerio Publico can use essential measures for the investigation of ML crimes, the measures and investigative techniques in internationally treaties that have been ratified by Honduras.

#### **Ratification of AML Related UN Conventions (c. 35.1) :**

667. Honduras has ratified the United Nations Convention against Transnational Organized Crime (the Palermo Convention) on December 2, 2003 and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) on December 11, 1991.

#### **Ratification of CFT Related UN Conventions (c. I.1):**

668. Honduras has ratified the United Nations International Convention for the Suppression of the Financing of Terrorism on November 11, 2002 as well as 12 out of the remaining 15 international conventions and protocols relating to terrorism. Honduras has not yet ratified the Nuclear Terrorism Convention, the Fixed Platform Protocol, the Protocol to the Protocol on Fixed Platforms and the Airport Protocol.

#### **Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):**

669. Honduras has implemented most but not all provisions of the Vienna Convention. In particular, equivalent value confiscation is not possible under Honduran law and there are no clear and efficient processes in place for the execution of MLA requests relating to drug-related ML offenses.

#### **Implementation of SFT Convention (Articles 2-18, c. 35.1 & c. I.1):**

670. Many of the provisions of the SFT Convention have been addressed by Honduran law. However, certain shortcomings have been identified with respect to the TF offense and legal persons may not be held criminally liable for FT. Furthermore, Honduras does not in all cases have jurisdiction over FT offenses committed abroad by Honduran citizens. Shortcomings have also been identified in the regulatory and supervisory regime for banks and other financial institutions.

#### **Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):**

671. Honduras has implemented many albeit not all provisions of the Palermo Conventions. In particular, shortcomings in the regulatory and supervisory regime for banks and other financial institutions have been identified. It remains unclear whether legal persons may be criminally liable for ML under Honduran law. Seizure and confiscation of equivalent value as well as confiscation of instrumentalities intended for use in the commission in a ML offense is not possible.

#### **Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)**

672. As outlined in great detail under SR III, Honduran law does not address the country's obligations under UNSCR 1267 and UNSCR 1373.

#### **Additional Element—Ratification or Implementation of Other relevant international conventions (c. 35.2):**

673. Honduras has ratified the UN Convention against Corruption (Merida Convention) on May 23, 2005. Furthermore, Honduras has signed and ratified the Central American Convention for the Prevention and Repression of Money Laundering Offences Associated with Illegal Traffic in Drugs and Narcotics and the Inter-American Convention against Terrorism.

#### **6.2.1. Recommendations and Comments**

674. Ensure that all provisions of the Vienna and Palermo Conventions are fully implemented.

675. Ensure that all provisions of the SFT Convention are fully implemented.

676. Put in place adequate measures to fully address the requirements under UNSCR 1267 and 1373.

### **6.2.2. Compliance with Recommendation 35 and Special Recommendation I**

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.35</b>	<b>PC</b>	Not all provisions of the Vienna and Palermo Conventions have been fully implemented.
<b>SR.I</b>	<b>PC</b>	Not all provisions of the CFT Conventions have been fully implemented. Honduran law does not address the requirements under UNSCR 1267 and 1373.

## **6.3. Mutual Legal Assistance (R.36-38, SR.V)**

### **6.3.1. Description and Analysis**

#### **Legal Framework:**

677. Honduras does not have a legal framework governing or regulating the provision of mutual legal assistance. However, mutual legal assistance may be provided directly based on and with respect to requests coming from Member States to any international convention and treaty Honduras has acceded to, including the Vienna, Palermo and SFT Convention.

678. In addition, Honduras has signed bilateral treaties on MLA in criminal matters with Mexico, Brazil, Spain, Colombia, Paraguay and the USA, whereby the treaty with the USA is limited to drug trafficking offenses, as well as a multilateral treaty on MLA in criminal matters comprising all Central American states.

679. For requests coming from countries not a signatory to any of the applicable treaties with an MLA component, Honduras may provide assistance on the basis of a letter rogatory to the Honduran courts.

### **Widest range of Mutual Assistance (c. 36.1):**

680. Requests for MLA may be sent to Honduras through diplomatic channels, using the Ministry of Foreign Affairs, or directly to the competent authorities in Honduras. The authorities stated that in practice, the majority of requests would be direct requests.

681. There is no central authority to receive or make MLA requests in criminal matters. Rather, different authorities are in charge depending on the convention based on which a specific request is received. For example, the General Prosecutor's Office is the central authority for requests based on the Vienna Convention, the Ministry of Interior for requests based on the Palermo Convention and the High Court of Accounts for requests based on the Merida Convention. Requests based on a letter rogatory or on regional treaties, such as the Central American treaty on MLA, are within the competency of the Supreme Court.

682. The authorities stated that in practice, however, all requests received by any of the authorities listed above and dealing with money laundering, terrorism financing, or other organized crimes would be forwarded to the General Prosecutor's Office for processing and implementation.

683. The authorities stated that dual criminality would be required for all forms of mutual legal assistance as outlined under Recommendation 37 below.

684. In all cases, Honduras would have the discretion to refuse a request, whereby the discretion lies within the central authority responsible for a specific request. As in practice requests are dealt with by the PPO, the PPO would recommend to the competent central authority to refuse a request but the formal decision of denial would have to be issued by the central authority itself.

685. Regarding form requirements, the authorities indicated that it would not be required that the requesting country send a copy of the law underlying the crime for which assistance is requested. It would suffice that the MOFA of the requesting country provides a sealed certificate, stating that the conduct in question is criminalized in the requesting country. In cases where there is uncertainty as to whether a case would meet the dual criminality requirement, the authorities would either check on the internet or by way of communication with the diplomatic representation of that country in Honduras whether they can verify this assertion.

686. In addition, requests received have to state the underlying legal basis (the relevant convention or treaty), specify the measure requested and the facts underlying the specific case.

687. Regarding the forms of assistance that may be provided, the authorities stated that any measure that could be taken in a domestic context could also be taken upon request of a foreign country. While the authorities could not provide any statistics on the types of measures taken based on MLA requests and in the context of ML or TF, it was stated that all types of measures listed in the FATF standard could be and in the past have been taken, albeit not necessarily with respect to ML or FT crimes.

688. Searches and seizures pursuant to Articles 206-209, 212, 213 and 219 Criminal Procedures Code as well as access to information, including privileged information, pursuant to Article 274

Criminal Procedures Code could be performed based on a MLA request, whereby a domestic court order has to be obtained.

689. The authorities stated that there would be no restriction with respect to the production of originals or copies of document, records and evidentiary items. In practice, all documents requested by a foreign country would be provided in sealed and certified form. In some instances, a Honduran official even went to the requesting country at a later stage to certify under oath that the documents provided were genuine.

690. The authorities stated that they could and in the past have served judicial documents based on requests by Spain, Mexico and the USA.

**Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1); Efficiency of Processes (c. 36.3):**

691. There are no formal procedures in place that would govern the provision of MLA. However, the authorities stated that on average it would take about two to three months to process, implement and respond to request from foreign countries.

692. In discussion with the authorities it was indicated that the fact that there is no central authority to deal with MLA requests would often cause a delay in the process, as it sometimes takes a while to determine who the responsible authority is in a specific case. In addition, for some conventions no centralized authority has yet been assigned, which causes confusion as to who such request should be handled and by whom.

693. While in theory requests are received and processed by the relevant competent authority, in practice all requests relating to ML, FT and organized crime would be forwarded to the PPO for processing. The administrative burden would therefore mainly lie with the PPO. Representatives of the PPO stated that no staff was assigned to exclusively deal with MLA requests but that staff would process such requests in addition to their regular job assignments. It was further stated that this would constitute a serious restraint on the PPOs budget and resources.

**Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):**

694. There is no formal list of grounds based on which MLA may be refused. The authorities stated that in practice, they would consider that requests may only be refused on the grounds listed in the relevant conventions and treaties, including in situations where dual criminality is not met, or if the request concerns state secrets of Honduras, endanger the security, sovereignty or public order of Honduras, or if the request is for a measure that is against domestic law. In addition, the request could be denied if reciprocity is not granted to Honduras by the requesting state.

695. The authorities did not provide any statistics with respect to MLA. It could therefore not be established how many requests have been refused by Honduras in the past and based on what grounds.

**Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):**

696. Under Honduran law, tax evasion is a serious offense and MLA with respect to such offenses may therefore be provided based on the Palermo Convention. The authorities stated that also with respect to other fiscal offenses, there would be no limitations to the provision of MLA. .

**Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):**

697. The authorities stated that it would be possible to apply for a court order pursuant to Article 274 Criminal Procedures Code on behalf of another country to gain access to confidential or privileged information.

698. In cases relating to ML, the powers pursuant to Article 28 AML Law may be applied, allowing the PPO to request such information even in the absence of a court order through the FIU. Pursuant to Article 46 AML Law the information may then be shared with the foreign prosecutor's office.

**Availability of Powers of Competent Authorities (applying R.28, c. 36.6); Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):**

699. All powers provided to law enforcement may be used in context of MLA, whereby it is required that the police are instructed to carry out such measures by the PPO.

700. In all other cases, the police may share information with its counterparts through INTERPOL channels, but may not take any other action merely based on a direct request by a foreign counterpart.

**Avoiding Conflicts of Jurisdiction (c. 36.7):**

701. Honduras has had situations relating to ships in international waters where coordination with other countries was required to determine the best venue for prosecution of the defendant.

702. In addition, in Honduras vs. Captain Ryan, Honduras cooperated with Panama to determine the best venue for prosecuting the defendant for money laundering.

703. While there is no formal process for such coordination, in practice the communications would take place between the PPO and the foreign prosecutor's office. In making the decision, the authorities would take into account where the majority of the evidence is located and where the prosecution could be conducted most efficiently.

**International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):**

704. In cases relating to FT, the powers to access and share confidential information pursuant to Article 28 and 46 AML Law are not available. In relation to all other aspects of SR I.1., the measures and processes outlined under Recommendation 36 apply also to the offences of terrorism financing.

705. The provisions outlined under Recommendation 36 apply to any category of crime, including offences of terrorism financing.

**Dual Criminality and Mutual Assistance (c. 37.1 & 37.2); International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):**

706. The authorities stated that dual criminality would be required for all forms of mutual legal assistance, whether the assistance is requested based on a treaty or based on a letter rogatory, and regardless of the specific measure requested.

707. Dual criminality would be required for requests relating to both ML and FT. The deficiencies identified with respect to the ML and FT offenses as outlined under Recommendations 1, 2 and SR II may therefore limit Honduras' ability to provide assistance in certain situations, for example in situations where a request is made based on the predicate offense relating to "illicit trafficking in stolen and other goods" or with respect to the prosecution of a legal person.

708. However, the Honduran authorities stated that the dual criminality requirement would be met if all the elements of the offence are present and the conduct underlying the offence for which the request was received satisfies the requirements of the relevant Honduran provision. Technical differences would not be taken into account.

**Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1); Property of Corresponding Value (c. 38.2); International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):**

709. Foreign seizing or confiscation orders may not be directly enforced in Honduras but would require conversion into a domestic court order.

710. However, all measures relating to the identification, seizing and confiscation of property laundered, property used to finance terrorism, proceeds from or instrumentalities used in the commission of a ML, FT or predicate offense may be taken upon request by a foreign country.

711. As outlined in great detail under Recommendations 3, the confiscation measures under Honduran law do not extend to instrumentalities intended for use in the commission of the offenses or to property of equivalent value to proceeds from or instrumentalities used or intended for use in the commission of the crime. In the context of ML, equivalent value confiscation is not possible in many situations.

712. Furthermore, provisional measures pursuant to Article 219 Criminal Code and Article 15 AML Law do not cover legitimate property of equivalent value to proceeds of or instrumentalities



used or intended for use in the commission of ML, FT or predicate offense or the money laundered or used to finance terrorism.

713. These shortcomings in the domestic law would also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.

**Coordination of Seizure and Confiscation Actions (c. 38.3):**

714. No formal arrangements are in place to coordinate seizing and confiscation actions with other countries. However, the authorities stated that in practice, there has been one case where simultaneous seizing measures have been coordinated and carried out with Panama. This was done on an ad hoc basis.

**Asset Forfeiture Fund (c. 38.4); Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):**

715. Honduras has not established an asset forfeiture fund in the formal sense. However, in the context of ML cases the OABI manages seized assets and consequently distributes the confiscated proceeds and instrumentalities amongst the local authorities in accordance with Article 23 AML Law.

**Sharing of Confiscated Assets (c. 38.5); Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):**

716. While Honduras has never shared confiscated assets or put in place formal asset sharing agreements, Article 16 and 46 would allow for the possibility of asset sharing in money laundering cases.

**Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):**

717. Honduran law does not provide for the recognition and implementation of foreign civil forfeiture orders. There are no provisions that would allow for the confiscation of property from organizations principally criminal in nature or confiscation of property with a reverse burden of proof to show the lawfulness of the property in question.

**Statistics (applying R.32):**

718. The authorities could not provide the assessors with complete and accurate statistics on the number of MLA requests received, granted or denied by all competent centralized authorities in the context of money laundering or terrorism financing cases.

719. Statistics received from the PPO indicate that between 2004 and 2007, 68 pertaining to ML have been received. However, it was unclear how many of those were granted or denied. Also the statistics are not complete in that other centralized authorities may have received additional requests which are not accounted for in the chart below:

Year	Requests received	Requests submitted
2004 <sup>5</sup>	9	12
2005	19	14
2006	32	32
2007	8	86

720. In discussions with the PPO it was stated that no requests relating to FT have been received by Honduras. It is unclear whether other centralized authorities have received such requests.

721. It is unclear whether letter rogatory requests from states not a member to a relevant convention or treaty have ever been received with respect to ML or FT cases.

### **6.3.2. Recommendations and Comments**

722. The authorities should consider establishing a centralized authority competent to receive any requests for MLA relating to ML, FT or predicate offenses so as to ensure that such requests are dealt with in an effective way.

723. Put in place formal procedures governing the provision of MLA to ensure that such requests are handled effectively and timely.

724. The authorities should keep accurate and complete statistics covering all MLA requests received in ML and FT cases, including by competent authorities other than the PPO.

725. Provide the PPO with sufficient resources to carry the administrative burden associated with the implementation of MLA requests.

726. The deficiencies identified with respect to the ML and TF offenses as outlined under Recommendations 1, 2 and SR II should be addressed as they may limit Honduras' ability to provide assistance in certain situations based on the application of dual criminality.

727. The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law should be remedied as they may limit Honduras' ability to conduct such measures based on foreign requests. For example, the authorities should be able to confiscate and seize property of equivalent value and to confiscate instrumentalities intended for but not actually used in the commission of an offense, including in situations where the request to take such measures is made by a foreign country.

### **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
<b>R.36</b>	<b>PC</b>	No formal procedures govern the provision of MLA to ensure that such requests

<sup>5</sup> As of August.

		<p>are handled effectively and timely and by a centralized authority.</p> <p>The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.</p> <p>Accurate and complete statistics covering all MLA requests received in ML cases are, including by competent authorities other than the PPO, are not available, making it difficult for the assessor to gauge the effectiveness of the system.</p> <p>Based on the application of dual criminality, the deficiencies identified with respect to the ML offenses as outlined under Recommendations 1 and 2 may limit Honduras' ability to provide assistance in certain situations.</p> <p>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</p>
<b>R.37</b>	<b>LC</b>	<b>Absent dual criminality, Honduras may not provide mutual legal assistance even with respect to non-coercive measures.</b>
<b>R.38</b>	<b>PC</b>	<p>Based on the application of dual criminality, the deficiencies identified with respect to the ML offenses as outlined under Recommendations 1 and 2 may limit Honduras' ability to provide assistance in certain situations.</p> <p>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</p>
<b>SR.V</b>	<b>PC</b>	<p>No formal procedures govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority.</p> <p>Accurate and complete statistics covering all MLA requests received in TF cases are, including by competent authorities other than the PPO, are not available, making it difficult for the assessor to gauge the effectiveness of the system.</p> <p>The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.</p> <p>Based on the application of dual criminality, the deficiencies identified with respect to the TF offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.</p> <p>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to</p>

		conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.
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#### **6.4. Extradition (R.37, 39, SR.V)**

##### **6.4.1. Description and Analysis**

###### **Legal Framework:**

728. Honduras does not have a legal framework governing or regulating extradition. However, extradition may be granted based on and with respect to member states to international conventions and treaties Honduras has acceded to, including the Vienna, Palermo and SFT Conventions.

729. Furthermore, Honduras has signed bilateral extradition treaties with Spain, USA, Guatemala, Colombia and Italy. At the time of the onsite visit the negotiation process for bilateral extradition treaties with Peru, Mexico, Kuwait and Russia was ongoing. In addition, Honduras is a signatory to the Caracas Convention on Extradition 1984, to which most Latin American countries have acceded to.

730. Article 10 Criminal Code states that extradition of foreigners may only be granted pursuant to a law or a treaty. The authorities confirmed that extradition is not possible to countries that are not members of any of the conventions or treaties outlined above.

731. However, the authorities stated that other measures could be used to achieve the same result as extradition. For example, persons located in Honduras illegally could be expelled. Extradition on the basis of letter rogatory is not possible.

###### **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):**

732. In all cases, and regardless of the basis for the extradition request, requests may only be granted if dual criminality is provided for.

733. According to the authorities, technical differences in the denomination/categorization of the offense between law of the requesting state and Honduras do not pose an impediment to extradition.

###### **Money Laundering as Extraditable Offence (c. 39.1):**

734. ML is an extraditable offense based on the bilateral and regional extradition treaties as well as the Palermo and Vienna Conventions.

735. Pursuant to Article 10 Criminal Code, extradition of foreigners is only possible if the crime for which extradition is sought has a minimum sanction of imprisonment for one year under Honduran law. Extradition is not possible for political crimes.

736. ML has a minimum sanction of 15 years and is not considered a political crime. Therefore, it is an extraditable offense.

737. In addition to lack of dual criminality, lack of the minimum sanction, lack of a treaty basis and the existence of a political offense, Honduras also denies extradition for crimes that may be punished with the death sentence in the requesting country.

**Extradition of Nationals (c. 39.2):**

738. As a general rule, extradition of Honduran nationals is prohibited based on Article 10 Criminal Code. Furthermore, Article 102 of the Honduran Constitution provides that “no Honduran person will be expatriated or surrendered by the authorities to a foreign State.”

739. The authorities stated that in cases where extradition is denied based on nationality, Honduras would be required pursuant to Article 5 (2) to prosecute its nationals domestically. However, as far as the authorities recall this situation has never occurred in practice.

**Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):**

740. The authorities stated that should the case arise, Honduras would request MLA from the referring country to ensure support the domestic prosecution.

**Efficiency of Extradition Process (c. 39.4):**

741. There are no formalized procedures in place to ensure the efficient and timely processing of incoming extradition requests.

742. In practice, the process for extradition requests is more formal than for other forms of MLA. Unlike other MLA requests, extradition requests may not be received by the authorities directly but have to be channeled through the MOFA, who in turn sends it to MOJ who will forward it to the Supreme Court.

743. The Honduran Supreme Court subsequently decides on whether or not a specific request should be granted. If the request is granted, the court will issue an arrest warrant, which is to be enforced by the Interpol division within the Honduran police. While there are no formal timeframes in place for extradition, the authorities stated that in generally it would take up to two months to process an extradition request and transfer the person to the requesting country.

### **Terrorism Financing as Extraditable Offense (applying 39.1.-39.4. in R.39, V.5)**

744. TF is an extraditable offense based on the bilateral and regional extradition treaties as well as the SFT Convention and the Inter-American Convention Against Terrorism.

745. Pursuant to Article 10 Criminal Code, extradition of foreigners is only possible if the crime for which extradition is sought has a minimum sanction of imprisonment for one year. Extradition is not possible for political crimes.

746. TF has a minimum sanction of 20 years and, unlike terrorism, is not considered a political crime. Therefore, it is an extraditable offense.

### **Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5); Additional Element under SR V (applying c. 39.5 in R. 39, c V.8)**

747. No simplified procedures are in place to allow direct transmission of extradition requests between appropriate ministries or for extradition of persons consenting to the extradition and formally waiving the formal extradition proceedings.

### **Statistics (applying R.32):**

748. Assessors were not provided with statistics for extraditions to other jurisdictions. However, in discussions with the authorities it was stated that since 2003 there have been less than ten requests for extradition and none of them involved money laundering or terrorism financing offences.

749. The authorities further stated that in three cases extradition was denied. In two cases the reason for the denial was the existence of a “political offense”. In the third case, a request from Norway was denied because of lack of a legal basis. Only after the rejection had been issued did it become clear that in fact Norway was a signatory to the Palermo and Vienna Conventions and that the request should therefore have been granted.

750. The authorities stated that in two cases Honduras made extradition requests to other countries in the context of ML cases. In the first case, the person for whom extradition was sought escaped and in the second case, the requested country initiated an investigation itself upon receipt of the extradition request.

## **6.4.2. Recommendations and Comments**

751. There are no formalized procedures in place to ensure the efficient and timely processing of incoming extradition requests.

752. The authorities should keep accurate and complete statistics covering all MLA requests received in ML and FT cases, including by competent authorities other than the PPO.

753. The deficiencies identified with respect to the ML and TF offenses as outlined under Recommendations 1, 2 and SR II should be addressed as they may limit Honduras’ ability to grant extradition in certain situations based on the application of dual criminality.

**6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V**

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.39</b>	<b>PC</b>	<p>No formal procedures govern the provision of extradition to ensure that such requests are handled effectively and timely.</p> <p>Accurate and complete statistics covering all MLA requests received in ML cases are not available, making it difficult for the assessor to gauge the effectiveness of the system.</p> <p>Based on the application of dual criminality, the deficiencies identified with respect to the ML offenses as outlined under Recommendations 1 and 2 may limit Honduras' ability to provide assistance in certain situations.</p>
<b>R.37</b>	<b>LC</b>	<b>Absent dual criminality, Honduras may not provide mutual legal assistance even with respect to non-coercive measures.</b>
<b>SR.V</b>	<b>PC</b>	<p>No formal procedures govern the provision of extradition to ensure that such requests are handled effectively and timely.</p> <p>Accurate and complete statistics covering all MLA requests received in FT cases are not available, making it difficult for the assessor to gauge the effectiveness of the system.</p> <p>Based on the application of dual criminality, the deficiencies identified with respect to the FT offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.</p>

**6.5. Other Forms of International Co-Operation (R.40 & SR.V)**

**6.5.1. Description and Analysis**

**Legal Framework:**

754. Article 46 of the AML Law explicitly creates the legal capacity for the Central Bank, the FIU, the CNBS and other competent authorities to exchange information with their foreign counterparts, on the basis of reciprocity, for AML purposes.

755. The FIU is authorized to exchange information with foreign FIUs subject to an MOU having been concluded and 15 MOUs have been signed to date. In the period 2004-2007, the FIU received and responded to 19 information requests from foreign FIUs, and itself made 17 requests to other FIUs.

756. In addition, Honduras has signed bilateral treaties on MLA in criminal matters with Mexico, Brazil, Spain, Colombia, Paraguay and the USA, whereby the treaty with the USA is limited to drug trafficking offenses, as well as a multilateral treaty on MLA in criminal matters comprising all Central American states.

757. For requests coming from countries not a signatory to any of the applicable treaties with an MLA component, Honduras may provide assistance on the basis of a letter rogatory to the Honduran courts.

**Widest Range of International Cooperation (c. 40.1) Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):**

758. Requests for MLA may be sent to Honduras through diplomatic channels, using the Ministry of Foreign Affairs, or directly to the competent authorities in Honduras. The authorities stated that in practice, the majority of requests would be direct requests.

759. There is no central authority to receive or make MLA requests in criminal matters. Rather, different authorities are in charge depending on the convention based on which a specific request is received. For example, the General Prosecutor's Office is the central authority for requests based on the Vienna Convention, the Ministry of Interior for requests based on the Palermo Convention and the High Court of Accounts for requests based on the Merida Convention. Requests based on a letter rogatory or on regional treaties, such as the Central American treaty on MLA, are within the competency of the Supreme Court.

760. The authorities stated that in practice, however, all requests received by any of the authorities listed above and dealing with money laundering, terrorism financing, or other organized crimes would be forwarded to the General Prosecutor's Office for processing and implementation.

761. The authorities stated that dual criminality would be required for all forms of mutual legal assistance as outlined under Recommendation 37 below.

762. In all cases, Honduras would have the discretion to refuse a request, whereby the discretion lies within the central authority responsible for a specific request. As in practice requests are dealt with by the PPO, the PPO would recommend to the competent central authority to refuse a request but the formal decision of denial would have to be issued by the central authority itself.

763. Regarding form requirements, the authorities indicated that it would not be required that the requesting country send a copy of the law underlying the crime for which assistance is requested. It would suffice that the MOFA of the requesting country provides a sealed certificate, stating that the conduct in question is criminalized in the requesting country. In cases where there is uncertainty as to whether a case would meet the dual criminality requirement, the authorities would either check on the internet or by way of communication with the diplomatic representation of that country in Honduras whether they can verify this assertion.

764. In addition, requests received have to state the underlying legal basis (the relevant convention or treaty), specify the measure requested and the facts underlying the specific case.

765. Regarding the forms of assistance that may be provided, the authorities stated that any measure that could be taken in a domestic context could also be taken upon request of a foreign country. While the authorities could not provide any statistics on the types of measures taken based on MLA requests and in the context of ML or TF, it was stated that all types of measures listed in the FATF standard could be and in the past have been taken, albeit not necessarily with respect to ML or FT crimes.



766. Searches and seizures pursuant to Articles 206-209, 212, 213 and 219 Criminal Procedures Code as well as access to information, including privileged information, pursuant to Article 274 Criminal Procedures Code could be performed based on a MLA request, whereby a domestic court order has to be obtained.

767. The authorities stated that there would be no restriction with respect to the production of originals or copies of document, records and evidentiary items. In practice, all documents requested by a foreign country would be provided in sealed and certified form. In some instances, a Honduran official even went to the requesting country at a later stage to certify under oath that the documents provided were genuine.

768. The authorities stated that they could and in the past have served judicial documents based on requests by Spain, Mexico and the USA.

**Clear and Effective Gateways for Exchange of Information (c. 40.2):**

769. Law enforcement requests from foreign police forces are received either directly on a bilateral basis or via the INTERPOL bureau housed in the national police. The bureau consists of 22 police (17 police officials and 5 auxiliaries); it provides support to other domestic law enforcement agencies, including the Fiscalía, obtaining information or channeling requests to appropriate law enforcement agencies.

**Spontaneous Exchange of Information (c. 40.3):**

770. The FIU is authorized to disclose information to foreign FIUs subject to an MOU being in place, spontaneously or on request of the foreign FIU.

**Making Inquiries on Behalf of Foreign Counterparts (c. 40.4), FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1) and Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):**

771. The FIU, having received a request from a foreign counterpart, can search its own databases and information to which it has a right to access. For other information, such as law enforcement information, the foreign enquiry would have to be referred to the Fiscalía.

**No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):**

772. No formal procedures govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority. The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.

**Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):**

773. No information available to the mission

**Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8):**

774. No information available to the mission

#### **Safeguards in Use of Exchanged Information (c. 40.9):**

775. Exchange of information between FIUs is made on the basis that the receiving party must obtain the permission of the providing party for any onward disclosure of the information received or for use for the purposes other than for which it was provided.

#### **Additional Element—Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1); Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11)**

776. Based on the application of dual criminality, the deficiencies identified with respect to the FT offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.

#### **International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5):**

777. The legal basis for international cooperation exists for ML but it needs to be extended in the law to TF.

#### **Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):**

778. No information available to the mission

#### **Statistics (applying R.32):**

779. Accurate and complete statistics covering all MLA requests received in FT cases are not available, making it difficult for the assessor to gauge the effectiveness of the system. The FIU maintains records of information requests received, disclosures made and requests it has itself made to other FIUs. As noted above, in 2004-2007 the FIU received and responded to 19 information requests, and itself made 17 requests to foreign FIUs.

#### **Analysis of effectiveness**

780. Since there is no central authority to receive and manage foreign requests, effectiveness is hindered. Requests for assistance under the various treaties mentioned above are in practice forwarded to the Fiscalía, which coordinates the action taken, if any. Streamlining this process would help to make it more efficient. The effectiveness of international cooperation and exchange of information could be enhanced by following through on the recommendations below.

### **6.5.2. Recommendations and Comments**

781. Formal procedures should be adopted to govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority. Consideration should be given to establishing a centralized authority competent to receive any requests for MLA relating to ML, TF or predicate offenses.

782. The PPO should be provided with sufficient resources to carry out its administrative duties associated with the implementation of MLA requests.

783. The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law should be addressed so as to not limit Honduras' ability to conduct such measures based on foreign requests.

**6.5.3. Compliance with Recommendation 40 and Special Recommendation V**

	<b>Rating</b>	<b>Summary of factors relevant to s.6.5 underlying overall rating</b>
<b>R.40</b>	<b>PC</b>	<p>The legal basis for international cooperation exists for ML but it needs to be extended in the law to TF.</p> <p>No formal procedures govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority.</p> <p>The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.</p> <p>Based on the application of dual criminality, the deficiencies identified with respect to the TF offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.</p> <p>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</p>
<b>SR.V</b>	<b>PC</b>	<p>No formal procedures govern the provision of extradition to ensure that such requests are handled effectively and timely.</p> <p>Accurate and complete statistics covering all MLA requests received in FT cases are not available, making it difficult for the assessor to gauge the effectiveness of the system.</p> <p>Based on the application of dual criminality, the deficiencies identified with respect to the FT offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.</p>

## 7. OTHER ISSUES

### 7.1. Resources and Statistics

784. The entire process of investigating and prosecuting money laundering is seriously underfunded. There are severe shortages of personnel, material, operating budgets, special equipment, vehicles, security systems, data systems, training, etc. Investigative units lack vehicles to take investigators to crime sites or to retrieve evidence; they need cameras, computers. The office of the AML prosecutor also does not have sufficient resources to do its work. Three prosecutors cannot cope with the several hundred case referrals that come their way each year. Because of the resource constraints, the prosecutors appear to be relying too heavily on the FIU for evidence gathering for the Ministerio Publico, when the FIU should be concentrating more attention and devoting more resources to enhancing and expanding its intelligence and analysis work.

785. The investigative and prosecutorial bodies, as already noted above, are seriously underfunded for their tasks, and there should be an infusion of resources to support and advance their work in the face of what appears to be a growing risk of money laundering. More prosecutors and staff to support them are needed. More police officers, and more equipment and material to make their work more effective and productive will ensure that they keep abreast of the problem.

786. The FIU is under-resourced, and should receive additional funding for an expanded mandate, and to equip it to undertake strategic analysis, as well as more comprehensive case analysis, and to equip itself with more analytic tools for both functions.

787. The FIU should publish statistics and an Annual Report to provide information on its work and performance. Others institutions involve in AML should follow suit.

788. Given the lack of supervisory coverage and enforcement across all financial and non-financial sectors of the Honduran economy, and given the recent passage of laws covering FT and including DNFBPs, the relevant authorities need to undertake a study to evaluate its resources in light of additional requirements for oversight relative to the new laws. Additional staff is likely to be needed and trained.

	Rating	Summary of factors underlying rating
<b>R.30</b>	<b>NC</b>	<p>The entire process of investigating and prosecuting money laundering is seriously underfunded. There are severe shortages of personnel, material, operating budgets, special equipment, vehicles, security systems, data systems, training, etc.</p> <p>Given the lack of supervisory coverage and enforcement across all financial and non-financial sectors of the Honduran economy, and given the recent passage of laws covering FT and including DNFBPs, the relevant authorities need to undertake a study to evaluate its resources in light of additional requirements for oversight relative to the new laws. Additional staff are likely to be needed and trained.</p>
<b>R.32</b>	<b>PC</b>	<p>There have been no studies done to provide some objective measure of the scope</p>

		<p>and extent of money laundering in Honduras.</p> <p>Each entity involved in the initiative against money laundering collects statistics to varying degrees and in different ways.</p> <p>It is difficult to assess whether the overall results achieved are sufficient.</p>
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## 7.2. Other relevant AML/CFT Measures or Issues

789. Major challenges for Honduran authorities will continue to be the issue of corruption in many parts of society and significant drug trafficking. These are difficult issues to address and resolve in any country. The authorities have a fair amount of work to do to be in greater compliance with the FATF Recommendations. However, even a greater level of compliance would still not address the issues of corruption and drug trafficking. Controlling drug trafficking is made all the more difficult by the country's porous borders and low level of economic growth, both of which contribute to the ease of entry into the crime. Corruption in Honduras has been cited as a significant problem by the authorities, by the private sector and a number of externally prepared reports on the subject. The authorities need to take concrete steps to address the various areas most affected by corruption. Many studies and individuals mentioned that judges need additional training and this would be a strong positive step. The judicial system as a whole may need to be reviewed to improve its performance and efficacy.

790. The mission suggests that the authorities put resources toward addressing some of the most egregious cases of drug trafficking and the related money laundering and bringing them to trial. It would demonstrate the commitment of the country to address the issues.

### 7.3. General Framework for AML/CFT System (see also section 1.1)

**Table 1. Ratings of Compliance with FATF Recommendations**

Forty Recommendations	Rating	Summary of factors underlying rating <sup>6</sup>
<b>Legal systems</b>		
1. ML offense	<b>LC</b>	<ul style="list-style-type: none"> <li>• The “concealment or disguise of the true nature or rights with respect to” proceeds of crimes is not criminalized in line with the Vienna and Palermo Conventions.</li> <li>• “Illicit trafficking of stolen and other goods” are not criminalized under Honduran law and are therefore not a predicate offense for money laundering.</li> <li>• In the absence of any statutory provisions or case law, it is unclear whether Article 3 AML Law may be applied to all predicate offenses committed abroad.</li> <li>• The number of convictions obtained for ML suggests that the ML provisions are applied effectively but in many cases there are considerable delays in the adjudication process.</li> </ul>
2. ML offense—mental element and corporate liability	<b>LC</b>	<ul style="list-style-type: none"> <li>• It remains unclear whether legal persons may be held criminally liable for money laundering under Honduran law.</li> </ul>
3. Confiscation and provisional measures	<b>LC</b>	<ul style="list-style-type: none"> <li>• Confiscation pursuant to Articles 55 and 64 Criminal Code does not extended to instrumentalities intended for use in the commission of the offenses or to property of equivalent value to proceeds from or instrumentalities used or intended for use in the commission of the crime. In the context of ML, equivalent value confiscation is not possible many situations.</li> <li>• It is unclear whether confiscation provisions pursuant to Article 55 and 335-H Criminal Code may be applied to all property as defined in the FATF standard, including property derived directly or indirectly from proceeds of the crime such as income, profits or other benefits.</li> <li>• Provisional measures pursuant to Article 219 Criminal Code and Article 15 AML Law do not cover legitimate property of equivalent value to proceeds of or instrumentalities used or intended for use in the commission of ML, FT or predicate offense or the money laundered or used to finance terrorism.</li> </ul>
<b>Preventive measures</b>		

<sup>6</sup> These factors are only required to be set out when the rating is less than Compliant.

4. Secrecy laws consistent with the Recommendations	<b>C</b>	
5. Customer due diligence	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of requirement regarding beneficial ownership</li> <li>• Absence of implementation in the securities and insurance sector</li> <li>• Still insufficient implementation of CDD requirement in the banking sector, in particular for pre-existing customers</li> <li>• Absence of requirement of enhanced due diligence for high risk customers.</li> </ul>
6. Politically exposed persons	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of enhanced CDD requirements for foreign PEPs.</li> <li>• Absence of requirement of senior management approval for continuing business relationships with existing customers found to be PEPs.</li> </ul>
7. Correspondent banking	<b>NC</b>	<ul style="list-style-type: none"> <li>• No specific regulations for foreign or domestic cross border correspondent banking relationships.</li> <li>• The authorities do not request information concerning the independence of funds of audit and compliance from the correspondent relationships.</li> <li>• The responsibilities for ML and TF are not available to for all corresponding institutions.</li> </ul>
8. New technologies & non face-to-face business	<b>NC</b>	<ul style="list-style-type: none"> <li>• Lack of clear requirements as to the type of information to be gathered in non face to face transactions, including in wire transfers.</li> </ul>
9. Third parties and introducers	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of framework for the introduction of business, particularly in the securities and insurance sector.</li> <li>• Not all insurance companies enforce the CDD requirements for business they receive through insurance brokers.</li> <li>• Honduran authorities do not take into account information available on whether those countries where third party business originates, adequately apply the FATF Recommendations.</li> </ul>
10. Record-keeping	<b>C</b>	
11. Unusual transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of implementation outside the banking sector, especially with regard to money remitters.</li> </ul>
12. DNFBP–R.5, 6, 8–11	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is no implementation of AML requirements for casinos by the authorities or within the gaming industry.</li> <li>• Other DNFBPs, included under the legal AML regime, through Decree 3-2008 at the end of the mission need to implement AML requirements.</li> <li>• Lawyers are still excluded from the legal requirements of the AML regime.</li> </ul>
13. Suspicious transaction reporting	<b>LC</b>	<ul style="list-style-type: none"> <li>• The requirements are in place for supervised institutions but not all supervised institutions submit reports and the supervisory authority needs to ensure compliance.</li> <li>• Absence of requirement to report attempted transactions.</li> </ul>

14. Protection & no tipping-off	<b>C</b>	
15. Internal controls, compliance & audit	<b>PC</b>	<ul style="list-style-type: none"> <li>• Absence of effective implementation in the insurance and securities sectors</li> <li>• Absence of effective implementation for the money remitters.</li> </ul>
16. DNFBP–R.13–15 & 21	<b>NC</b>	<ul style="list-style-type: none"> <li>• STR requirements for DNFBPs are not fulfilled and are not monitored or sanctioned by the competent authorities yet.</li> </ul>
17. Sanctions	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of effective, dissuasive and proportionate sanctions for non-compliance with laws and regulations.</li> <li>• Absence of use of the sanctioning powers.</li> </ul>
18. Shell banks	<b>PC</b>	<ul style="list-style-type: none"> <li>• Absence of requirements on FI not to enter into or continue correspondent banking relationships with shell banks.</li> </ul>
19. Other forms of reporting	<b>C</b>	
20. Other DNFBP & secure transaction techniques	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of measures to encourage the use of modern and secure financial techniques.</li> </ul>
21. Special attention for higher risk countries	<b>NC</b>	<ul style="list-style-type: none"> <li>• Absence of requirement that FIs pay special attention to countries that are not sufficiently FATF compliant.</li> <li>• Absence of capacity for the Authorities to apply countermeasures against these countries.</li> </ul>
22. Foreign branches & subsidiaries	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is no information available to the mission regarding the foreign branches or subsidiaries of Honduran banks and their compliance with AML/CFT laws and regulations.</li> <li>• There are no obligations regarding the compliance of branches and subsidiaries with AML/CFT requirements.</li> </ul>
23. Regulation, supervision and monitoring	<b>NC</b>	<ul style="list-style-type: none"> <li>• The law does not explicitly state that the CNBS should have access to information regarding the ultimate beneficial owners of a financial institution.</li> <li>• There is no prior review of risk management and internal control policies with regard to AML/CTF during the licensing process.</li> <li>• There is no CNBS prior approval and fit and proper assessment required in a transfer of ownership, beneficial ownership, or the exercise of voting rights of a bank.</li> <li>• Not all natural and legal persons providing a money or value transfer service or a currency changing service is licensed or registered or subject to effective systems for monitoring and ensuring compliance with national requirements to combat ML and TF.</li> <li>• Absence of mobilization of the supervisory powers to foster compliance with the AML/CFT requirements outside the banking sector.</li> <li>• Insufficient efforts by the supervisor to ensure effective</li> </ul>



		implementation of the AML requirements, in particular outside the banking sector.
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• There is no supervision of DNFBPs, including casinos.</li> <li>• No sanctions are applied to DNFBPs, including casinos.</li> </ul>
25. Guidelines & Feedback	NC	<ul style="list-style-type: none"> <li>• There is no feedback to assist FIs apply ML and TF measures.</li> <li>• Lack of effectiveness as the supervisor does not use its powers of enforcement and sanction in the event there is failure to comply with or properly implement AML and CFT requirements in financial institutions.</li> <li>• No guidelines or feedback have been provided to DNFBPs, including casinos.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	PC	<ul style="list-style-type: none"> <li>• The FIU does not have access to law enforcement information. Nor does it have access to information from other governmental and non-governmental sources, thus limiting its analysis.</li> <li>• The FIU does not have sufficient operational independence, and there is significant influence exercised over its work by the Fiscalía (Ministerio Público).</li> <li>• The FIU does not preside over its own budget and its expenditures need to be approved by the CNBS.</li> <li>• Insufficient resources have a limiting influence on effectiveness.</li> <li>• STR reporting levels are very low.</li> <li>• The FIU does not issue an annual report nor publish statistics and typologies that would serve to inform other partners and the general public.</li> </ul>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>• Significant insufficiency of resources, inadequate leadership and coordination, inadequate information sharing, need for more training, including for judges.</li> </ul>
28. Powers of competent authorities	C	
29. Supervisors	PC	<ul style="list-style-type: none"> <li>• In light of the additional entities subject to AML/CFT supervision and the inclusion of CFT as a criminal offence, the authorities are not adequately staffed at the present time to take on the additional work required.</li> </ul>
30. Resources, integrity, and training	NC	<ul style="list-style-type: none"> <li>• The entire process of investigating and prosecuting money laundering is seriously underfunded. There are severe shortages of personnel, material, operating budgets, special equipment, vehicles, security systems, data systems, training, etc.</li> <li>• Given the lack of supervisory coverage and enforcement across all financial and non-financial sectors of the Honduran economy, and given the recent passage of laws covering FT and including DNFBPs, the relevant</li> </ul>

		authorities need to undertake a study to evaluate its resources in light of additional requirements for oversight relative to the new laws. Additional staff are likely to be needed and trained.
31. National co-operation	NC	<ul style="list-style-type: none"> <li>• Absence of effective domestic coordination mechanisms, either at the policy or operational level.</li> <li>• Lack of clarity of the respective mandates of the FIU, Fiscalia and law enforcement.</li> </ul>
32. Statistics	PC	<ul style="list-style-type: none"> <li>• There have been no studies done to provide some objective measure of the scope and extent of money laundering in Honduras.</li> <li>• Each entity involved in the initiative against money laundering collects statistics to varying degrees and in different ways.</li> <li>• It is difficult to assess whether the overall results achieved are sufficient.</li> </ul>
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> <li>• No measures are in place to ensure that accurate and complete information on the founders, owners (incl. shareholders), managers, directors, controllers and beneficiaries of legal persons is obtained and maintained and can be accessed by competent authorities in all cases and in a timely fashion.</li> <li>• While bearer shares seem to be used in Honduras, no measures are in place to ensure that bearer shares are not being misused for ML and TF purposes.</li> </ul>
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> <li>• The measures in place do not sufficiently ensure that legal arrangements established under Honduran law cannot be abused by money launderers.</li> </ul>
<b>International Cooperation</b>		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• Not all provisions of the Vienna and Palermo Conventions have been fully implemented.</li> </ul>
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>• No formal procedures govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority.</li> <li>• The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.</li> <li>• Accurate and complete statistics covering all MLA requests received in ML cases are, including by competent authorities other than the PPO, are not available, making it difficult for the assessor to gauge the effectiveness of the system.</li> <li>• Based on the application of dual criminality, the deficiencies identified with respect to the ML offenses as outlined under Recommendations 1 and 2 may limit Honduras' ability to provide assistance in certain situations.</li> </ul>

		<ul style="list-style-type: none"> <li>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</li> </ul>
37. Dual criminality	<b>LC</b>	<ul style="list-style-type: none"> <li>Absent dual criminality, Honduras may not provide mutual legal assistance even with respect to non-coercive measures.</li> </ul>
38. MLA on confiscation and freezing	<b>PC</b>	<ul style="list-style-type: none"> <li>Based on the application of dual criminality, the deficiencies identified with respect to the ML offenses as outlined under Recommendations 1 and 2 may limit Honduras' ability to provide assistance in certain situations.</li> <li>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</li> </ul>
39. Extradition	<b>PC</b>	<ul style="list-style-type: none"> <li>No formal procedures govern the provision of extradition to ensure that such requests are handled effectively and timely.</li> <li>Accurate and complete statistics covering all MLA requests received in ML cases are not available, making it difficult for the assessor to gauge the effectiveness of the system.</li> <li>Based on the application of dual criminality, the deficiencies identified with respect to the ML offenses as outlined under Recommendations 1 and 2 may limit Honduras' ability to provide assistance in certain situations.</li> </ul>
40. Other forms of co-operation	<b>PC</b>	<ul style="list-style-type: none"> <li>The legal basis for international cooperation exists for ML but it needs to be extended in the law to TF.</li> <li>No formal procedures govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority.</li> <li>The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.</li> <li>Based on the application of dual criminality, the</li> </ul>

		<p>deficiencies identified with respect to the TF offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.</p> <ul style="list-style-type: none"> <li>• The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>PC</b>	<ul style="list-style-type: none"> <li>• Not all provisions of the SFT Conventions have been fully implemented.</li> <li>• Honduran law does not address the requirements under UNSCR 1267 and 1373.</li> </ul>
SR.II Criminalize terrorist financing	<b>PC</b>	<ul style="list-style-type: none"> <li>• The definition of "terrorism" pursuant to Article 335 Criminal Code does not cover (1) all terrorism offenses as defined in the Conventions and Protocols listed in the Annex to the FT Convention, including in situations where the act was carried out for other than "political reasons" and (2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.</li> <li>• In the absence of a reference to "individual terrorists" in Article 335-A Criminal Code the financing of individual terrorists does not seem to be covered in situations whether the offender did not have the intent to finance a specific act.</li> <li>• In the absence of a definition of "terrorist organization," it is unclear to what extent Articles 335-A and 335-E criminalize the financing of such organizations.</li> <li>• In the absence of a definition of "financial means" it remains unclear whether the terrorism financing offense extends to any legitimate or illegitimate funds as defined in the TF Convention.</li> <li>• Honduras does not seem to have jurisdiction over terrorism financing offenses committed by Honduran citizens abroad in all cases.</li> <li>• There is no criminal liability of legal entities.</li> <li>• Effectiveness could not be measured as the law was only</li> </ul>

		amended near the end of the mission.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> <li>• No adequate laws and procedures are in place to ensure that terrorist funds or other assets of persons designated by the UN in accordance with UNSCR 1267, in the context of UNSCR 1373 or of legal persons subject to an investigation or prosecution under domestic law can be frozen without delay and without prior notice to the person involved.</li> </ul>
SR.IV Suspicious transaction reporting	C	
SR.V International cooperation	PC	<ul style="list-style-type: none"> <li>• No formal procedures govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority.</li> <li>• Accurate and complete statistics covering all MLA requests received in TF cases are, including by competent authorities other than the PPO, are not available, making it difficult for the assessor to gauge the effectiveness of the system.</li> <li>• The PPO as the office carrying the administrative burden associated with the implementation of MLA requests does not have sufficient resources to fulfill this task.</li> <li>• Based on the application of dual criminality, the deficiencies identified with respect to the TF offenses as outlined under SR II may limit Honduras' ability to provide assistance in certain situations.</li> <li>• The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law may also limit Honduras' ability to conduct such measures based on foreign requests. Property of equivalent value may therefore be neither confiscated nor seized and instrumentalities intended for but not actually used in the commission of an offense may not be confiscated, including in situations where the request to take such measures is made by a foreign country.</li> </ul>
SR.VI AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• Pure MTOs are not supervised and fall outside the sanctioning regime, and are not under either a registration or licensing regime. There is a lack of implementation in FIs performing MVT services with regard to wire transfer rules.</li> <li>• No requirement for MVT service operators to verify identification information on occasional customers.</li> <li>• Weaknesses identified for Recommendations 5-11, 13-15 and 21-23 apply.</li> <li>• Absence of monitoring of MVT compliance with</li> </ul>

		AML/CFT requirements.
SR.VII Wire transfer rules	NC	<p>Sanctions are available for non-compliance but are not effectively utilized and therefore do not provide a deterrent for failure to comply with laws and regulations.</p> <ul style="list-style-type: none"> <li>• Supervision of pure MTOs not effectively implemented.</li> <li>• There is a lack of full implementation in FIs with regard to wire transfer rules found in the AML Law and Regulation.</li> <li>• Absence of requirements on beneficiary information when the information accompanying the wire is incomplete.</li> <li>• There are a low number of STRs submitted in relation to wire transfers.</li> <li>• Weaknesses in the verification of occasional customer, and general weaknesses on the customer information that travels with the wire given the pitfalls identified under R5.</li> </ul>
SR.VIII Nonprofit organizations	NC	<ul style="list-style-type: none"> <li>• The relevant reviews of the domestic non-profit sector have not been conducted.</li> <li>• No outreach to the NPO sector has been undertaken with a view to protecting the sector from TF abuse.</li> <li>• Other than the annual filing requirement for NPOs set up after 2003, no steps have been taken to promote effective and active supervision or monitoring of all relevant NPOs as the URSAC does not have any enforcement or sanctioning powers for noncompliance by NPOs with the annual filing requirements.</li> <li>• No mechanism in place to ensure that relevant control information on NPOs set up before 2003 is available. The mechanism in place for NPOs set up after 2003 is not enforced effectively.</li> <li>• No registration or licensing requirement for NPOs set up before 2003.</li> <li>• No requirement for NPOs to maintain detailed records of transactions to verify that funds have been spent consistent with purpose and objectives.</li> <li>• There is no investigative expertise and capabilities to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.</li> </ul>
SR.IX Cash Border Declaration & Disclosure	PC	<ul style="list-style-type: none"> <li>• The effectiveness of monitoring of cross border currency movements is inadequate, due to large sections of uncontrolled and easily traversable border.</li> <li>• Insufficient resources and inadequate training to fully discharge mandate.</li> <li>• No information reported to or accessible by FIU</li> <li>• Inadequate recording of data about declarations, searches, seizures and disposition seized currency, etc.</li> </ul>

**Table 2. Recommended Action Plan to Improve the AML/CFT System**

<b>FATF 40+9 Recommendations</b>	<b>Recommended Action (in order of priority within each section)</b>
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
Criminalization of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> <li>• Criminalize the “concealment or disguise of the true nature or rights with respect to” proceeds of crimes to cover all material elements of the money laundering offense as defined in the Vienna and Palermo Conventions.</li> <li>• Criminalize “illicit trafficking of stolen and other goods” to make such conduct a predicate offense for money laundering.</li> <li>• Amend the law to ensure that Article 3 AML Law may be applied to all predicate offenses committed abroad.</li> <li>• Amend Article 12 AML Law to clarify that legal persons may be held criminally liable for money laundering under Honduran law.</li> <li>• To eliminate any room for abuse of the ML provision, the authorities should consider amending the catch all provision in Article 3 AML Law to extend to underlying criminal conduct only.</li> <li>• To eliminate any doubt that a conviction for money laundering can only be obtained in cases where the perpetrator knew that the proceeds involved were illicit, the authorities should consider amending Article 3 AML Law to either add a specific knowledge requirement to be prove by the prosecution or to provide the accused with a statutory defense of “lack of knowledge” of the unlawful conduct and, upon proving the defense, a right to acquittal.</li> </ul>
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> <li>• Amend the definition of “terrorism” pursuant to Article 335 Criminal Code (1) to cover all terrorism offenses as defined in the Conventions and Protocols listed in the Annex to the FT Convention and ratified by Honduras, regardless of whether the act was carried out for “political reasons” or not and (2) to extend to any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its</li> </ul>

	<p>nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.”</p> <ul style="list-style-type: none"> <li>• Amend Article 335-A Criminal Code to expressly include a reference to “individual terrorists” to ensure that the financing of individual terrorists may also be prosecuted in cases whether the offender did not have the intent to finance a specific act and define “individual terrorist” in line with the FATF standard.</li> <li>• Define the term “terrorist organization” in line with the international standard to clarify the extent to which Articles 335-A and 335-E Criminal Code criminalize the financing of such organizations.</li> <li>• While it appears that the terrorism financing offenses can be applied with respect to a wide range of assets and property, to eliminate any doubts on this point the assessors recommend defining the terms “funds” and “financial and other services” in line with the definition of “funds” as provided for in the TF Convention.</li> <li>• Article 335-B Criminal Code should be revised to require that specific knowledge by the offender has to be proven in all situations covered by Article 335-B Criminal Code.</li> <li>• Article 3 Criminal Code should be amended to give Honduras jurisdiction over all terrorism financing offenses committed by Honduran citizens abroad.</li> <li>• Amend the law to provide for criminal liability of corporate entities.</li> </ul>
Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)	<ul style="list-style-type: none"> <li>• Confiscation measures pursuant to Articles 55 and 64 Criminal Code should be extended to instrumentalities intended for use in the commission of the offenses as well as to property of equivalent value to proceeds from or instrumentalities used or intended for use in the commission of the crime. In the context of ML, equivalent value confiscation should be possible also in situations where there was no comingling with illicit property.</li> <li>• To ensure that the confiscation provisions pursuant to Article 55 and 335-H Criminal Code may be applied to all property as defined in the FATF standard, including property derived directly or indirectly from proceeds of the crime such as income, profits or other benefits.</li> <li>• Provisional measures pursuant to Article 219 Criminal Code and Article 15 AML Law should be extended to legitimate property of equivalent value to proceeds or instrumentalities of ML, FT or predicate offense or the money laundered or used to finance</li> </ul>



	terrorism
Freezing of funds used for terrorist financing (SR.III & R.32)	<ul style="list-style-type: none"> <li>• Honduras should put in place adequate laws and procedures to ensure that terrorist funds or other assets of persons designated by the UN in accordance with UNSCR 1267, in the context of UNSCR 1373 or of legal persons subject to an investigation or prosecution under domestic law can be frozen without delay and without prior notice to the person involved. The laws and procedures should address all requirements under UNSCR 1267, 1373 and SR III. In particular:</li> <li>• The laws and procedures should ensure that freezing actions initiated under the mechanisms of other jurisdictions can be examined and, where appropriate, be implemented.</li> <li>• The freezing mechanisms should extend to all funds and assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations and as well as any funds or assets derived or generated from funds or other assets owned or controlled directly or indirectly by such persons or organizations.</li> <li>• Procedures should be established to ensure that all freezing actions taken pursuant to Resolutions 1267 and 1373 and SR III are immediately being communicated to the financial sector.</li> <li>• Financial institutions and other persons or entities that may be holding targeted funds or assets should receive clear instructions and guidance regarding their obligations under the established freezing mechanisms.</li> <li>• The laws and mechanisms should provide for effective procedures for considering de-listing request and for procedures for unfreezing in a timely manner the funds or other assets inadvertently affected by the freezing measures. Both procedures should be made public and be in line with UNSCR 1267 and 1373.</li> <li>• The laws and mechanisms should provide for clear procedures for access to funds in accordance with UNSCR 1452.</li> <li>• The laws and mechanisms should provide for procedures to challenge any freezing measures.</li> <li>• The authorities should ensure effective monitoring of compliance with the obligations under SR III and provide for sanctions for noncompliance by financial institutions or other entities that may be</li> </ul>

	holding targeted funds or assets.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> <li>• The capacity to protect FIU information and processes should be strengthened by a combination of personnel, technical and physical security measures. Consideration should be given to enhanced screening of FIU staff and management, given the sensitivity of the information assets of the organization. This could include explicit restrictions on extracurricular business or political activities, and post employment activities. Consideration should be given to bringing the FIU's data servers within the FIU's premises, and bringing the systems administrator(s) under its own control and screening them to the same enhanced levels recommended for all staff. Physical access controls to the FIU's premises should be strengthened. More stringent information management systems and processes within the FIU would also enhance the FIU's capacity to protect its information holdings.</li> <li>• The mandate of the FIU should be further clarified by providing explicit authority in the AML Law to access law enforcement information, and to authorize the FIU also to access governmental and non-governmental (commercially or publicly available) data bases for the purpose of its analytic work.</li> <li>• The operational independence of the FIU should be further strengthened in the AML Law by giving it sole authority to determine its processes and by providing it with its own budget and empowering it to make its own expenditure decisions. The relationship of the Director to the President of the CNBS should also be further clarified in the Act. The Fiscalia's grip on the FIU and its role in the internal processes of the FIU, and its use of, the FIU to collect information should be clarified to ensure that the FIU is not co-opted into the investigative process, at the expense of its mandate to receive, analyze and disseminate financial intelligence about suspected money laundering or terrorism financing and to provide more strategic research and analysis.</li> <li>• The reasons for low reporting levels should be studied by the FIU jointly with the financial sector supervisory unit of the CNBS. AML compliance, including transaction reporting, by reporting entities is key to ensuring that the FIU receives a sufficient quantity of information from all reporting entities to permit it to maximize the quality, scope, and value of its analysis and disclosures to the Fiscalia.</li> <li>• The mandate and role of the FIU in outreach and compliance should</li> </ul>

	<p>be enhanced to help ensure compliance and to encourage increased reporting levels of STRs.</p> <ul style="list-style-type: none"> <li>• The FIU is under-resourced, and should receive additional funding for an expanded mandate, and to equip it to undertake more comprehensive case analysis, and more strategic analysis, as well as respond expeditiously to the prosecutors' information requests. It also needs to acquire more analytic and information management tools for both functions.</li> <li>• The FIU should publish its own Annual Report, including statistics and information about money laundering and terrorism financing trends and typologies and information on its work and performance.</li> </ul>
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> <li>• To address the issue of leadership and coordination, assessors recommend that the government designate a high level official to take the leadership role in relation to the fight against money laundering and terrorism financing. Authorities noted that such a function had been created earlier, in January 2005, and a senior level committee had been struck under the chairmanship of the CNBS, but that it had fallen into disuse and had not met for several years. Senior officials of several agencies named as members of that body seemed unaware of the existence of the body. Assessors recommend that this function be recreated and re-energized, and a committee or commission of high level representatives of all the entities involved in the fight against money laundering and terrorism should be re-established.</li> <li>• This body should be clearly tasked to ensure that all necessary policy, regulatory and legislative initiatives are prepared and brought forward expeditiously to the appropriate body for approval. It should also work to set strategic direction and priorities for the initiative, advise on the allocation and need for resources and training and development, and where necessary also provide a means of ensuring operational coordination. It should also commission a study of the extent and scope of money laundering and terrorism financing in Honduras.</li> <li>• The assessors also recommend that the government provide an infusion of resources to support and advance the work of the AML community in the face of what appears to be a growing risk of money laundering. More prosecutors and staff to support them are needed. More police officers, and more equipment, material and training to make their work more effective and productive, will ensure that they keep abreast of the problem.</li> </ul>

3. Preventive Measures– Financial Institutions	
<p>Customer due diligence, including enhanced or reduced measures (R.5–8)</p>	<ul style="list-style-type: none"> <li>• The supervisory authority has sanction tools available to it to impose fines for noncompliance. However it has not effectively used them. The supervisory authority has only once imposed a fine and it was on a casa de cambio. There is a need to extend their use to other supervised institutions. Incentives to comply with AML/CFT laws and regulations are significantly weakened without the fear of sanctions for non-compliance.</li> <li>• Regarding beneficial ownership, FATF requires a more proactive and in-depth approach on the part of financial institutions than what is currently in Honduran regulation, specifically Res. 869, Art 18. FATF requires the FIs to determine whether a customer is acting on behalf of another customer and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person. In addition, it requires that if customers are legal persons or legal arrangements, the FIs should understand the ownership and control structure of the customer and determine who are the natural persons who ultimately own or control the legal person.</li> <li>• Greater efforts need to be made in the supervision of the insurance industry, and in particular insurance intermediaries, to bring them in line with international standards.</li> <li>• The securities industry continues to be small and is not macro economically relevant, or significant from an AML/CFT perspective. Compliance in the securities sector is not clear. However, the sector is small, being comprised of local companies whose issues are mostly bonds bought by other local companies. Bearer shares are permitted which continues to be a weakness that should be remedied (see recommendation 33).</li> <li>• Recently, the March 2008 reform in the AML law expanded supervisory oversight to more entities. However, there are still parts of the financial and non-financial sectors that are not covered by the regulations and therefore immediate action needs to be taken to include them in the requirements set forth in the AML law. This is most pressing in the case of money remitters. They may be being used to launder funds of crime especially through the real estate sector which is seeing significant growth.</li> <li>• CDD requirements apply to Honduran PEPs and should be expanded to include foreign PEPs. The supervisory authority should provide appropriate guidance in this regard to currently supervised institutions. The regulation should include a requirement to obtain</li> </ul>

	<p>senior management approval to continue a business relationship if an existing client is found to be a PEP.</p> <ul style="list-style-type: none"> <li>• There should be a higher level of requirements as to information gathered in non face to face transactions.</li> <li>• The authorities should include non-resident customers, private banking customers, arrangements such as trusts or other legal holding vehicles, and companies with shares in bearer form as higher risk categories. FIs and DNFBPs should be required to develop and enforce enhanced levels of due diligence for these higher risk customers and their transactions.</li> <li>• There are no regulations dealing with correspondent banks, and even less so with counterparts that may be in countries that are not FATF compliant. Regulations need to be developed to address this shortcoming. The supervisory authority should provide appropriate guidance in this regard to all supervised institutions.</li> </ul>
Third parties and introduced business (R.9)	<ul style="list-style-type: none"> <li>• The supervisor should work together with the industry to address and improve compliance with AML requirements, in particular on introduced business. There is a need to ensure that all insurance and reinsurance companies enforce the CDD requirements for business they receive through insurance brokers – or that delegation of the CDD requirements are properly laid out and in line with Recommendation 9. There is currently a plan in place by CADHA, the insurance industry association, to create an official form to identify customers which the assessors reviewed. Implementing use of this form would at least be a step forward in the third party business compliance with CDD requirements.</li> </ul>
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• Honduras is compliant with Recommendation 4.</li> </ul>
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• Supervisors should ensure that FIs are sending and receiving the proper originator information with wire transfers. Additionally, the CNBS should start imposing sanctions on FIs not meeting wire transfer requirements. In order to bring attention to wire transfers and the submission of STRs, the authorities may consider issuing guidelines to all FIs performing wire transfers. These guidelines may be used to remind FIs that STRs could be filed when full originator information is not provided or cannot be verified. The FIU should take all steps necessary to broaden its maintenance of statistics</li> </ul>

	<p>related to wire transfers.</p> <ul style="list-style-type: none"> <li>• Verification of customer information is required of FIs but there are still questions as to whether or not FIs are verifying that information, especially in the case of pure MTOs that are only recently licensed or supervised.</li> </ul>
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• Implementation of the unusual transactions requirements needs to be more energetically enforced outside the banking sector. Money remitters need to have the same reporting requirements.</li> <li>• The authorities should put measures and requirements in place to require FIs to pay special attention to transactions coming from countries that are not sufficiently FATF compliant. In addition, the authorities should have the means by which to take countermeasures against these countries.</li> </ul>
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<ul style="list-style-type: none"> <li>• Many of the requirements are in place and sufficiently address the FATF requirements with the exception of requirements for general feedback. The major issue is implementation of the requirements. Not all institutions that are required to submit STRs do so and money remitters and DNFBPS only recently became subject to the same reporting requirements. Financial institutions should be required to report attempted transactions on terrorist financing.</li> <li>• The CNBS needs to address the low level of STR reporting to ensure that all possible transactions are being captured and reported, including for money remitters.</li> <li>• Protection of “non-supervised” institutions and their staff when submitting STRs to the authorities should be included in the law. Amending the language in Article 39 may serve to rectify this problem and provide “non-supervised” institutions the protection afforded to supervised entities</li> <li>• Feedback should be provided on STRs.</li> </ul>
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> <li>• Honduras should increase its capacity to screen departing travelers for illicit transportation of currency, including training for Customs officers and intensification of monitoring unofficial border crossings.</li> <li>• Record keeping of currency declarations and currency seizures should be enhanced, computerized, made accessible to the FIU and other relevant authorities, and detailed statistics should also be provided to relevant authorities and partner agencies.</li> </ul>

	<ul style="list-style-type: none"> <li>• Like most other elements of the anti-money laundering initiative in Honduras, this element needs additional resources to strengthen its capacities.</li> <li>• Legislative amendments to correct deficiencies and to clarify and expand mandates should be finalized and taken forward as quickly as possible.</li> </ul>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> <li>• One key issue is the absence of supervision of the sum of entities under the AML/CFT framework, in particular money remitters. At the end of the mission, legislation was passed which included all money remitters as subject to supervisory oversight. Their supervision should begin as soon as possible. There is no credible evidence of compliance outside the supervised entities.</li> <li>• The authorities need to ensure that all foreign branches and subsidiaries of Honduran financial institutions observe AML/CFT measures consistent with those of Honduras and those of the local host country. FIs should be required to inform the Honduran supervisory authority if their foreign operations cannot observe appropriate AML/CFT measures.</li> </ul>
Shell banks (R.18)	<ul style="list-style-type: none"> <li>• The authorities should require FIs to not enter or continue correspondent banking relationships with shell banks, and to satisfy themselves that respondent FIs in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>
The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)	<ul style="list-style-type: none"> <li>• Supervisory powers should be more forcefully used to ensure compliance. Not all supervised FIs are in compliance with the laws and regulations and only one sanction has been meted out although the law allows for sanctions for noncompliance.</li> <li>• Although there has been significant progress since the last assessment in the authority and the supervisory oversight activities of the CNBS a number of additional powers would significantly expand its authority to effectively oversee the financial sector with regard to AML/CFT. The CNBS must ensure that it effectively and consistently uses the sanctioning powers that are legally available to them.</li> <li>• Honduras needs to broaden the scope of its sanctions beyond the current level of from 10 to 100 times the minimum monthly salary of the region in which the noncompliance occurred, and needs to more forcefully have recourse to these sanctioning powers in cases</li> </ul>

	<p>of non-compliance.</p> <ul style="list-style-type: none"> <li>• The CNBS should be more involved in the initial licensing of FIs. It is currently tasked with only reviewing the operational and accounting manuals of banks applying for bank licenses. The authorization process for new banking licenses is carried out by the Studies Division. There should be a prior review of risk management and internal control policies with regard to AML/CTF.</li> <li>• The authorization process should be revised to ensure that the following aspects are assessed prior to granting a license to an FI: <ul style="list-style-type: none"> <li>- Identification and evaluation of the ultimate beneficial owners of the bank.</li> <li>- Assessment of the transparency of the ownership structure of the bank and its wider group. To this end, the CNBS should collect information on the related parties to all shareholders prior to authorizing a bank license.</li> <li>- Assessment of policies regarding risk management and internal controls, including for AML/CFT.</li> <li>- Assessment to ensure that the Board collectively understand the risks of the activities the bank intends to conduct.</li> <li>- Directors and senior managers of FIs should be evaluated on the basis of “fit and proper” criteria.</li> </ul> </li> <li>• The CNBS should have the legal authority to have access to the ultimate beneficial owners of FIs. This will enable them to prevent criminals or their associates from holding or being the beneficial owners of significant or controlling interests in FIs or holding management positions, etc.</li> <li>• Natural and legal persons providing a money or value transfer service, or a money or currency changing service should be licensed or registered.</li> <li>• In light of the additional entities subject to AML/CFT supervision and the inclusion of CFT as a criminal offence in early 2008, the authorities need additional staff and resources to take on the additional work required.</li> </ul>
Money value transfer	<ul style="list-style-type: none"> <li>• The assessment team recommends that “non-supervised” MVT</li> </ul>



services (SR.VI)	<p>service operators be brought under the umbrella of supervision without delay. The CNBS should issue guidance to MVT service operators and start imposing sanctions on those institutions not meeting AML requirements found in the Law. Furthermore, Honduras should take all necessary action to guarantee the correct implementation of international standards by MVT service operators, in particular, implementation of Recs. 5-8 and SR VII. Clarification is needed in the AML Law on the protection of “non-supervised” entities when submitting STRs. The authorities should consider extending fit-and-proper tests beyond inception and first change of ownership to include all changes in senior management and directors and during any additional changes in ownership.</p>
<b>4. Preventive Measures– Nonfinancial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• The above referenced amendment is intended to set forth requirements for DNFBPs to meet the international standards for Recommendations 5,6,8, and 11 on customer due diligence and record-keeping requirements. The authorities should conduct risk assessments to determine the appropriate CDD and record keeping thresholds for the respective sectors. In particular, measures are needed for real estate agents and automobile sales, as anecdotal evidence shows these areas are of great concern for ML and TF. Lawyers were not included in the amendment and this continues to be a weakness in the regime.</li> <li>• Honduras should also ensure that the proper authorities who will be conducting supervision of these newly introduced DNFBPs are adequately resourced to do so. These supervisory authorities should prepare sector regulations, guidelines, and conduct outreach for each sector to assist with the transition and compliance with the AML Law.</li> </ul>
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>• Honduras should take all necessary steps to implement the minimum requirements for DNFBPs found in Recommendations 13-15 and 21 and properly apply them to DNFBPs. Those tasked with supervision should conduct outreach within the DNFBP sector and thoroughly explain the new obligations. Training on money laundering typologies should be given to DNFBPs so they will be able to detect suspicious transactions. All consideration should be made to exclude STR obligations for legal professionals in situations that are subject to legal privilege.</li> </ul>
Regulation, supervision,	<ul style="list-style-type: none"> <li>• Honduras should take all necessary steps to implement Decree 3-</li> </ul>

monitoring, and sanctions (R.17, 24, & 25)	2008 to include DNFBPs under the AML regime to impose all international requirements on this sector. All the minimum requirements for DNFBPs found in Recommendations 24 and 25 should be applied to this sector.
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> <li>As the change in the law is relatively recent, it will take some time and additional resources to familiarize and train participants in the listed businesses with the new reporting requirements. As current resources may already be stretched, additional resources may need to be allocated to the task. In addition to training, oversight and supervision to ensure effective compliance needs to be undertaken.</li> </ul>
<b>5. Legal Persons and Arrangements &amp; Nonprofit Organizations</b>	
Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>Put in place measures to ensure that accurate, complete and timely information on the owners, managers, directors, controllers and beneficiaries of all forms of legal persons is obtained and can be accessed by competent authorities in a timely fashion by, for example, requiring all forms of legal entities to register and, in case of any changes, update the names, addresses and other information of such persons. With respect to shareholders, the measure could also be to require companies to maintain a complete and updated shareholder register that is accessible by law enforcement authorities.</li> <li>Put in place measures to ensure that bearer shares are not misused for money laundering and terrorism financing purposes. For example, the authorities could prohibit the issuance of new bearer shares and require that rights linked to existing bearer shares may only be exercised upon registration of the bearer with the company register and only by the registered bearer. In such cases, the shareholder register maintained at the company should be accessible by law enforcement authorities.</li> <li>The authorities should consider putting in place an electronic live-time database linking all regional offices of the Merchant's Registry and thus providing the public as well as financial institutions and law enforcement authorities with quick access to all information maintained at the Registry.</li> </ul>
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> <li>While it would generally be an appropriate measure to only allow trusts to be administered by banks, thus applying the general CDD measures to all trusts and granting law enforcement access to such information through the FMC, in the Honduran context the measure</li> </ul>

	<p>cannot be considered to ensure that trusts are not abused for money laundering or terrorism financing purposes for two reasons:</p> <ul style="list-style-type: none"> <li>• First, in the absence of a reference to or a definition of “beneficial owner”, Article 20 of Resolution 869 does not seem to require banks to identify all beneficial owners of the trusts they administer, including the trust settlor, the trust protectors or any other persons having control over the trust arrangement, and the beneficiaries of the trust.</li> <li>• Secondly, Article 20 of Resolution 869 does not require that banks verify any information obtained on their customers.</li> </ul>
Nonprofit organizations (SR.VIII)	<ul style="list-style-type: none"> <li>• Honduras should undertake a review of its NPO sector with a view (1) to determine the overall number of NPOs operating in Honduras, including those set up prior to 2003 and (2) to gather complete information on the activities, size and other relevant features of the NPO sector and to identify the features and types of NPOs most vulnerable to be misused for ML/TF purposes. Both reviews should be reassessed and updated periodically to ensure that the information obtained and conclusions derived are being kept relevant and updated.</li> <li>• Conduct outreach activities to educate NPOs about the risk of abuse for terrorist financing purposes.</li> <li>• Review the information available on NPOs at URSAC and other agencies to identify NPOs with international funding or which account for a significant size of the sector and promote effective supervision or monitoring of those NPOs.</li> <li>• Establish mechanisms to ensure that information on all operating NPOs, including those set up before 2003, is available in all cases, on the identity of persons who own, control or direct their activities.</li> <li>• Provide the URSAC with sanctioning power for noncompliance by NPOs with the annual filing requirement.</li> <li>• Require all NPOs established before 2003 to register with URSAC.</li> <li>• Require all NPOs to maintain, for a period of at least five years, and make available to competent authorities records or domestic and international transactions that are sufficient to verify that funds have been spent in a manner consistent with the purposes and objectives of the organization.</li> <li>• Develop investigative expertise and capabilities necessary to</li> </ul>

	examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.
<b>6. National and International Cooperation</b>	
National cooperation and coordination (R.31 & 32)	<ul style="list-style-type: none"> <li>Honduras should set up as quick as possible a policy-level domestic coordination mechanism, and should review the current arrangements and practices regarding operational coordination.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>Ensure that all provisions of the Vienna and Palermo Conventions are fully implemented.</li> <li>Ensure that all provisions of the SFT Convention are fully implemented.</li> <li>Put in place adequate measures to fully address the requirements under UNSCR 1267 and 1373.</li> </ul>
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<ul style="list-style-type: none"> <li>The authorities should consider establishing a centralized authority competent to receive any requests for MLA relating to ML, FT or predicate offenses so as to ensure that such requests are dealt with in an effective way.</li> <li>Put in place formal procedures governing the provision of MLA to ensure that such requests are handled effectively and timely.</li> <li>The authorities should keep accurate and complete statistics covering all MLA requests received in ML and FT cases, including by competent authorities other than the PPO.</li> <li>Provide the PPO with sufficient resources to carry the administrative burden associated with the implementation of MLA requests.</li> <li>The deficiencies identified with respect to the ML and TF offenses as outlined under Recommendations 1, 2 and SR II should be addressed as they may limit Honduras' ability to provide assistance in certain situations based on the application of dual criminality.</li> <li>The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law should be remedied as they may limit Honduras' ability to conduct such measures based on foreign requests. For example, the authorities should be able to confiscate and seize property of equivalent value and to confiscate instrumentalities intended for but not actually used in the commission of an offense, including in situations where the</li> </ul>

	request to take such measures is made by a foreign country.
Extradition (R. 39, 37, SR.V & R.32)	<ul style="list-style-type: none"> <li>• There are no formalized procedures in place to ensure the efficient and timely processing of incoming extradition requests.</li> <li>• The authorities should keep accurate and complete statistics covering all MLA requests received in ML and FT cases, including by competent authorities other than the PPO.</li> <li>• The deficiencies identified with respect to the ML and TF offenses as outlined under Recommendations 1, 2 and SR II should be addressed as they may limit Honduras' ability to grant extradition in certain situations based on the application of dual criminality.</li> </ul>
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> <li>• Formal procedures should be adopted to govern the provision of MLA to ensure that such requests are handled effectively and timely and by a centralized authority. Consideration should be given to establishing a centralized authority competent to receive any requests for MLA relating to ML, TF or predicate offenses.</li> <li>• The PPO should be provided with sufficient resources to carry out its administrative duties associated with the implementation of MLA requests.</li> <li>• The shortcomings identified with respect to the provisional and confiscation measures available under Honduran law should be addressed so as to not limit Honduras' ability to conduct such measures based on foreign requests.</li> </ul>
<b>7. Other Issues</b>	
Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> <li>• Because of the resource constraints, the prosecutors appear to be relying too heavily on the FIU for evidence gathering for the Ministerio Publico, when the FIU should be concentrating more attention and devoting more resources to enhancing and expanding its intelligence and analysis work.</li> <li>• The investigative and prosecutorial bodies, as already noted above, are seriously underfunded for their tasks, and there should be an infusion of resources to support and advance their work in the face of what appears to be a growing risk of money laundering</li> <li>• The FIU is under-resourced, and should receive additional funding for an expanded mandate, and to equip it to undertake strategic analysis, as well as more comprehensive case analysis, and to equip itself with more analytic tools for both functions.</li> </ul>

	<ul style="list-style-type: none"> <li>• The FIU should publish statistics and an Annual Report to provide information on its work and performance. Others institutions involve in AML should follow suit.</li> <li>• Given the lack of supervisory coverage and enforcement across all financial and non-financial sectors of the Honduran economy, and given the recent passage of laws covering FT and including DNFBPs, the relevant authorities need to undertake a study to evaluate its resources in light of additional requirements for oversight relative to the new laws. Additional staff is likely to be needed and trained.</li> </ul>
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**Annex 1. Authorities' Response to the Assessment**

**Annex 2. Details of All Bodies Met During the On-Site Visit**

- Central Bank of Honduras (President)
- Police Commission (Director General)
- Honduras Preventive Police
- Honduras Association of Banking Institutions (AHIBA) (Executive Director)
- Secretary of State-Office of External Affairs
- National Commission of Banks and Insurance (CNBS) (Vice-President)
- Financial Intelligence Unit (UIF) (Director)
- Public Ministry (Managing Director)
- Military Intelligence
- Attorney General
- Central American Securities Market (President)
- America CDC-Exchange House (Manager)
- Citigroup (Internal Audit and Compliance)
- Fichosa Express-Banks and Money Remittance
- Supreme Court of Justice
- Property Registry
- Office of Frozen Assets (OABI)
- Customs Authority



**Annex 3. List of All Laws, Regulations, and Other Material Received**

Ley de Instituciones del Sistema Financiero - 1995

Ley de La Comision Nacional de Bancos y Seguros

Ley de Instituciones de Seguros y Reaseguos

Ley de Mercado de Valores

Ley de Notariado – Decreto No 162

Ley de Casas de Cambio

Ley de Casinos, Juegos de Envite o Azar

Reglamento para la prevencion y deteccion del uso indebido de los servicios y productos que comercialzn las instituciones de seguros y reaseguos en el lavado de activos

Decreto No. 45-2002 Ley Contra El Delito de Lavado de Activos

Decreto No 3-2008

Decreto No 23-2008

Decreto No 129-2004

Decreto No 144-83

Decreto No 255-2002

Resolucion No 869/29-10-2002

Resolucion No 1308/21-12-2004

Resolucion No 1238/07-12-2004

Resolucion No 013/02-02-2003

Resolucion No 300/15-03-2005

Resolucion No 1397/23-12-2003

Resolucion No 1131/11-10-2005

Resolucion No 1398/23-12-2003

Resolucion No 1202/01-11-2005

Resolucion No 407/12-04-2005

Resolucion No 714/13-07-2004

Resolucion No 1301/25-11-2003

Resolucion No 730/26-06-2007

Circular No 001/2004

Manual de Inspeccion – CNBS – 2005 – Administracion del Riesgo de Lavado de Activos y  
Financiamiento al Terrorismo

Informacion sobre Lavado de Activos (Superintendente de Valores y Otra Instituciones, CNBS)

Oficina de Bienes Incautados (OABI) – “Bienes Asegurados, 2004-2008”

Case Law: Honduras vs. Williams Ellis (2004), Honduras vs. Betancourt (2004), Honduras vs.  
Avila Castillo (2004), Honduras vs. Villeda (2004), Honduras vs. Umaña (2006), Honduras vs.  
Castellanos (2004), Honduras vs. Castillo (2006), Honduras vs. Banegas (2005)