**Middle East & North Africa Financial Action Task Force**

# *Mutual Evaluation Report Of*

# *The Republic of Tunisia*

## *On*

## *Anti-Money Laundering and Combating Financing of Terrorism*

This Detailed Assessment Report on anti-money laundering and combating the financing of terrorism for Mauritania was prepared by the World Bank. The report assesses compliance with the FATF 40+9 Recommendations and uses the FATF methodology of 2004. The report was adopted as a MENAFATF Mutual Evaluation by the MENAFATF Plenary on April 3rd, 2007.

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LIST OF ACRONYMS

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|---|---|
| Al | Paragraph |
| AML/CFT | Anti-money laundering and combating the financing of terrorism |
| APTBEF | *Association Professionnelle Tunisienne des Banques et des Etablissements Financiers* (Tunisian Professional Association of Banks and Financial Institutions) |
| Art. | Article |
| BCT | *Banque Centrale de Tunisie* (Central Bank of Tunisia) |
| BTS | *Banque Tunisienne de Solidarité* |
| CCB | *Compte chèque bancaire* (bank checking account) |
| CCP | *Compte chèque postal* (post office checking account) |
| CGA | *Comité général des Assurances* (General Insurance Committee) |
| CI | *Etablissement de crédit* (credit institution) |
| CMF | *Conseil du marché financier* (Financial Market Board) |
| CP | *Code pénale* (Criminal Code) |
| CPP | *Code de procédure pénale* (Code of Criminal Procedures) |
| CTAF | *Commission Tunisienne des Analyses Financières* (Tunisian Financial Analysis Commission) |
| D | Tunisian dinar |
| EPNFD | *Entreprises et Personnes Non Financières Désignées* (designated nonfinancial businesses and professions) |
| FATF | Financial Action Task Force |
| GDP | Gross domestic product |
| LSC | *Loi sur les Sociétés Commerciales* (law on commercial companies) |
| LRC | *Loi sur le Registre du Commerce* (law on the trade register) |
| M | Million |
| ONP | *Office National des Postes* (National Post Office) |
| OPCVM | *Organisme de Placements Collectifs en Valeurs Mobilières* (mutual fund) |
| RIB | *Relevé d'identité bancaire* (statement of bank account identity |
| RIP | *Relevé d'identité postal* (statement of post office account identity) |
| SA | *Société anonyme* (business corporation) |
| SARL | *Société anonyme à responsabilité limitée* (joint stock company) |
| SICAF | *Société d'Investissement à Capital Fixe* (closed-end investment fund) |
| SICAV | *Société d'Investissement à Capital Variable* (open-end investment fund) |
| SICAR | *Société d'Investissement en Capital Risque* (risk-capital fund) |
| USD | U.S. dollar |
| WCO | World Customs Organization |

## Preface

### Information and Methodology Used for the Assessment of Tunisia

1. The assessment of Tunisia's anti-money laundering and combating the financing of terrorism (AML/CFT) regime was based on "The Forty Recommendations" (2003) and the nine "Special Recommendations on Terrorist Financing" (2001 and 2004) formulated by the Financial Action Task Force (FATF). The AML/CFT Methodology of 2004 was also used in the preparation of the assessment, for which reference was made to the laws, regulations, and other documents supplied by the Tunisian authorities and to data collected by the assessment team during its mission of January 16-28, 2006 and throughout the assessment process. Some members of the assessment team also visited Tunis in mid-March 2006 for additional meetings with the Central Bank of Tunisia and the Ministry of the Interior. During those visits, the assessment team met with officials and representatives of the relevant government agencies and the private sector. The entities whose representatives met with the mission are listed in Annex 2 to the mutual evaluation report.

2. The assessment was carried out by a team of assessors from the World Bank, comprising experts in criminal law and specialists in subjects of concern to the authorities responsible for criminal prosecution and regulation issues. The mission comprised Jean Pesme (mission chief, financial sector specialist), Isabelle Schoonwater (legal expert), Cédric Mousset (financial sector specialist), and Emile Van der Does de Willebois (legal expert). Rana Matar from the secretariat of the Middle East and North Africa Financial Action Task Force (MENAFATF) participated in the mission as an observer. The experts analyzed the institutional framework, the AML/CFT-related laws, regulations, and guidelines, as well as the financial sector supervisory system and any other mechanisms in place for combating money laundering and terrorist financing through the financial institutions and designated non-financial businesses and professions. Assessments were also made of the institutional capacity, implementation, and effectiveness of all these arrangements.

3. This report contains a summary of the AML/CFT measures in effect in Tunisia at the time of the mission or immediately thereafter—by agreement with the Tunisian authorities, the measures in place on April 21, 2006[1] were taken into account in the assessment. The report describes and analyzes those measures and makes recommendations on additional steps to be taken to strengthen certain aspects of the system (see Table 2). The report also indicates the level of Tunisia's compliance with the Recommendations (40 + 9) of the FATF (see Table 1).

[1] On April 21, 2006, the Tunisian authorities forwarded two CTAF decisions containing directives, which are reflected in the analysis, but it appears that they have not yet been promulgated. Drafts of these two directives were submitted to the mission during its on-site visit and comments were then made to the authorities.

## SUMMARY OF THE ASSESSMENT

### 1. GENERAL INFORMATION

4. Tunisia's GDP is US$28.7 billion (2005). The services sector represents about 40 percent of GDP, with tourism accounting for 5-6 percent of GDP. Industrial production represents about one third of GDP, and agriculture, approximately 12 percent.

5. The financial sector is relatively well developed, but Tunisia is still not a significant international financial market. The partial convertibility of the Tunisian dinar[2] (current convertibility and total convertibility for investments by nonresidents) and the tight capital account exchange controls in place in Tunisia are major structural factors, especially in the organization of the financial relations between Tunisia and the rest of the world.

6. The Tunisian economy is characterized by the division between activities geared primarily toward export (the so-called offshore sector)—complementing the currency control arrangements—and those targeted toward the domestic market (the so-called onshore sector). Full implementation of the association agreement with the European Union (and the creation, within this framework, of a free trade zone with Europe) will fundamentally change this structure by opening up the domestic sector to competition. Moreover, Tunisia is generally characterized by a high level of regulation and monitoring of economic activity, which means that the business environment is somewhat complex. The liberalization and deregulation efforts made over the past few years are an initial response to these issues. Tunisia has also established strict requirements for accounting and financial transparency and good governance. Nevertheless, a portion of Tunisia's economic base remains organized in the form of groups—in particular, family groups—that are relatively closed and sometimes little disposed to much transparency[3].

7. Considering Tunisia's level of development, there is a relatively small amount of currency in circulation (about 14 percent of the money supply). The firm actions taken by the authorities against bad checks are aimed at strengthening confidence in bank money. In addition, Tunisia has acquired modern payment systems and encourages the use of electronic cash. These very positive developments toward modern means of payment are sometimes hampered by occasional debt collection problems (lengthy procedures or even difficulties in the enforcement of court rulings) that may result in a preference for cash money. Cash transactions in amounts considerably above the due diligence threshold in force in Tunisia and in amounts up to that of the international standard are also carried out by nonresidents from neighboring countries where cash is still the preferred means of payment.

8. The Tunisian authorities consider the risk of money laundering to be low in Tunisia and feel that exchange controls constitute a decisive factor of risk reduction. They deem the level of criminality low overall, most especially with respect to organized crime, particularly since income inequalities among the general population are small. In their view, Tunisia's size is an additional factor that explains the absence—or low level—of organized crime. On the other hand, the geographic position of Tunisia is a risk factor in light of the flows of organized crime and the illegal migratory flows from Sub-Saharan Africa. However, the authorities believe that this risk is mitigated by what they deem the "temporary" nature of those situations. It will be important for Tunisia to conduct a more elaborate analysis of criminal activities, based on the statistical data jointly established by all public authorities, to draw up an AML/CFT risk profile. The creation of a unit specifically responsible for carrying out such analyses within the Legal and Judicial Studies Center in the Ministry of Justice and Human Rights is an important opportunity to deepen the

[2] The exchange rate is $ 1 = DT 1.3.
[3] Fitch, Oct. 2005, "Tunisian companies preparing for the 2008 deadline".

assessment of crime and the risk of money laundering in Tunisia—which would warrant a particular capacity building effort.

9. The authorities are highly mobilized concerning terrorist matters. The Djerba attack was a clear reminder of the existence of terrorist activity against Tunisia, with both a local base and international ramifications in that particular case. The authorities consider other terrorist activities as purely local.

10. In the absence of more accurate and more detailed figures, it is difficult to give a more quantitative and qualitative assessment of the criminal context in Tunisia and in particular of the degree to which there are organized criminal activities. Illicit activities such as counterfeiting or illegal importing, the proceeds of which can be considerable, or trafficking in stolen vehicles exist in Tunisia, but it is still difficult to quantify the size of the underlying networks, in a context where the AML/CFT framework is too recent to facilitate such analysis.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

11. Law 2003-75 of December 15, 2003 on supporting international efforts to combat money laundering and terrorist financing constitutes the cornerstone of Tunisia's relevant arrangements. The criminalization of the laundering of drug trafficking proceeds has existed in the Criminal Code since 1992 but has never been used – the authorities point out however that the predicate offenses have been prosecuted. The Law of 2003 defines the offenses of money laundering and terrorist financing in overall conformity with international standards. All crimes and misdemeanors, including terrorist financing, are defined as money laundering predicate offenses, and all the categories of offenses described by the FATF are covered as crimes or misdemeanors in the Tunisian Criminal Code. Some Tunisian authorities believe that the legislation does not provide for the prosecution on money laundering charges of the perpetrators of the predicate offense who themselves launder the proceeds of their offenses, although there is nothing in the general principles of Tunisian law to support that view. Tunisia is a signatory to the international conventions for the suppression of the financing of terrorism and organized crime (Convention on the financing of terrorism, Vienna Convention, Palermo Convention) and has transposed the relevant obligations into domestic criminal law.

12. In addition, Law 2003-75 provides for liability of legal persons for money laundering and terrorist financing. Conditions under which such liability may be incurred, are however, overly restrictive – Court decisions have not yet provided clarification. The penalties that can be imposed on natural and legal persons are proportionate and dissuasive.

13. Moreover, Law 2003-75 defines the due diligence required of regulated institutions and professions (see below) and establishes the legal and institutional mechanism for the reporting of suspicions. Like any legislative measure that creates a legal and institutional mechanism of this scope *ex nihilo*, Law 2003-75 cannot resolve all the practical circumstances that may arise. The directives recently approved by the Tunisian Financial Analysis Commission (CTAF) and the preparation of other regulations for implementing the law, and especially for their practical implementation, should make it possible over time to remove some of the uncertainties or identify any legislative or regulatory clarifications that may prove necessary.

14. Tunisia has comprehensive legal mechanisms for freezing, seizing, and confiscating assets related to AML/CFT offenses, and the authorities stated that those mechanisms have been used regularly, in particular within the framework of complementary penalties. Seizure measures are said to be used regularly as of the preliminary phases of judicial proceedings. Law 2003-75 also provides for the authority to confiscate the direct or indirect proceeds of crime following a conviction for terrorist financing or money laundering. In addition, it provides for the possibility of optional confiscation of other movable or real property and other financial assets of convicted persons, if there are serious charges regarding their use for terrorist financing. As regards money laundering, the automatic confiscation of any assets that are the subject of money laundering and the direct or

indirect proceeds of the offense can be supplemented with other complementary penalties under normal procedures. The authorities stated that Tunisia had the power to confiscate property following international rogatory commissions.

15. In practice, Tunisia informally forwards the lists provided by the United Nations Security Council under Resolutions 1267 *et seq.* to Tunisian financial institutions, requesting that they check whether their customers include any of the listed persons or entities[4], and that they freeze the assets of such persons or entities where applicable. To date, no Tunisian financial institution has identified a person appearing on the above-mentioned lists.

16. Nevertheless, Tunisia lacks legal arrangements that would allow it to freeze assets administratively in accordance with the obligations of Resolution 1267. In their responses to the United Nations Anti-Terrorism Committee Tunisian authorities stated that in the event of a listed person or entity turning up in an institution, Tunisia would act to freeze transactions relating to which suspicions have been reported, in implementation of Resolution 1267. However:

- Freezing transactions by financial institutions does not amount to a freeze of all the assets covered by the Resolution. In practice, a similar result could be obtained, indirectly, through the freezing of all transactions related to the assets in question, but this would not fully encompass the definition of assets given in the Resolution; and

- - A freeze decided by the CTAF is an administrative act. However, it can be extended beyond a four-day period only by a judicial authority, in the context of a legal inquiry—which assumes a judicial level of proof. Resolution 1267 provides for immediate, indefinite freezing, merely on the basis of the presence of a person or entity on a list approved by the Penalties Committee.

17. As regards Resolution 1373, Tunisia's legal bases are the same. Moreover, it has not established a mechanism for the review of freezing measures adopted by other countries under Resolution 1373 and on which Tunisia may be requested to take action and, where applicable, adopt similar freezing measures.

18. Nevertheless, Tunisia could, in order to implement Resolution 1373, perhaps rely on Articles 94 *et seq*. of the Law of December 2003. Indeed, Article 94 states that the public prosecutor of the Tunis court of appeals can, notwithstanding any report of a suspicious or unusual operation or transaction, petition the president of the court of first instance of Tunis to order the freezing of assets belonging to individuals or legal entities suspected of having ties to persons, organizations, or activities related to the offenses covered by this law, even if they were not committed on the territory of the Republic. This approach would have numerous advantages in terms of effectiveness, especially since the duration of the freeze is indefinite. It presupposes, however, that the elements linking the person to persons, organizations, or activities related to terrorist activities are of a judicial nature, which rules out its use in the context of Resolution 1267 *et seq.*

19. Tunisia's legal provisions are based on a concept of assets which is more restrictive than "funds or other assets owned or controlled wholly or jointly, directly or indirectly."

20. Moreover, Tunisia has no procedure for examining requests for removal from a list or the lifting of a freeze, no provision enabling a person subject to such a freeze to contest the decision, no arrangement for communicating orders for the release of erroneously frozen funds, and no measure authorizing access to funds to cover certain basic expenses and certain types of commissions, fees, and payments for services or extraordinary expenses. There are no provisions related to such freezing measures that protect the rights of third parties acting in good faith.

[4] The conduct of these checks by financial institutions has not been the subject of verification on significant samples by the supervisors.

21. Tunisia should establish a mechanism for the freezing of assets in accordance with the requirements of Resolutions 1373 and 1267.

22. Law 2003-75 created Tunisia's financial intelligence unit, the Tunisian Financial Analysis Commission (CTAF), which is responsible, in particular, for receiving, analyzing, and disseminating suspicious transaction reports (STRs). It has also been given the task of formulating general directives on the detection of unusual or suspicious transactions and reporting them. It is required to collaborate in the study of programs to combat illicit financial channels, participate in related research activities, facilitate communications between the Tunisian and international units, and represent Tunisia in international bodies.

23. Establishment of the CTAF is under way, in particular through the appointment of its members. It began its work on the preparation of directives aimed at regulating implementation of the obligations of Law 2003-75 by the reporting institutions. To that end two directives were approved on April 20, 2006: the first concerns the format in which suspicious transactions are to be reported; the second provides clarifications and more detailed obligations for credit institutions, off-shore banks, and the National Post Office for the implementation of Law 2003-75. While the CTAF, which is located in the premises of the Central Bank of Tunisia (BCT), has operational and financial autonomy, the organization of its operational unit will need to be clarified and strengthened. In particular, it is essential for the CTAF to have secure premises of its own as soon as possible – such premises are currently under construction. The multidisciplinary nature of the CTAF is an asset, and the fact that staff members of other administrations have been assigned to it is very positive. The trainings delivered so far to the CTAF staff have been well focused. It will be important to ensure that these arrangements are consistent with the operational independence of the unit and its effectiveness, and that they are the subject of regular reviews, especially to take account of changes in the unit's workload. Steps should be taken as soon as possible to increase the staffing of the CTAF and the expertise of its operational unit, since the law gives the CTAF a broad mandate and the preparation of directives and interministerial coordination constitute a heavy workload in the early years of effective implementation of the mechanism.

24. AML/CFT investigations are carried out by police units, under the supervision of the judicial authority. The initiation of public proceedings is the responsibility of district attorneys and attorneys-general. Under Law 2003-75 the Tunis court of first instance has exclusive jurisdiction in money laundering and terrorist financing cases. Given the small number of proceedings initiated to date against organized crime or financial fraud, there has been no incentive to create specialized units within the Tunis public prosecutor's department or among investigating magistrates of the court of first instance. The public prosecutor's department has not yet defined a criminal policy aimed specifically at dealing with the financial dimension of cases - except with respect to terrorism, for which such an approach exists. Such a criminal policy needs to be defined and the financial expertise of the public prosecutor's department and of judges needs to be strengthened. The creation of a unit specialized in financial crime within the Prosecutor's office should be considered by the authorities.

25. The investigative powers of officers of the judicial police as described in the Code of Criminal Procedure are broad (obtaining proof, seizing, searching, questioning). Professional secrecy cannot be invoked against a district attorney, an investigating magistrate, or officers of the judicial police. The investigative units, including the intelligence units, are part of the Ministry of the Interior. The ministry is organized in a highly structured manner, with dedicated economic and financial units and extensive, sophisticated resources, as well as training programs and units.

26. The customs directorate also has broad powers to initiate legal proceedings, including the ability to settle matters. The organization of the directorate and the resources made available to it testify to the attention paid by the authorities to controlling Tunisia's borders. The customs directorate includes units directly responsible for combating money laundering and the financing of

terrorism. It also has statistical analysis and monitoring units. It considers international cooperation a high priority.

27. Tunisia has comprehensive arrangements on cash couriers and the obligations to report the physical cross-border transportation of cash or negotiable instruments (reporting system). The customs directorate is responsible for enforcing these obligations, in close cooperation with other relevant units and services and any failure to comply is the subject to dissuasive penalties.

## 3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

28. All financial activities described in the FATF Recommendations, except micro-credit, are carried out by financial institutions covered by the core principles of financial regulation and therefore subject to the prudential supervision of the Central Bank of Tunisia, the General Insurance Committee (CGA—attached to the Ministry of Finance), and the Financial Market Board (CMF).

29. Law 2003-75 describes the financial activities subject to the AML/CFT measures and defines the core principles of prevention and detection as well as of compliance assessment:

- Customer identification,
- Establishment of an AML/CFT-related detection and audit system,
- Reporting of unusual or suspicious transactions,
- Role of financial sector supervisors in assessing compliance with the obligations, and
- Disciplinary and criminal penalties in cases of noncompliance.

30. So far, the implementation of the legal framework has focused on the set up of new institutions and on the preparation of the implementing regulations. The implementation of the prevention and detection pillars of the AML/CFT framework has not yet begun. The process is developing very gradually, as progress is made in the operational functioning of the CTAF, the publication of its directives, and then the issuance of specific circulars to the professions. The adoption on April 20, 2006 of the CTAF directive for credit institutions, off-shore banks, and the ONP is a welcome step in that direction. More specifically, a number of financial institutions, especially the subsidiaries of foreign groups, have already adopted anti-money laundering systems. Despite this, much remains to be done to ensure a greater harmonization of those efforts, especially in the banks that are not part of an international network, and to monitor compliance by the institutions with their customer identification and reporting obligations.

31. The timetable for operational implementation of the new legislative framework was determined by the necessity of establishing the CTAF initially, in a context where the authorities' assessment that money laundering risks were low led them to adopt a gradual approach. The first steps taken (creation of the CTAF, initial staff appointments, completion of the first two directives) are encouraging. The magnitude of the work still to be done, as well as the varying degrees of awareness within the financial sector about the challenges to be addressed in combating money laundering and terrorist financing, should lead the authorities to adopt a sequenced approach that is also accelerated, while at the same time conducting a major awareness raising and training effort. The banking sector (onshore and offshore) should continue to be the priority for the authorities. The securities market should be the focus of the next phase, followed by the insurance market. While the authorities' concern with a gradual approach is legitimate, especially to ensure full ownership by the financial institutions of their new obligations, the rate of progress should be accelerated to ensure a strong forward thrust, and to take full advantage of the concerted efforts of the Tunisian financial community.

32. As regards the customer identification obligations defined in the law and recently supplemented with a CTAF directive exclusively for credit institutions, offshore banks, and the post office initially, the principal components are legally in place (identification of customers, including

occasional customers beyond certain thresholds, customers acting on behalf of a third party, basic identification requirements for legal persons, record keeping…). The CTAF directive for credit institutions and the post office clarifies the obligations with respect to the timing of verification and with respect to cross-border correspondent banking relationships. The identification thresholds for life insurance contracts[5] should also be lowered. A requirement to report on the purpose and the nature of business relationships should be established for the nonbank financial sector. The recent CTAF directive creates an enhanced due diligence requirement for high-risk accounts. Tunisia should create an explicit due diligence obligation for politically exposed persons and clarify the requirements in the event of the use of intermediaries or third parties to carry out certain aspects of the due diligence measures. The notion of identification of the beneficial owner is too restrictive in the existing obligations and is not sufficiently clarified in the CTAF directive, which is an important shortcoming in the arrangements to date. The existence of anonymous cash certificates and capitalization bonds is a failure to comply with the identification obligations that the authorities should quickly eliminate. While the law on making transactions paperless has eliminated the possibility of new bearer shares being issued, a portion of the past stock has not yet disappeared; the deposit in an escrow account of such stocks is a positive factor—as it requires the identification of customers coming in to encash their holdings—that the authorities should reinforce by gradually eliminating bearer shares, following international examples. The total amount of these instruments was not indicated to the mission in response to its queries.

33. Law 2003-75 states that financial institutions are required to adopt AML/CFT practices and programs—in an approach, still new to numerous institutions despite the general requirements already in existence in this area, consisting of establishing structured internal control mechanisms. The new banking law also creates an obligation to establish such internal controls. The CTAF directive reinforces that dynamic for the institutions it covers. Although the requirement for due diligence in the course of business relationships is not currently defined in the law, it is required by that same directive. For the other professions, it should in effect result from the same obligation to adopt practices and programs and from the obligations to report suspicions. Nevertheless, this assumes that the CTAF and the financial sector supervisors clearly define, in regulations, the practical and operational obligations with respect to internal control and compliance assessment. In this regard, it is important for the process of implementing the new banking law and of adopting the implementation circulars, in particular on internal control, to be completed quickly.

34. Law 2003-75 creates a mechanism for the reporting of suspicious or unusual transactions or operations. It also provides for the systematic suspension of such transactions and gives the CTAF the power to extend any such suspension by following it with a freeze of the transaction in question for two days, renewable. After this period, the CTAF (after analysis) must either forward the report concerned to the district attorney or authorize execution of the transaction. Upon receipt of such a report from the CTAF, the district attorney has two days to decide to either to open a legal investigation—in the context of which the freeze can be extended—or to close the matter.

35. Attempted transactions and the possibility of making a report after the performance of a transaction when subsequently collected information arouses suspicion should be covered by the reporting obligation.

36. The reporting mechanism presents several difficulties. No distinction is made in the law between unusual operations and suspicious operations, and the directive only makes a very partial attempt

[5] Life insurance is as yet not very developed in Tunisia

to clarify the matter. The link between the law and the CTAF directive, which is now in force, thus perpetuates ambiguities that are detrimental to a mechanism in process of implementation. The link between the report and the temporary suspension and freezing of a transaction creates excessively vague incentives for reporting institutions. The definition of a suspicious transaction in fact introduces a high threshold for the reporting of suspicions. It also assumes that the report of suspicion is filed *before* the operation. At the same time, any noncompliance with the obligation to report is subject to a penalty. The mix of these two approaches may well create a vague incentive system for the reporting institutions, and this is harmful to the readability and effectiveness of the mechanism. In addition, given the timeframes mentioned in the law, the CTAF and the district attorney are obliged to react very quickly, possibly to the detriment of a thorough examination of the report and consequently of the information forwarded by the CTAF to the public prosecutor's department. These timeframes also create a high operational risk and may well prevent the necessary collection of additional information at both the national and international levels.

37. The priority of the Tunisian authorities should continue to be to ensure the proper operational functioning of the current mechanism for reporting suspicions, despite its deficiencies or imperfections. A partial clarification of the notions of unusual transaction and suspicious transaction, aimed at distinguishing between them and not requiring the reporting of transactions which are unusual only, should be provided. Eliminating the automatic suspension and freezing of transactions that have led to a report also seems essential— while maintaining the discretion to freeze transactions in specific circumstances.

38. The law provides for a sanction on tipping off customers that their transaction has given rise to a report. Nevertheless, automatic suspension and freezing can indirectly inform the customer of the fact that a report has been filed—which is another argument in favor of a change in the current mechanism. Reporting institutions cannot be held liable for damages when they have filed a report in good faith.

39. Law 2003-75 clearly explains the role of the supervisory authorities in the operational setting and monitoring of the new obligations for financial institutions—thus allowing for proper integration with prudential supervision, which should be accelerated,. Shell banks are not authorized to operate in Tunisia. The legislation already existing in prudential matters, especially on licensing, on the verification of fit and proper tests, on supervisory powers, both off-site and on-site, on access to the information necessary for carrying out their tasks, and on the power to impose penalties, provide a sound basis for the introduction of preventive measures against money laundering and terrorist financing. Professional secrecy cannot be invoked against supervisory bodies. However, under the current legal framework, supervisory bodies cannot share confidential information (the new law on the central bank solves this problem for the banking supervisor). A number of the existing mechanisms need to be clarified, expanded, or founded on a more sound legal basis, specifically, the need to verify the fit- and properness of business introducers and shareholders in the three sectors, the power to impose penalties on individual shareholders and executives in the insurance sector in cases of non-compliance with AML-CFT obligations, and the possibility to impose fines for noncompliance with internal control requirements (especially following focused on-site missions). Moreover, the CGA should introduce on-site audits of insurance agents and brokers and base its inspection program on an assessment of their risks.

40. To be able to carry out their AML/CFT mission fully, supervisors of financial institutions and the securities market have started providing training to their staff. These efforts should be pursued, especially with respect to training on on-site audits. The Insurance Controller should also take steps in this direction. In addition, it is necessary to strengthen the human resources of the banking supervisor and the CGA, so that they can deal with the surge of activity generated by their new missions (preparation of implementing circulars, formulation of specific procedures for control, staff training, and on-site audits).

41. Money and value transfer services can be provided only by authorized intermediaries (credit institutions, the national post office), to which the identification requirements set out in the law apply. On this basis, the banking authorities should spell out the obligations to disclose information on the originator, when conducting cross-border transfers and should amend the format for national transfers in order to clarify the obligations that a transfer be traceable. They should also define the obligations of financial institutions when transfers that are received (national or cross-border) do not contain the required information concerning the originator.

## 4. PREVENTIVE MEASURES—DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS

42. Law 2003-75 does not adopt a profession-based approach accompanied by a definition of the activities to which AML/CFT obligations apply. It is based on a consideration of activities, regardless of the profession engaging in those activities. Article 74 defines the scope of regulated persons as "any person who, in the exercise of his profession executes, monitors, or advises on, financial operations or transactions involving a transfer of funds." This definition clearly extends the obligations beyond the financial sector alone, and this is a key advantage. The authorities stated that the notion of "performing a transaction" in this context embraced the concept of "carrying out on behalf of their customers." The professionals with whom the mission met (lawyers, notaries, statutory auditors) are informed and aware of their new obligations.

43. The approach of linking the obligations to activities only stems from the authorities' wish to ensure a serene, pragmatic dialogue with the professionals in question—which can only contribute to the proper implementation of the mechanism when the time comes. However, there are two potential disadvantages to this approach, namely, uncertainty about the exact range of professionals involved (which is a problem in a context where penalties are imposed for noncompliance) and a description of the activities covered which is not geared to the specific characteristics of each profession.

44. Considering that "performing" is interpreted to mean "carrying out on behalf of their customers", the activities of casinos (in particular, because they must have the status of subagents for foreign exchange to change gaming disks for foreign currency), lawyers, real estate agents, and company service providers in Tunisia are broadly covered. The due diligence obligations (identification) of lawyers when they "prepare transactions" on behalf of their customers are not, however, covered by Law 2003-75, since at that stage there is no link with a financial transaction. On the other hand, there is no difficulty where the reporting obligations are concerned. The activities of traders in precious metals or in precious stones are not covered however since they engage in transactions *with* customers.

45. The approach adopted by Tunisia is a major step in the right direction. It does not, however, entirely follow the philosophy of the 40 Recommendations and creates uncertainties or ambiguities that should be remedied quickly. Awareness raising among professionals over the past two years seems to have taken place in a constructive manner, but it is still insufficient. It would be appropriate to take advantage of the goodwill created to establish a mechanism that is based on first, a definition of professions and only subsequently of activities. This would be highly beneficial in terms of the clarity of the legal framework and the relevant obligations.

46. All the designated non financial professions covered by Law 2003-75 are subject to regulation or self-regulation. They are subject to licensing by the public authorities. Regular controls are exercised by the authorities. In law, the regulatory mechanism is therefore satisfactory overall, but has yet to be implemented in respect of AML/CFT.

## 5. LEGAL PERSONS AND ARRANGEMENTS AND NONPROFIT ORGANIZATIONS

*Types of legal persons*

47. Law 2000-93 of November 3, 2000 on commercial companies (*Loi sur les sociétés commerciales*—LSC) defines commercial companies as follows: on the one hand, partnerships (*sociétés* en *nom collectif*), limited partnerships (*sociétés en commandite simple*), and jointly-owned companies (*sociétés en participation*); and, on the other hand, limited companies (*sociétés à responsabilité limitée*) and joint-stock companies (*sociétés par actions*) that can be either corporations (*sociétés anonymes*), whether they issue stock to the general public or not, or partnerships limited by shares (*sociétés en commandite par actions*).

48. Articles 15 and 16 of the LSC provide for the publication, in the *Journal Officiel de la Republic* (Official Gazette), of instruments of incorporation as well as any amendment to those instruments, and any appointment of company executives. For limited companies, the instrument of incorporation should contain information about the founding natural and legal persons. Any company other than a jointly-owned company (*société en participation*) cannot be a legal person until it is listed in the trade register. A register of associates is kept at the head office under the responsibility of the manager. Whenever the equity of a corporation is equal to or exceeds D 20,000, it is required to appoint a statutory auditor.

49. A legal person can be appointed to membership of the board of directors of a corporation. Persons convicted of a crime or misdemeanor against public decency, law and order, or laws governing companies are barred from membership on a board of directors. Following passage of the law dematerializing securities in March 2000, there was a two-year transitional period, during which all previously issued bearer shares were to have been converted into registered instruments, and the holders identified. Where holders of bearer securities did not come forward by the end of the two-year period, the securities in question were liquidated, and the proceeds were deposited at the Deposit and Consignment Office (*Caisse des Depots et Consignations*). Holders may, for an unlimited time, come in and exchange their securities for the corresponding liquidation value, upon presentation of identification. The securities can circulate until that time. The total amount involved was not divulged to the mission.

*Trade register*

50. Law 95-44concerning the Trade Register (*Loi relative au Registre de Commerce*—LRC) states that each court of first instance must maintain a trade register listing all companies headquartered in Tunisia. These data are centralized by the National Institute of Standardization and Industrial Property. To register, a company must provide the following details: the amount of its equity, its address, its principal activities, data on its partners and on those authorized to manage or administer it and on those with the general power to bind the company. The register is public. Fines are imposed for failure to register or for providing inaccurate or incomplete information. The mission was unable to confirm whether in fact the data in the register are checked and whether the updating obligations are actually observed (various signs seem to indicate that the updating requirement is not always followed). The Ministry of Justice and Human Rights has initiated a study on these issues.

51. Foreign investment in Tunisia is subject to the approval of various government agencies and committees when it exceeds 50 percent of the capital or when it involves certain sectors of activity subject to prior authorization, the list of which is still long, be it shrinking. Under these conditions, information on the beneficial owners is, in principle, available to the authorities.

52. Overall, the Tunisian system makes it possible, in theory, for the authorities to obtain all the up-to-date information they need on domestic beneficial owners, and in certain circumstances, on foreign beneficial owners. The prosecution authorities have not reported any difficulties in this regard.

*Nonprofit organizations*

53. Nonprofit organizations are governed by Organic Law 59-154 of November 7, 1959 on associations, as amended in 1992. The forming of an association requires a statement indicating the name and purpose of the association and the names, addresses, and official identity document references of the founders and those responsible for the association's administration or management. The Minister of the Interior can decide to reject an association's application. An association is required to report to the Ministry of the Interior any changes that have occurred in its administration or management.

54. No foreign association may be formed or engage in business in Tunisia unless the Ministry of the Interior has approved its articles of incorporation. It must provide all of the same information as required from Tunisian associations. Approval may be granted on a temporary basis or made subject to periodic renewal.

55. The AML/CFT Law states in its Article 69 that NPOs[6] are required to adopt management rules that preclude their receiving any grants or subsidies of unknown origin and any grants or other forms of financial assistance, regardless of the amount involved, except in cases of waivers under a special provision of the law. No funds from abroad can be received without the intervention of an authorized intermediary. NPOs are required to maintain an inventory of receipts and transfers from and to foreign countries, including their justification, their effective date, and the identification of the originating natural or legal person. A copy is forwarded to the Central Bank of Tunisia. Verification of compliance with these obligations by the authorities is provided for in the law, although it does not specify which ministerial department will be responsible. The Minister of Finance may require that legal persons suspected of having links with terrorist persons, organizations, or activities, or who may have been guilty of violations of these management rules, obtain prior authorization for any receipt of transfers from abroad.

56. Under ordinary arrangements and the supplementary arrangements created by Law 2003-75, a very elaborate and detailed regulatory framework is being established for NPOs, to prevent them from being misused for terrorist purposes or to ensure that funds made available to them are not used for other purposes. The authorities stated that the Ministry of Finance had started setting up the structures necessary for exercising the controls for which it is responsible.

## 6. NATIONAL AND INTERNATIONAL COOPERATION

57. The term of office (and the composition) of the CTAF provides adequate bases for cooperation at the national level, in terms of defining the key AML/CFT guidelines and policies. The ability of the CTAF to obtain access to all the information necessary for the performance of its missions is very positive. The principal weakness, currently being resolved for the banking sector, in cooperation among national authorities is caused by the legal restrictions on cooperation among supervisors of the financial sector.

58. The CTAF can engage in international cooperation in the context of conventions. It has already begun discussions to this end with two countries. It has applied for membership in the Egmont Group.

59. Currently, financial sector supervisors cannot seek or respond to requests for international cooperation. The CMF believes that it has the necessary legally required legislative basis but has not yet concluded any cooperation agreement. It is currently checking whether such agreements would have to be subject to a parliamentary ratification procedure. The new law on the central bank authorizes the banking supervisor to cooperate at the international level.

60. Tunisia has the main mechanisms needed in the area of international cooperation on crime, in all phases of the procedure. The authorities say that they use them both for seeking international

[6] In the same way as legal persons

mutual legal assistance and responding to requests for such assistance. Tunisia cannot extradite its citizens. The authorities stated that in practice they would initiate legal proceedings in such circumstances. They have access to a comprehensive network of agreements on mutual assistance in criminal matters. The lack of accurate statistical data prevents assessing actual implementation.

## 7. OTHER MATTERS

Table 1: Rating of Compliance with the FATF Recommendations
Table 2: Action Plan Recommended for Strengthening the AML/CFT Arrangements
Table 3: Authorities' Response to the Assessment (if necessary)

**MUTUAL EVALUATION REPORT**

# 1 General Information

## 1.1 General information on Tunisia

61. Tunisia (the Tunisian Republic[7]) is located in North Africa. The capital is Tunis. The population of Tunisia is a little under 10 million inhabitants. The surface area of Tunisia is 164,000 km$^2$.

62. Tunisia continues to make steady progress in the area of economic and social development. Social advances in health, education, and welfare put Tunisia at the top of the list of countries with similar incomes and in a comfortable position with regard to achieving the Millennium Development Goals (MDG). In particular, life expectancy has risen to 72 years and poverty has been reduced significantly from 8 percent of the population in 1995 to 4 percent in 2000.

63. Tunisia has had a Constitution since 1959 (the most recent amendment dates back to 2002). The Constitution established a Republic with a separation of powers between the executive, the legislature, and the judiciary. The President of the Republic is elected by direct universal suffrage. The Prime Minister and members of the government are appointed by the President of the Republic. The legislature is bicameral, consisting of the Chamber of Deputies, the members of which are elected every five years by direct universal suffrage, and the Chamber of Councillors—created in 2002—in which 85 of the 126 members were elected for the first time in August 2005 by indirect universal suffrage. The country is divided into 23 governorates, themselves subdivided into communes. Governors are appointed by the President of the Republic. City Councillors are elected by universal suffrage.

64. The gross domestic product is $28.7 billion (2005), with services representing about 40 percent of GDP (with tourism accounting for 5-6 percent of GDP); industrial production, about one third of GDP; and agriculture, 12-14 percent (depending, in particular, on rainfall). In the secondary sector, the manufacturing industries, particularly textiles and clothing, the engineering and electrical industries, and the agri-food industries have accounted for increasingly large shares in recent decades.

65. Tunisia maintains close relations with the other Maghreb countries. It is a member of the Arab Maghreb Union along with Libya, Algeria, Morocco, and Mauritania. It has signed numerous bilateral agreements with its neighbors, in particular on commercial and criminal matters.

66. Tunisia has also developed close relations with western countries. In particular, it has concluded an association agreement with the European Union, providing for the establishment of a free trade zone in 2008. The Tunisian authorities have supported the ongoing restructuring of the Tunisian economy to prepare for the effects of this trade liberalization through a major effort to strengthen competitiveness and an active policy of promoting investment, especially foreign direct investment.

67. The judiciary in Tunisia is made up, for criminal matters, of various jurisdiction levels located throughout the country. Public prosecution work is done by attorneys-general (*procureurs généraux*) and district attorneys (*procureurs*), who, although magistrates of the Judiciary, operate under the authority of the Minister of Justice and Human Rights. Investigating magistrates, who do not operate under the authority of the public prosecutor's department (*Parquet*), fall under the purview of the Supreme Judiciary Council (*Conseil supérieur de la magistrature*). The country is subdivided into 10 courts of appeal, 26 courts of first instance, and 84 local courts, and each court has criminal jurisdiction. There is a *cour de cassation* (the Supreme Court), located in Tunis. The

[7] Throughout this report, "Tunisia" will be used to designate the Tunisian Republic.

classification of offenses makes a distinction between violations (incurring prison sentences of 1-15 days), misdemeanors (16 days to five years), and crimes (over five years). Criminal investigation functions are carried out by the district attorneys and investigating magistrates, the latter being judges responsible for investigating complex—in particular, criminal—cases. In the context of their respective attributions, they appoint units of judicial police, and supervise and monitor their investigations.

68. Tunisia has signed and ratified the United Nations Convention on Transnational Organized Crime (Palermo Convention). It has signed the United Nations Convention against Corruption (Merida Convention), and the relevant ratification process is under way. The Tunisian Criminal Code contains several measures against corruption (active and passive corruption, embezzlement, influence trading, misappropriation), providing for severe penalties. Such offenses have been prosecuted; cases to date have been mainly in the category of "petty corruption." Officials, broadly speaking, and in particular police officers, judges, and district attorneys, are subject to clear ethical obligations; it is noteworthy, in this connection, that for offences set out in the Criminal Code, there are provisions for harsher penalties when the offender is a member of the judiciary.

69. Tunisia has established a system of clear principles and regulations in the area of transparency and good governance, based on international good practices and the European models. The 1994 law reorganizing the financial market marks the beginning of the establishment of these obligations, which have since been gradually increased. Accordingly, a law on the strengthening of security in financial relations was adopted in October 2005; it seeks to broaden the obligations of enterprises as regards good governance, transparency and the quality and accuracy of accounting and financial data. This expansion is aimed primarily at enterprises that issue securities to the general public and are of a minimum size. Despite the existing controls, abuses and slippages can, of course, occur, as was evidenced by the Batam case (which remains an isolated event to date).

70. A large share of Tunisia's economic base is, however, organized on a family basis, in the form of relatively closed groups[8] that are often not very disposed to a substantial degree of transparency (a reluctance that can also be found in major enterprises), in particular for tax reasons. While all enterprises are subject, under the Commercial Code, to minimal obligations with respect to accounting and financial transparency, glaring disparities seem to exist in the area of implementation.[9]

71. More generally, Tunisia is generally characterized by a high level of regulation and control of economic activities (prior authorizations, technical specifications *"cahiers des charges"*…), and the authorities intend to pursue the efforts of the past few years on deregulation and liberalization. Tunisian economic agents are thus starting to point publicly to the complexity of the regulatory framework and the great emphasis placed on tax benefits as an economic policy instrument. In addition, this type of regulation has raised questions about the weaknesses of economic governance, and in particular the predictability and transparency of the regulatory framework as well as market contestability, which can represent a major constraint for private investment, especially in a context of highly discretionary government intervention.[10] This situation is exacerbated by the gap that exists, in regulatory and tax matters, between economic activities

[8] "The Groups of Tunisian Companies Facing the 2008 Deadline," FitchRating, October 2005.

[9] "Study on Business Financing," UTICA, 2001.

[10] "Development Policy Review," World Bank, 2004.

geared primarily to export (the so-called offshore sector, as defined in the Investment Code) and those targeting the domestic sector (the so-called onshore sector).

72. Tunisia maintains an exchange control framework, in a context of limited convertibility of the Tunisian dinar. While the authorities expressed a wish to evolve gradually toward full convertibility of the dinar, after a total liberalization of the current accounts and a partial liberalization of the capital accounts (benefiting in particular non-residents), financial operations as well as capital transactions remain subject to a formalism inherent to capital controls, on both inflows and outflows (the latter being the subject of higher levels of regulation and control than the former). They are accompanied by dissuasive penalties in the event of noncompliance with the regulations. Concretely, exchange control entails verification of the nature of the underlying transactions, mainly to confirm that they really involve current transactions or the proceeds of the sale or transfer of capital invested through the importing of foreign currency. All currency transactions with the rest of the world must be carried out by authorized intermediaries (credit institutions and the national post office). In particular, foreign exchange subagents act for manual currency transactions in the context of a delegation from credit institutions (themselves being delegates of the Central Bank of Tunisia), with ex-post data submission and reporting mechanisms to the Central Bank. These subagents can only exchange dinars against foreign currency. On-site inspection of compliance with these obligations seems to be still limited.

73. Exchange controls and limited convertibility of the dinar therefore act as a filter for financial transactions with the rest of the world, in particular as they allow for verification of the economic purpose of those transactions. Although these arrangements have no AML/CFT objectives, they are nevertheless clearly and explicitly taken into account by the authorities (and economic agents) in their assessment of the risk of money laundering in Tunisia—at least in the case of international money laundering.

74. Even if the timetable has not yet been definitively set, Tunisia has resolutely embarked on the path of liberalization and of gradual opening up its capital account. These developments will lead to a measured but fundamental evolution of economic regulation in Tunisia. Thus, exchange controls are a risk-reducing factor from the AML/CFT perspective but should not be considered an excessive source of comfort, especially because circumvention of it is not impossible. The evolution of economic regulation in Tunisia, which is necessary, will alter the risk profile from that angle, and continuous monitoring and adaptation are therefore required. This can be achieved through close coordination among all the authorities involved—and with the private sector. This would also facilitate optimization of the allocation of resources, which remain limited. At the same time, the notions of risk management and of tailoring the intensity of the response (with respect to prevention and suppression), which are an integral part of the measures to combat money laundering and terrorist financing, can serve as an example for other facets of regulation.

### 1.2 General situation with regard to money laundering and terrorist financing

75. The Tunisian authorities perceive the risk of money laundering as low in Tunisia. As stated above, exchange controls are an important factor in this assessment—to the extent that, where money laundering schemes with an international dimension are concerned the authorities consider that restrictions on capital transfers represent a factor that discourages abuse of the Tunisian financial system by criminals for money laundering purposes.

76. Regarding the risk of laundering proceeds of crimes and misdemeanors committed domestically, the authorities point out the low level of crime in Tunisia. They state that existing criminal activities are carried out essentially by individuals, occur only occasionally, and are not supported by networks of organized crime. They feel that the size of Tunisia is another factor that explains the absence—or low level—of organized criminal activity.

77. The principal criminal activities identified by the authorities and likely to lead to domestic money laundering are clandestine immigration, counterfeiting, and trafficking in stolen vehicles and

drugs (even if the authorities believe that Tunisia is primarily a transit country for these two offenses).

78. The Ministry of the Interior considers that organized crime is not a major problem and that there are no mafia-style criminal organizations in the country. Armed robbery is fairly rare. There were 3,413 cases of fraud in 2004 involving 11,394 individuals, or a ratio of 34 cases per 100,000 residents. The police force's success rate with offenses of this type is 80.38 percent. Counterfeiting offenses numbered 188 and involved 157 individuals, with 48.4 percent of cases solved (the currencies most often counterfeited were the dollar and the euro). Drug trafficking involved ecstasy, hashish, and marijuana. Tunisia is essentially a transit country between Morocco, Algeria, and Libya. Users and small drug dealers are arrested. The authorities stress that probation is not an option for consumers in Tunisia and the penalties are therefore considered highly dissuasive. An interministerial unit, the National Narcotics Bureau, made up of police, health, and customs officials, coordinates anti-drug trafficking actions. Another unit is responsible for combating forgery. In 2005, some thirty cases were filed. There were 1,540 traffic violations in 2005. The authorities indicated that they have been especially vigilant with regard to the embezzlement of public funds since the early 1980s.

79. The authorities pointed to their strong concerted efforts to combat terrorist activities motivated by religious or ideological considerations. The Djerba attack in April 2002 clearly confirmed the existence of a terrorist sphere of influence in Tunisia (the international dimension of which, for that particular act, is recognized by the government authorities), which the authorities describe as entirely local and against which they are mobilizing all the resources at their disposal, especially to eliminate their sources of financing.

80. In the absence of sufficiently detailed figures, including, in particular, a breakdown by category of offense, the mission was unable to arrive at a more quantitative and qualitative assessment of the criminal context in Tunisia. Regarding criminal activities that are essentially purely local, and in particular financial crime, the information available to the mission seems to support the finding of limited organized crime. The geographic position of Tunisia is, however, a risk factor in light of the flows of organized crime and the illegal sub-Saharan migratory flows. That seems also to be the case for the trafficking in stolen vehicles coming in from Europe and either intended for the Tunisian market or re-exported. Given the high volume of counterfeiting and illegal imports, and their degree of organization, the mission feels that a more in-depth study of this area in the future is warranted, the manifestations of their existence being visible in the streets of Tunisia. The magnitude of the counterfeiting problem cannot be disconnected from the opening up of Tunisia to international competition, especially as this can create jobs alternative to those in manufacturing (for example, in the apparel industry), which is facing increased pressure from competition and a loss of market share.

81. The AML/CFT Law and the corresponding detection mechanisms are too recent for the mission to make a more sound and precise assessment of the extent of money laundering or of the methods and techniques used. It is noteworthy, however, that the judicial authorities have never used the criminalization of the laundering of drug trafficking proceeds, which has existed in Tunisian criminal law since 1992; the mission was unable to determine clearly whether this was the result of the absence of criminal strategy considering the financial aspect of this trafficking, or of the absence of drug-related criminal networks in Tunisia. The judicial authorities have used the seizure mechanisms in some terrorist financing cases—in particular against associations—but those instances have been too selective to be used as the basis for an analysis of trends.

### 1.3 Overview of the financial sector and designated nonfinancial businesses and professions

82. The Tunisian financial system is primarily composed of:

- Credit institutions (universal banks, investment banks, and leasing companies) and offshore banks,
- The national post office (ONP),
- The Central Bank of Tunisia (BCT),
- Insurance companies,
- The Tunis securities exchange and securities brokers, and
- Investment companies.

**Banking sector**

Credit institutions governed by the Law of July 10, 2001 and offshore banks

83. Tunisia has 43 credit institutions: those governed by the Law of July 10, 2001 and the offshore banks[11]. The assets of the banking system total about D 37 billion, or nearly US$28 billion. Twenty universal banks control 90 percent of the banking system's assets. The government, the Tunisian private sector, and foreign investors each hold nearly one third of the capital of all the banks.

84. Tunisia embarked in 1997 on a program to restructure its banking system. This led primarily to the disappearance of the development banks (absorption of two of them by the main public bank in 2000, then to a change in the status of the others, which became universal banks) and to the privatization of the UIB in 2002, and of Banque du Sud in 2005. In addition, a plan to restructure part of the financial sector is under way. Despite an average operating ratio in 2004 for the Tunisian banking system as a whole of 57.2 percent, provisioning requirements will, for several years to come, affect the resources that certain institutions will be able to raise to strengthen their control functions – including internal controls dealing with AML and CFT.

85. Eight offshore banks are governed by a specific law dated December 6, 1985 (see 3.10.1). These institutions are free to engage in all types of banking transactions with nonresidents. By contrast, only a limited part of their business can be done with residents, in very controlled conditions. Interviews conducted by the mission tend to show that the offshore banks work mainly with Tunisian enterprises that are nonresident under the exchange control regulations (primarily the export sector), but with which they can have regular physical contacts.

86. The offshore banks are mainly subsidiaries of foreign banks. The total balance sheet for all these institutions represents about DT 2.3 billion, or nearly US$1.7 billion (approximately 5 percent of the total banking assets).

Micro-credit

87. Micro-credit activities, which are subject to detailed regulations, are carried out by the Banque Tunisienne de Solidarité (BTS) and by associations connected to the BTS. These associations are subject to licensing by the Ministry of the Interior in their capacity as associations (Law of 1959) and by the Ministry of Finance to the extent that they distribute micro-credit (Law of 1999). They can distribute credit totaling less than DT 4,000 (approximately US$3,000) only to individuals meeting strict identification and eligibility criteria. They are also subject to an obligation to have external audits of their accounts and off-site and on-site inspections by the BTS. There are some 170 such associations that have distributed nearly DT 150 million (i.e., approximately US$115 million) since their creation in 1999.

[11] 20 universal banks, eight offshore banks, 11 leasing companies, two investment banks, and two factoring companies

88. In addition to financing the above-mentioned associations, the BTS supplies two products: the financing of micro-projects totaling up to D 80,000 (i.e., about US$60,000), and financing the acquisition of computers for up to D 1,200 (i.e., about US$900). These two products require the meeting of detailed identification and eligibility conditions. In addition, the funds are released directly to the suppliers. Despite a high default rate (the recovery rate on loans is only 52 percent), it seems there was no fraud undermining the solidity of the lending mechanisms used. The BTS is licensed as a universal bank and is therefore subject to supervision by the central bank.

National post office (ONP)

89. The ONP, which is largely governed by provisions that are specific to it, is subject to supervision by its statutory auditor and by the Ministry of Information Technologies (Articles 14 and 15 of Decree 98-1305 establishing the ONP). Like credit institutions, it is subject to the regulation on exchange controls and the 2003 law on AML/CFT.

90. The ONP employs close to 9,000 people and has an extensive network of more than 1,000 post offices. It offers diversified financial services (postal checking accounts, postal savings accounts, money orders, electronic banking, and foreign exchange services), but does not grant credit. It also intervenes as a recognized intermediary. In 2004, it had about 2.5 million savings accounts, more than 600,000 postal checking accounts (CCP), and had executed approximately 4.7 million electronic money orders and more than 600,000 outward transfers. The ONP's financial services are growing quickly and now account for about half its resources.

**Insurance sector**

91. The insurance market in Tunisia consists of 18 resident enterprises and four offshore companies. Most of the companies operate in multi-branch mode, with two specializing in life insurance. The market is typified by a dense network of insurance intermediaries (640 in 2004), operating as agents representing companies (approximately 600) or brokerage houses (approximately 40). The banking networks are also used to market insurance products.

92. In 2004, premiums issued totaled DT 644 million (approximately US$485 million). The penetration of all insurance services in the economy is still below the world average (the turnover/GDP ratio was about 2 percent in 2004, compared with a world average of about 8 percent).Furthermore, life insurance still represents only a very small portion of all insurance activities (a little under 9 percent of the insurance sector turnover in 2004, or less than D 60 million in turnover). According to market participants met during the mission, the so-called mandatory life insurance products continue to make up the bulk of the market in Tunisia. These products consist primarily of term life insurance contracts (*contrats temporaires décès*—insurance to borrowers, linked to a bank loan), life insurance for which the underwriting is linked to that of damages insurance products or group contracts underwritten by employers for their employees.

93. The government authorities are seeking ways to promote the development of life insurance in Tunisia, in particular through tax exemptions. This effort, which is designed to encourage the mobilization of national savings and complement pension payments by social security systems, is primarily geared to capitalization products to which customers are free to subscribe.

**Financial markets**

94. Established in 1969, the Tunis securities exchange did not achieve any real significance until the late 1980s. It is still modest in size at the national level and even more so at the regional level, in terms of both its capitalization and its volume of transactions. At end-2004, its capitalization amounted to US$2.6 billion, or 8.8 percent of Tunisia's GDP, with an annual volume of transactions totaling US$257 million. Forty-four companies were listed. The financial sector accounts for most of its capitalization (60 percent at end-2004, of which 52 percent held by the

banking sector alone). In addition, 25.6 percent of the capitalization on the same date was held by foreigners. There are 23 securities brokers in Tunisia, subject to supervision by the Financial Markets Board (CMF).

95. There are also 91 closed-end funds (*SICAF*) managing nearly D 500 million (approximately US$380 million), 44 open-end funds (*SICAV*) and investment funds (*FCP*) managing about D 2.4 billion (close to US$1.8 billion), a common claims Fund (DT 50 millions, ie US 38 millions) and 40 risk-capital funds (*SICAR*) with a little under D 300 million (US$230 million).

**Designated non-financial businesses and professions**

96. Legal and accounting professionals are organized in professional groups and associations with codes of conduct and ethics. Accounting professionals are subject to specific obligations to detect and report to the public authorities any financial or accounting misappropriation; failure to comply with those obligations is penalized as a crime. Professionals are also subject to supervision and controls (in particular, licensing) exercised by government authorities.

### 1.4 Overview of commercial law and mechanisms applicable to legal persons and arrangements

97. Law 2000-93 on commercial companies (LSC) defines commercial companies as follows: on the one hand, partnerships, limited partnerships, and jointly owned companies, and on the other, limited liability companies (SARL) and joint stock companies, which may be business corporations (SA), whether issue stock to the general public, or partnerships limited by shares. Strictly speaking, only the members of this latter group are legal entities.

98. Article 314 of the LSC stipulates that securities issued by corporations, regardless of their category, must be registered in the name of the bearer. They must be deposited in accounts held by the issuing legal persons or by a licensed intermediary. Until 2000, corporations had been able to issue bearer shares. After the adoption of the law on paperless securities in March 2000, all securities were required to be dematerialized for a transitional period of two years. When the holders of bearer securities did not come forward by the end of the two-year period, such securities were liquidated and the proceeds deposited in the Deposit and Consignment Office.

99. Law 95-44 on the Trade Register (LRC) states that each court of first instance must keep a trade register in which all corporations with headquarters in Tunisia are to be registered. Article 6 states that the National Institute of Standardization and Industrial Property must keep a master trade register containing all the information recorded in each local register. The mission was informed—but could not verify—that the data in the register are checked and that efforts are made to update it. Aware that these updating efforts are still incomplete, the Ministry of Justice and Human Rights appointed a commission to analyze the current situation and propose legal, technical, and organizational solutions to improve the effectiveness of this instrument.

100. In certain circumstances, investment – be it foreign or domestic - in Tunisia is subject at the primary stage to the control of various government agencies and committees. Investment by a foreigner is subject to prior approval when it involves a sector not covered by the investment code—the list of which, currently being shortened, is still long, however—or when it involves activities in the service sector which are partially directed towards exports, if the investment exceeds 50 percent of the capital base of the company or if it exceeds 50 % in the secondary market of the capital of companies not labeled as SME.

## 1.5 Overview of the strategy to prevent money laundering and terrorist financing

a. AML/CFT strategies and priorities

101. The Tunisian authorities clearly reaffirmed to the mission their total determination to combat terrorist financing and money laundering actively, both at the domestic level and in the context of international efforts against these offenses.

102. Measures to combat terrorism and terrorist financing thus clearly represent a political priority, relayed through an operational approach to these issues. The authorities place their action in a rationale of mobilizing all the available instruments, with coordination among all involved (from the intelligence community to all economic agents subject to the AML/CFT Law), based on the broad definition of terrorist activities in the Law of December 2003.

103. Regarding anti-money laundering measures, the Tunisian authorities have not yet defined an explicit strategy and quantitative or qualitative objectives. The mission feels that this results from their assessment that the risk of money laundering is low—the mission considers that this approach does not yet make the fight against money laundering one of the main priorities with respect to overall policies on crime from an operational standpoint. The judicial authorities nevertheless informed the mission that they were increasingly taking account of financial issues in criminal cases, whenever this proved applicable, and that they had yet to acquire more in-depth expertise in this regard—a prerequisite, in the mission's opinion, to a more proactive approach to the combating of money laundering.

b. AML/CFT institutional framework

104. The AML/CFT framework is being put in place gradually. It is based largely on existing institutions, including the financial sector supervision authorities, the self-regulation authorities of nonfinancial businesses and professions, the investigation and court proceedings units, and the customs directorate. Of the latter, only the Directorate of Judicial Police at the Ministry of the Interior currently has a dedicated economic and financial unit. The Tunis Public Prosecutor's Department is currently contemplating the creation of a special unit. In this context, combating money laundering and the financing of terrorism has been added to their existing responsibilities—although the resources (particularly human resources) have not yet been systematically reinforced.

105. The AML/CFT Law also created the Tunisian Financial Analysis Commission (CTAF), which, in addition to collecting, analyzing, and disseminating STRs, has broad responsibilities in the areas of interministerial coordination, definition of general AML objectives, and assessment of the results achieved.

c. Risk based approach

106. The AML/CFT legislative and regulatory arrangements in place at this time are not risk-based. The lack of formal risk analysis, both now and prior to the passage of the Law of December 2003, largely explains the adoption of a more traditional approach.

d. Progress made since the last assessment or mutual evaluation

107. Tunisia has not yet been the subject of an assessment by an international institution or a mutual evaluation. However, as a member of the MENAFATF, created in November 2004, Tunisia is expected to participate in the MENAFATF mutual evaluation program. In this context, there is a procedure for coordination between MENAFATF and the international financial institutions. This assessment will subsequently be used as a basis for the first cycle in the MENAFATF mutual evaluation process of Tunisia.

## 2 Legal System and Related Institutional Measures

Laws and regulations

### 2.1 Criminalization of money laundering (R. 1, 2, and 32)

#### 2.1.1 *Description and analysis*

108. Law 2003-75 of December 10, 2003 on supporting international efforts to combat money laundering and the financing of terrorism (the AML/CFT Law) stipulates in its Article 62 that money laundering is "any intentional act aimed, by any means, at providing a false justification of movable or real property of illicit origin or of the direct or indirect proceeds of a misdemeanor or crime. Money laundering is also deemed to be any intentional act aimed at investing, depositing, concealing, managing, integrating, or holding the direct or indirect proceeds of a misdemeanor or crime, or assisting in such operations. The provisions […] shall be applicable even if the offense from which the laundered funds result was not committed on Tunisian territory."

109. All serious offenses such as mentioned in the Glossary in "The Forty Recommendations" are defined in the Criminal Code (*Code Pénal*—CP) and in several other sectoral laws, all of which were provided to the mission, which was thus able to verify the conformity of the applicable Tunisian provisions.

110. Article 3 of Law 2003-75 specifies that the provisions of the CP shall apply to the offenses governed by said law. Thus, according to Article 33 of the CP, any accomplices in an offense (those who aided or abetted the perpetrator) shall be punished with the same penalty as that imposed on the perpetrator of the offense. Attempts to commit an offense are punishable under Article 59 of the CP.

111. Article 66(2) of the AML/CFT Law states that legal persons can be held liable "if it is established that the money laundering operations in question were carried out to their benefit, if they received income from said operations, or if their purpose was to engage in money laundering operations."

112. According to Article 63 of the AML/CFT Law, any perpetrator of money laundering shall be "punished with one year to six years of imprisonment plus a fine of D 5,000-50,000. The fine may be increased to an amount equal to one half of the value of the laundered assets." For legal persons, Article 66 provides for "a fine equal to five times the value of the fine established for natural persons. The fine may be increased to an amount equal to the value of the laundered assets." That "is also without prejudice to any extension of the disciplinary measures prescribed for said legal persons under the existing applicable legislation, in particular the prohibition from engaging in their business for a given period or the dissolution of said business." Penalties are more severe, ranging from five years to 10 years of imprisonment plus a fine of D 10,000-100,000 when the offense was committed under certain circumstances. Penalties may also be more severe in cases of money laundering related to terrorist activities, as defined in Article 20 of the AML/CFT Law.

113. The AML/CFT Law entered into force in December 2003 and the Tunis Public Prosecutor's Department indicated that it had already used it several times to prosecute money laundering offenses[12] associated with principal offenses of drug trafficking, usury, obtaining a signature by duress, and other offenses. The courts have not yet handed down final judgments in these cases.

[12] The authorities stated that the law had been enforced in cases of seizure and freezing of funds related to terrorism.

Article 30 of Law 92-52 of May 18, 1992 had already criminalized the laundering of drug trafficking proceeds. This article was never invoked and was repealed by the AML/CFT Law.

The offense of money laundering

114. The definition of money laundering in the AML/CFT Law matches that given in the Vienna Convention and the Palermo Convention, in that it describes principal and predicate offenses as "crimes and misdemeanors." Tunisia has thus adopted a broad-based approach with respect to predicate offenses. The offense of money laundering as described in the AML/CFT Law applies to all types of property, *movable and real, and to the proceeds, whether direct or indirect,* of an offense. It is also applicable to a predicate offense even if that offense was committed in a foreign country.[13] Offenses related to money laundering, such as complicity and attempted money laundering, are punishable under Tunisian law.

115. The offense of money laundering in the AML/CFT Law applies to natural persons as well as to legal persons. However, Article 66 provides for legal persons to be held liable in cases where it is established that money laundering operations were carried out for their profit, that they benefited from the proceeds of the operations in question, or that their purpose was money laundering. In that case, the threshold for engaging the criminal liability of legal persons seems too stringent. The lack of precedents to the AML/CFT law makes it impossible at this stage to determine how the legal authorities will apply the liability threshold defined in this way.

116. The AML/CFT Law does not require that a person be convicted for a predicate offense to prove that an asset is the proceeds of a crime. The authorities confirmed the autonomous nature of the offense of money laundering, and that the usual requirements of the Criminal Code and the Code of Criminal Procedure on the furnishing of proof will apply.

117. Although Article 62 of the law of 2003 defining the elements constituting the offense of money laundering does not specify that laundering cannot include the situation of self-laundering, the authorities indicated that this situation cannot, in their opinion, serve as the basis for a criminal prosecution on money laundering charges. They said that in such cases, the perpetrator of the principal offense—otherwise the launderer—would then be prosecuted only for that principal offense and that the proceeds of the offense would then be confiscated in the context of that proceeding and liquidated for the benefit of the Treasury. Such a confiscation requires a conviction for the predicate offense. The authorities did not say what basic principle of Tunisian law makes it impossible to prosecute the perpetrator—otherwise the launderer—for money laundering, and particularly whether it would result from application of the principle of *non bis in idem*.

118. On this point, and in view of the similarity of the general principles of Tunisian law to those of French law, it should be noted that the French *Cour de Cassation* stated in a leading case that it is possible in French law to prosecute the perpetrator of the principal offense on money laundering charges when the latter also launders the proceeds of its offense. Absent a more substantiated argument on the part of the Tunisian authorities, there is no general principle of Tunisian law that seems to justify excluding the possibility of prosecuting the perpetrator of the principal offense for money laundering.

119. Tunisian criminal law, like any system of civil law, is based on freedom of proof and the existence of a minimum of accumulated charges and clues. Therefore, the intentional aspect of the offense of money laundering can be inferred from objective factual circumstances.

[13] The Tunisian authorities indicated that an offense committed abroad could constitute a predicate offense even if the act in question was not deemed an offense in the foreign country where it was committed. There is at present no specific case to support that analysis.

120. The penalties described in the AML/CFT Law are dissuasive by definition. However, at this stage, the dissuasive effect is greatly diminished by the lack of effective imposition of these penalties. Compared with the penalties provided for other property offenses, these penalties are proportionate. Moreover, they are coupled with the confiscation (cf. section 2.3) of assets or income from laundering, which increases their dissuasive character.

121. There are no detailed statistics available on investigations, prosecution and convictions.

### *2.1.2 Recommendations and Comments*

122. The criminalization of money laundering is appropriate, but the circumstances in which legal persons incur criminal liability constitute an excessively high threshold, which may make it impossible to implement in practice.

123. The Tunisian authorities should:

- Introduce the possibility of prosecuting the perpetrator of the principal offense on money laundering charges when the latter also launders the proceeds of its offense
- Lower the threshold whereby legal persons incur criminal liability
- Put in place a system for collecting statistics on principal offenses and money laundering.

### *2.1.3 Compliance with Recommendations 1, 2, and 32*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 1 | LC | Impossibility of prosecuting the perpetrator of the principal offense on money laundering charges when the latter also launders the proceeds of its offense, although there is no general principle of Tunisian law indicating such an impossibility |
| R. 2 | LC | Threshold making legal persons liable for prosecution set too high |
| R. 32 | NC | General lack of statistical data on both principal offenses and AML/CFT. |

## 2.2 Criminalization of terrorist financing (SR. II and R. 32)

### *2.2.1 Description and analysis*

124. Article 19 of the AML/CFT Law defines the perpetrator of terrorist financing as anyone who "provides or collects assets, by any means whatsoever, directly or indirectly, knowing them to be intended for the financing of persons, organizations, or activities related to terrorist offenses, regardless of the legitimate or illicit origin of the assets provided or collected."

125. This offense is punishable with five years to 12 years of imprisonment plus a fine of D 5,000-50,000. The amount of the fine can be increased to five times the value of the assets to which the offense relates.

126. Article 21 provides for legal persons to be held liable and subject to fines equal to five times the amount of the fine established for the initial offense.

127. As stipulated above (paragraph 108), Article 3 of the AML/CFT Law provides for enforcement of the ordinary law provisions of the Criminal Code.

Terrorist financing

128. The criminalization of terrorist financing in Tunisian law is consistent with Article 2 of the Convention on the suppression of terrorist financing. The definition stipulates the two elements

of "providing or collecting" assets for use in an act by a terrorist or a terrorist group. The use of the concept of "assets" constitutes a broad definition that encompasses what is defined as "funds" in the Convention.

129. The use of the term "intended" clarifies that for the implementation of Article 19 the relevant issue is the objective of the use of the funds in question, not their actual use. This sense is confirmed by Article 24 of the AML/CFT Law, which introduces an aggravation of complicity even in a case where no terrorist offense was committed.

130. As the provisions of the Criminal Code are applicable to offenses governed by the AML/CFT Law, related crimes, attempts, and complicity apply to terrorist financing. Complicity defined in this way satisfies the requirements of Article 2(5) of the Convention.

131. Terrorist financing is a crime, defined by law 2003-75, and can therefore be a money laundering predicate offense.

132. The AML/CFT Law does not impose any restrictions regarding territoriality and does not require that the perpetrator of terrorist financing must be from the same country as the terrorists or the terrorist organization, or that the acts take place in that country.

133. Tunisian law states that the intentional element may be inferred from objective factual circumstances. Tunisian criminal law is based on freedom of proof and a minimum of accumulated charges and clues.

134. Penalties as defined are dissuasive and proportionate. The fact that the new offense has not been used prevents assessing its effectiveness.

135. No statistical data are available.

#### *2.2.2 Recommendations and comments*

136. The authorities should establish statistical monitoring mechanisms.

#### *2.2.3 Compliance with Special Recommendation II and Recommendation 32*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| SR. II | C | |
| R. 32 | NC | Lack of statistical data |

### 2.3 Confiscation, freezing, and seizure of the proceeds of crime (R. 3 and 32)

#### *2.3.1 Description and analysis*

Confiscation

137. Concerning money laundering, Article 67 of the AML/CFT Law stipulates that the Court *must* order the confiscation of any assets or income generated directly or indirectly by the offense of money laundering. The article adds that "if the actual seizure has not been possible, a fine having the same effect as liquidation shall be imposed, the value of which may not be less […] than that of the funds to which the offense relates."

138. Concerning terrorism, Article 46 of the AML/CFT Law states that the "Court may also order the confiscation of all or a portion of any movable or real property and financial assets belonging to a convicted person, if there are serious charges regarding the use of said property

and financial assets to meet the financing requirements of persons, organizations, or activities connected with terrorist offenses."

139. In cases of conviction for terrorist financing or money laundering, Article 28 of the Criminal Code—applicable based on Article 3 of the AML/CFT Law (see paragraph 108)—states that the judge *may* order the confiscation of objects that have been used or were intended to be used in the offense and that were generated by said offense, regardless of who is their owner.

140. Article 102 of the AML/CFT Law states that rulings imposing the liquidation or confiscation of assets may in no case contravene the rights of third parties acquired in good faith.

*Seizure and freezing*

141. Article 40 of the AML/CFT Law, which is applicable to terrorist financing, stipulates that "the investigating magistrate may […] order […] the seizure of movable or real property of defendants, as well as their financial assets." Also, Article 94, which is applicable to both terrorist financing and money laundering, states that "the public prosecutor at the Tunis court of appeals may […] request the President of the Tunis court of first instance to order the freezing of assets of natural or legal persons […] even if the offenses are not committed on the territory of the Republic."

142. Article 99 of the Code of Criminal Procedures (CPC) states that investigating magistrates may order the seizure of any object, correspondence, or other mail if they deem this useful for demonstration of the truth. That includes any property that can be confiscated following sentencing.

143. The Tunisian authorities confirmed that court-ordered seizure measures (including those of freezing funds) are actually applied and are current practice. They also stated that confiscation is regularly ordered by the courts. Confiscated money is deposited at the Treasury.

144. The applicable legal provisions require no prior notification for an initial request for freezing or seizure, and the information provided by the authorities indicates that such is indeed the practice.

145. The Tunisian Law clearly states in its Article 67 that it is mandatory to confiscate any proceeds of the offense of money laundering, and that where such proceeds are inaccessible, it is possible to confiscate funds of an equivalent value. In imposing the special confiscation mentioned in the Criminal Code, the judge may also confiscate instruments used to commit the offense of money laundering and those intended to be used for committing the offense. The rights of third parties are protected, on the express condition they have acted in good faith.

146. Article 5 of the Criminal Code provides for confiscation as an accessory penalty. Article 28 clarifies that special confiscation applies to items used or intended for use in committing the offense and to the proceeds, regardless of who owns them. Confiscation may be ordered by the judge in the event of conviction. If the items ordered confiscated have not been seized or are not handed over, the judgment fixes the value of such items for purposes of civil imprisonment, which is carried out at the rate of one day of imprisonment for every three dinars or fraction of three dinars (Article 343 of the CPP), for a term not to exceed two years. Confiscation of equivalent value for predicate offenses is therefore not explicitly provided for, but in practice the threat of civil imprisonment leads to payment of the amount of the financial penalty set by the judge. Regarding the definition of the items covered by Article 28, the authorities have indicated that the definition is broad and includes the indirect proceeds of an offense.

147. As indicated in section 2.5 regarding the CTAF and section 2.6 on the investigation and court proceedings units, the CTAF and the units in question have sufficient authority to detect and trace the origin of assets that are or may be subject to confiscation.

148. The seizure and confiscation provisions strictly related to the AML/CFT law have not yet been used and their effectiveness cannot be assessed, but the ordinary law provisions on seizure and confiscation seem effective, even though the authorities have not provided sufficiently detailed statistics for a full objective assessment.

149. The legal provisions in force prior to the AML/CFT law themselves constitute a solid basis for seizure, freezing, and confiscation: the requirement of confiscation as an accessory penalty in money laundering cases is noteworthy. The regular use that the authorities apparently make of the ordinary law measure augurs well for future prosecutions and convictions for money laundering and terrorist financing.

150. The statistical data on confiscation provided by the authorities are excessively aggregated, which is a major drawback.

| Confiscation cases handled | | |
|---|---|---|
| Courts | 03-04 | 04-05 |
| Court of appeals | 5,429 | 5,622 |
| Court of first instance | 11,397 | 11,886 |
| Local court | 4,504 | 3,798 |
| Total | 21,330 | 21,306 |

### *2.3.2 Recommendations and comments*

151 The authorities should quickly rectify the shortcomings in their statistical tracking system, including, when necessary, for purposes of better demonstrating its performance.

### *2.3.3 Compliance with Recommendations 3 and 32*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 3 | C | |
| R. 32 | NC | Lack of sufficiently detailed statistical data |

## 2.4 Freezing of funds used to finance terrorism (SR. III and R. 32)

### *2.4.1 Description and analysis*

152. Tunisia has informally and systematically forwarded the lists provided by the United Nations Security Council under Resolutions 1267 *et seq.* to Tunisian banks, with the request that they check whether their customers included any of the listed persons or entities, and that they freeze the assets of such persons or entities as applicable. To date, none of these names has turned up among the customers of Tunisian financial institutions.

153. Nevertheless, Tunisia lacks legal arrangements that would allow it to implement such a freeze in accordance with the obligations of Resolution 1267. Indeed, the authorities stated, in their responses to the United Nations Anti-Terrorism Committee, that in the event of a listed person or entity turning up in an institution, Tunisia would act to freeze transactions relating to which suspicions have been reported, in implementation of Resolution 1267. However:

- Freezing transactions by financial institutions does not amount to a freeze of all the assets covered by the Resolution. In practice, a similar result could be obtained, indirectly, through the freezing of all transactions related to the assets in question, but this would not fully

encompass the definition of assets given in the Resolution; and

- A freeze decided by the CTAF is an administrative act. However, it can be extended beyond a four-day period only by a judicial authority, in the context of a legal inquiry—which assumes a judicial level of proof. Resolution 1267 provides for immediate freezing, merely on the basis of the presence of a person or entity on a list approved by the Penalties Committee.

154. Regarding Resolution 1373, Tunisia's legal bases are the same. Moreover, it has not established a mechanism for analyzing the freezing measures adopted by other countries under Resolution 1373 and on which Tunisia may be requested to take action and, where applicable, adopt similar freezing measures.

155. Nevertheless, although the authorities did not mention this option, Tunisia could, in order to implement Resolution 1373, rely on Articles 94 *et seq*. of the Law of December 2003. Indeed, Article 94 states that "the public prosecutor of the Tunis court of appeals can, notwithstanding any report of a suspicious or unusual operation or transaction, petition the president of the court of first instance of Tunis to order the freezing of assets belonging to individuals or legal entities suspected of having ties to persons, organizations, or activities related to the offenses covered by this law, even if they are not committed on the territory of the Republic." Articles 95 and 96 specify the procedures for implementing these measures, including the opening of a judicial investigation of the person in question; the last paragraph of Article 96 states that "assets subject to the above-cited order shall remain frozen until the judicial authority handling the case decides otherwise."

156. This approach has numerous advantages in terms of effectiveness, especially since the duration of the freeze is indefinite. It presupposes, however, that the elements linking the person to persons, organizations, or activities related to terrorist activities are of a legal nature, which rules out its use in the context of Resolution 1267 *et seq.*

157. Tunisia's legal provisions are based on a concept of assets which is more restrictive than "funds or other assets owned or controlled, wholly or jointly, directly or indirectly."

158. Tunisia has no formal, systematic, and effective mechanisms for communicating freeze orders to financial institutions and other persons or entities likely to hold such funds or other assets, and to date has disseminated the lists (see above) only to the banking sector. It has no procedure for examining requests for removal from a list or the lifting of a freeze, no provision enabling a person subject to such a freeze to contest the decision, and no arrangement for communicating orders for the release of erroneously frozen funds. It has adopted no procedures to authorize access to funds to cover certain basic expenses and certain types of commissions, fees, and payments for services or extraordinary expenses. There are no provisions related to such freezes that protect the rights of third parties acting in good faith. It has no provisions to ensure effective monitoring and the imposition of penalties in connection with the freezing of assets.

159. The provisions on the seizure, freezing, and confiscation of assets apply to funds or assets linked to terrorism in a general manner (see section 2.3 of this report).

### *2.4.2 Recommendations and comments*

160. Tunisia should adopt a mechanism for the freezing of assets in accordance with the requirements of Resolutions 1373 and 1267. In particular, it should:

- Establish a complete legal mechanism and implementing procedures in conformity with Resolution 1267 and subsequent resolutions, enabling it to freeze immediately the funds and

other assets of persons targeted by Penalties Committee measures against Al-Qaeda and the Taliban;

- Clarify the legal basis for the implementation of Resolution 1373, specifically by indicating whether it is based on Articles 94 *et seq.* of the law of December 23;
- Expand the definition of assets subject to freezing to include "funds or other assets owned or controlled, wholly or jointly, directly or indirectly;"
- Put in place mechanisms and procedures for disseminating lists and removals from lists; for contesting freeze orders; for releasing funds frozen erroneously; for access to funds to cover certain basic expenses and certain types of commissions, fees, and payments for services or extraordinary expenses;
- Establish a procedure for analyzing the freezing measures adopted by other countries and, where applicable, their "appropriation" by Tunisia.

### *2.4.3 Compliance with Special Recommendation III and Recommendation 32*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| SR. III | NC | No legal basis for power to freeze the assets of persons designated by the United Nations under Resolution 1267 *et seq.*<br>Definition of funds subject to freezing too narrow<br>Lack of clear, rapid, formal, and effective procedures for the implementation of freeze decisions<br>Lack of clarity concerning the legal basis for the implementation of Resolution 1373 |
| R. 32 | NC | Lack of statistical tracking |

Authorities

## 2.5 The financial intelligence unit and its functions (R. 26, 30, and 32)

### *2.5.1 Description and analysis*

161. The Tunisian Financial Analysis Commission (CTAF) was created by Law 2003-75 of December 10, 2003. Decree 2004-1865 of August 11, 2004, which establishes the structure and operating methods of the CTAF, implements the legislative arrangements.

162. The unit is located at the Central Bank of Tunisia (BCT), where it has its head office. The CTAF consists of a steering committee, an operational unit, and the general secretariat (Article 79 of the law and Article 6 of the decree). The BCT provides its secretariat. The composition of the CTAF's steering committee is established by law (Article 79) and includes the BCT Governor (Chair), a senior magistrate, a representative of the Ministry of the Interior and Local Development, a representative of the Ministry of Finance, a representative of the Directorate General of Customs, a representative of the Financial Market Board (CMF), and an expert specialized in measures to combat financial offenses. These seven persons and the Secretary-General make up the steering committee. The functions of Secretary-General are assumed by the Head of the BCT's Legal Department (Article 14 of the Decree of August 11, 2004).

163. The steering committee of the CTAF, chaired by the Governor of the Central Bank, is in charge of defining the policy of the FIU (art. 7). It is responsible for the following tasks: formulating

general directives to guide the subject professions in detecting suspicious operations; collecting and processing reports on suspicious and unusual operations and transactions, and announcing the action taken on them; collaborating in studies on AML/CFT strategies; taking part in research, training, and studies; and representing the various units and agencies involved in AML/CFT activities at the national or international level, and facilitating coordination among them. The operational unit puts forward proposals to the CTAF, following the analysis of STRs, on their dissemination. In its operational setting, the CTAF, as defined in art. 79 of the Law, meets on a as needed basis (art. 3 of the Decree), with a quorum of at least 4 members. The decisions are approved by a majority of the members actually attending the meeting, with the President having the final say in case of split vote (art. 4).

164. The General Secretary is in charge of the supervision of the operational unit, of receiving the STRs and of notifying the decisions taken on them, of the administrative, financial and technical management of the unit and of the preparation of the annual report (art. 13 of the Decree).

165. On April 20, 2006 the steering committee approved a directive on the reporting of suspicions and a decision containing general directives for credit institutions, offshore banks, and the National Post Office on the detection and reporting of suspicious or unusual operations. The first directive introduces two forms for reporting suspicions: one for natural persons and the other for legal persons. Essential details expected from the person reporting are requested, in particular the reasons for the suspicion. The law calls for the creation of a database specifically for the CTAF and requires that data be stored for ten years (Article 83).

166. The CTAF may, in carrying out its tasks, call on administrative law enforcement authorities and the bank and non-bank financial institutions, as well as any professional that are obliged to report. These authorities and institutions are required to provide the CTAF with any information it may need, without the option of refusing to do so on grounds of professional secrecy.

167. The CTAF may also consult with its foreign counterparts, once a memorandum has been signed with them. In order for the CTAF to conclude such memoranda, its counterparts must be subject to professional secrecy and must use any information received solely for AML/CFT purposes. The CTAF is currently negotiating with the French and Argentine financial intelligence units with a view to signing memoranda with them (see Other forms of international cooperation, section 6.5). The CTAF has taken the initial steps to join the Egmont Group.

168. The members of the unit, their colleagues, and all other employees are required to maintain professional secrecy, even when their functions come to an end (Article 84 of the law).

169. All of the Commission's members mentioned in Article 79 of the Law of 2003, with the exception of the expert, have been appointed (cf. paragraph 156). The Secretary-General has assumed his functions and is currently overseeing the actual setting up of the Commission. The operational unit comprises eight persons regarding whom individual written decisions were issued by their supervisors for their secondment to the CTAF. Six of them are central bank staff members, including a computer programmer, an auditor, a specialist in transfers and foreign trade, a foreign exchange specialist, a legal expert specializing in electronic payments, and a person seconded from the Electronic Cashing Company of Tunisia. These employees have some 20 years of seniority and were chosen for the complementary nature of their experiences. Two persons provided by Customs and the Ministry of the Interior work on operational relations with their original administrations. They are undergoing training and have already been on short study tours abroad, in particular at the TRACFIN unit in France. The wages of these employees are still paid by their original administrations, without reference to their position in the CTAF structure.

170. The general secretariat and the unit are currently working on the formulation of various draft directives and the CTAF by-laws. According to the authorities, these by-laws, which will establish, among other things, the decision-making procedures, should once again spell out the obligations of confidentiality and the rules on use of information as well as the separation of professional activities.

171. The unit does not currently have secure premises of its own. The central bank has arranged for future office space for the CTAF in its new building, which is under construction and is expected to be completed by end-2006. This space will meet the CTAF's needs for security and physical separation from the other units of the BCT. At present, however, the unit is operating in temporary premises at the central bank. Members of the Commission who are not from the central bank remain in their original administrations with their original responsibilities. Meetings of CTAF members have been held as needs arose, in particular upon the receipt and processing of STRs; this mode of operation is not as yet guided by clear and strict procedures.

172. A budget was submitted to and approved by the Governor of the central bank, covering in particular the physical needs of the unit related to its gradual set-up. The unit has a specific budget line in the central bank budget, which is autonomous and separate from all government administrations.

173. The unit has received only five STRs since the entry into force of the law. Analysis of the STRs did not result in their being forwarded to the public prosecutor.

*Analysis*

174. Owing to the lack of properly organized premises and the consequences of this situation, particularly in terms of bringing together the staff appointed to the unit, the CTAF is still operating on a rudimentary basis. The attachment to the central bank does not warrant any reservations and seems likely to give the CTAF technical legitimacy as well as facilitate the building of a close relationship of trust with the subject entities. The membership as established by the law and the decree gives the CTAF a multidisciplinary vocation that can only encourage synergies among the various administrations and institutions involved in combating money laundering and terrorist financing. One problem, however, lies in the absence of specific rules and regulations for members, whether as executives, staff, or other types of personnel, notwithstanding the reminder about the obligation to safeguard professional secrecy and use the information they process solely for the purposes of the CTAF mission. The nature of the links that members and staff retain with their original administration is somewhat unclear and thus raises doubts about the operational independence of the CTAF. Indeed, the activities of its members and staff with respect to the functioning of the CTAF are not formally separate from any other professional duties they may have.

175. On the other hand, the CTAF has the powers usually assigned to structures of this type, beyond its operational functions of receiving and processing STRs, facilitated by a multidisciplinary, interministerial composition. In particular, it has a right of communication (Article 82), being authorized to share information with foreign counterparts without excessive constraints. It has a coordinating role in the AML/CFT arrangements, with clear missions to define general strategies, conduct analysis, compile overviews of money laundering and terrorist financing, and review the effectiveness of the overall arrangements. It can also formulate instructions and thus has a decisive role in adapting the legal, regulatory, or technical framework to changes in money laundering or terrorist financing schemes and risks.

176. According to article 11 of the decree, the decision on the follow-up to STRs belongs to the CTAF. The composition of the CTAF, with a preeminent role given to the Governor of the Central Bank (article 79 of the Law and article 4 of the Decree), raises the issue of the independence of the decision so adopted, by reference to the other functions of the Governor, and this notwithstanding the collegiality of the CTAF. Two solutions could be proposed, either

suppressing article 4 of the Decree (i.e. the notion that the president of the CTAF would have the final say in case of "split vote" and have the quorum set at an odd number so as to avoid such "split votes", or grant the General Secretary with the final decision, after the CTAF has given its advice. The mission believes it beneficial to maintain the collegiality of the decision-making process, including to foster the independence of the CTAF towards the Central Bank.

### *2.5.2 Recommendations and comments*

177. The Tunisian authorities should adopt the following measures:

- Clarify the decision-making process regarding the follow-up to the operational unit's proposal on the dissemination of STRs following their analysis. This clarification should to provide a legal framework for the independence of the CTAF towards the Central Bank – mainly by ensuring the collegiality of its decisions.
- Provide the CTAF with appropriate, clearly secured premises as well as the materials and equipment needed for autonomous operation
- Strengthen the policies and procedures for staff and members to ensure the objective of independence and confidentiality vis-à-vis their original administration
- For reasons of efficiency, and especially with a view to being reactive and preserving confidentiality on a day-to-day basis, all members of the operating unit, particularly those seconded by Customs and the Ministry of the Interior, should work in the unit's own offices.
- Adopt by-laws containing job descriptions, rules governing the separation of employees' activities, rules of confidentiality—not only in terms of principles but also in specific operational terms.

### *2.5.3 Compliance with Recommendations 26, 30, and 32*

| | Compliance rating | Summary of grounds (specific to section 2.5) for the overall compliance rating |
|---|---|---|
| R. 26 | PC | Lack of clarity about the relations between employees from outside the CTAF and their original administrations, leading to excessive ambiguity about the CTAF"s independence and operational autonomy.<br>Lack of security at the current CTAF premises, which places at risk the protection of data held by the unit<br>Unit not operating effectively |
| R. 30 | LC | CTAF employees lack of specific AML/CFT training<br>At present, lack of technical resources and suitable premises for the CTAF |
| R. 32 | NC | Lack of formal statistical data |

## 2.6 Authorities responsible for investigations, criminal prosecution authorities, and other competent authorities—the frameworks for investigations and prosecution of offenses and for confiscation and freezing (R. 27, 28, 30, and 32)

### *2.6.1 Description and analysis*

178. The judicial authority supervises and controls investigations carried out in criminal cases, and imposes penalties as prescribed in the Criminal Code and the laws providing for action against criminal offenses.

179. The judicial structure consists of a *cour de cassation* in Tunis (the Supreme Court), 10 courts of appeal, 26 courts of first instance, and 84 local courts. Each court has criminal jurisdiction. The

local courts rule on offenses for which the maximum penalty is one year of imprisonment. Crimes fall within the jurisdiction of the assize court ("Cour d'assises"), and rulings handed down in matters heard by this court, as in delicts (court of first instance), have had dual jurisdiction since 2000. The courts of first instance hear cases of misdemeanors and related minor offenses.

180. Investigations fall within the purview of the public prosecutor and his substitutes, and, when referred by a prosecutor, investigating magistrates, who are judges not operating under the authority of the public prosecutor. The latter are responsible for investigating the more complex cases and, necessarily, crimes. The public prosecutor, its alternates and investigating magistrates, police or customs officers with the status of judicial police officers, pursuant to Article 10 of the Penal Procedure Code (PPC), are in charge of investigations. Prosecutors as well as investigating magistrates, as responsible for the case, exercise control over the investigations conducted by judicial police officers and have a significant role in supervising their work.

181. There are 1,765 magistrates in Tunisia, including both those operating as prosecutors and as judges, regardless of jurisdiction or assignment (which means that magistrates responsible for the administration of justice within the Ministry of Justice are also included).

182. The breakdown of the number of magistrates acting within the judicial system is as follows:

- *Cour de cassation*: 98 sitting magistrates, 23 operating under the authority of the public prosecutor's department
- Court of appeals: 320 sitting magistrates, 64 operating under the authority of the public prosecutor's department
- Court of first instance: 683 sitting magistrates, of whom 74 are investigating magistrates and 119 magistrates operating under the authority of the public prosecutor's department
- Local courts: 116 sitting magistrates.
- Property court: 191 magistrates.

183. In Tunis the public prosecutor's department is headed by the attorney general (*procureur de la République*), with an assistant attorney general (*procureur adjoint*), a principal substitute, and 17 substitutes. The Tunis court of first instance consists of 16 investigating judges, who are senior magistrates. Two are specialized in the areas of terrorism and three in financial matters. There are no specialized jurisdictions, under Tunisian criminal procedures, for dealing specifically with financial cases. However, the Law of 2003 attributes exclusive jurisdiction to Tunis for cases of terrorism, terrorist financing, and money laundering (Articles 34, 35, and 90 of the Law of 2003), without prejudice to other jurisdictions being able to carry out initial urgent procedural steps.

184. Magistrates receive high quality training, are recruited on the basis of selective competitions, and are given well-organized continuing training at the Institut Supérieur de la Magistrature. Investigating judges are necessarily magistrates with considerable seniority, in the same way as magistrates operating under the authority of the Tunis public prosecutor. The Institute provides training in financial matters in particular and plans shortly to organize practical seminars in money laundering and terrorist financing.

185. There is a national crime database that contains a record of all criminal judgments on a case-by-case basis, including final judgments and jurisdictional decisions. This national database is

managed by the Ministry of the Interior and can be accessed by the judiciary. It is used systematically in judicial proceedings. Its organization is defined in the Penal Procedure Code.

186. Statistics on activities and on decisions handed down, broken down by group of offenses, are maintained in the public prosecutor's departments of the courts. A monthly notice is prepared and sent to the Inspection of Judicial Services of the Ministry of Justice, which centralizes and routinely prepares summaries of the figures.

187. The authorities forwarded statistical data on the activity of the courts, aggregated by major types of offenses for the period 1992 to 2005. The categories selected are: offenses against persons, offenses against property, and offenses against public decency, offenses against public order, economic and financial offenses, health violations, and violations of the highway traffic code— without more detailed statistical data.

188. During the period, the total numbers of economic and financial offense were as follows:

2001/02: 144,404
2002/03: 175,939
2003/04: 160,329
2004/05: 151,065

189. This category covers all economic and financial offenses and makes no distinction between matters involving organized crime and less sophisticated offenses such as simple breach of trust, for example. The authorities explained that in 2003-2004 there were 5,575 cases of fraud and 143 cases of corruption (for 2004-2005 the figures are 4,456 and 111, respectively). The category "offenses against public order" (61,254 in 03-04, 72,010 in 04-05) is still too general to draw any conclusions about the number of possible cases linked to terrorism.

190. There have been no convictions for money laundering, none in application of the Law of 1992 on drug trafficking, and, for all the more reason, none in application of the Law of 2003. To date, no decisions have been handed down in cases of terrorist financing.

191. In addition, there is a Legal and Judicial Studies Center established by a Law of 1993. This public institution, which is an administrative body, falls under the authority of the Ministry of Justice. It has four units, the most recent of which (created in 2005) is responsible for studying criminal trends, with a view to facilitating a better understanding of crime in Tunisia and proposing appropriate solutions. The creation of this latest unit is a major opportunity to deepen the understanding of crime and the risk of money laundering in Tunisia.

192. The investigative authorities, for their part, are dealt with in detail in the Code of Penal Procedure. Public prosecutors are vested with powers to conduct preliminary investigations (Article 26) and investigations of flagrancy (Articles 33-35), their powers being broader in the second case because of the urgent and critical nature of the facts. Investigating judges have the broadest powers to handle the more complex investigations. (Articles 47-111). When these magistrates appoint judicial police officers to carry out all or part of an investigation, such officers, under the supervision of the magistrates, have powers, also mentioned in the Penal procedure Code, to establish the facts, seize property, and conduct questioning The prosecutor in so-called flagrancy investigations, and the investigating judge have full powers to conduct searches, seize evidence and items that may be used to demonstrate the truth, as well as powers to seize the proceeds of the commission of an offense. Most of those powers can be delegated to judicial police officers, still under the supervision of the magistrate in charge. Police custody can be used under judicial control and, as in the case of the questioning of witnesses, strictly as defined in the Code of Penal Procedure.

193. Professional secrecy cannot be invoked against a prosecutor, an investigating judge, or a judicial police officer in charge of a criminal investigation. Wiretapping by judicial order is allowed. The relevant provisions were amended by a law of 2003. Wiretapping is carried out

under the supervision of judges. Under Article 40 of the Penal Procedure Code, at any stage of a case an investigating judge may instantly order, with or without the request of the public prosecutor, the seizure of movable or real property and financial assets of a defendant, and may establish modalities for their administration while the case is being investigated or order their sequestration, where applicable. There is also a seals unit at each court. Sums of money that have been seized are deposited and blocked at the Deposit and Consignment Office. Owing to the legal inaccessibility of assets in the absence of a final decision, they cannot at this stage be transferred to the government.

194. With respect to measures to combat money laundering and terrorist financing, Law 2003-75 provides for specific procedures to be followed, aimed at improving the organization of judicial referrals (Articles 34-37, especially regarding the exclusive competence of the jurisdiction of Tunis) in these matters, and redefining the circumstances in which seizure is possible (Articles 38-40). Thus, the investigating judge is required to confiscate arms, ammunition, explosives, and other materials, as well as documents used to commit the offense and any proceeds of the offense.

195. In Tunisia, the security services are centralized within the Ministry of Interior. The intelligence units and police units responsible for doing the work of the judicial police are attached to the Ministry of the Interior. Officers in charge of judicial investigations have the specific status of judicial police officers (OPJ, see above 187 ). The OPJ status is set out in the Penal Procedure Code (Articles 9-19 of the CPP).

196. There are five general police directorates:

- Directorate general of special services (responsible for personal intelligence gathering);
- Directorate general of technical and support services (technical intelligence gathering);
- Directorate general of public security (ordinary law crimes), comprising a traffic unit, a technical and scientific police unit, a judicial police unit, and a tourism police unit;
- Directorate general of intervention units (maintenance of order);
- Directorate general of support, assistance, and logistics (specifically responsible for training, technical and IT resources, research, organization, and methods).

There is also a General Inspection department.

197. The Directorate of Judicial Police comprises the following five sub directorates:

- Economic and financial investigations;
- Narcotics operations;
- Social protection;
- Criminal affairs;
- Research and monitoring. Each sub directorate has a research and monitoring unit, however.

Specialized units such as the sub directorate of economic affairs have national jurisdiction.

198. Tunisia’s security structure is unique, and is centralized within the Ministry of Interior. Its level of organization is to be noticed, and it has performing analysis and statistical tools.

199. The Ministry of the Interior is constantly engaged in intelligence activities in the field of terrorism and its financing. It closely monitors associations and their financing and is especially vigilant in uncovering misappropriation of funds in that sector (a 1988 law on this subject supplemented the law of 1959 on associations – cf. Section 5.3).

200. In summary, the Ministry of the Interior has a sophisticated organization, specialized judicial police services equipped to fight organized crime, a large staff, and initial and ongoing training programs and structures. Finally, these services have units dedicated to statistics[14] and the analysis of criminality and its treatment (no budgetary information was provided but the security budget is apparently sizable).

201. Customs reports to the Ministry of Finance. There is a customs code containing the applicable texts. The activities of the customs services cover the entire national territory. The total number of customs employees is 5,070, of whom 4,944 work in the customs services. There are 162 senior officers, 717 junior officers, 3,876 assistant officers, and 189 auxiliary staff. Customs agents have the status of judicial police officers only with regard to the establishment of customs violations (Article 10 of the Penal Procedure Code). In that respect, they are subject to the supervision of public prosecutors.

202. Customs has its own procedural powers, spelt out in the Customs Code, and in particular the power to engage in transactions. To establish whether an offense may be taking place, to perform confiscations, and to decide what is to be done with confiscated property, customs agents are authorized to inspect "merchandise, means of transport, and individuals," to carry out inspections similar to searches, to have any documents useful for their work made available for inspection, to examine shipments by post, and to check the identity of individuals (Articles 49-56 of the Customs Code) at points of entry and throughout the territory.

203. The Directorate of Customs Investigations, with the authority to conduct complex investigations possibly involving organized crime, comprises two sub directorates:

- The investigations sub directorate is subdivided into a customs operations unit (inspection of industrial and agricultural products, economic regimes, and tax benefits), a unit handling violations of the foreign exchange law (responsible for violations involving precious metals, AML/CFT offenses, and control of customs operations), and a special affairs and drug trafficking unit (in charge of combating contraband, smuggling of products under government control, and drug trafficking).

- The sub directorate of intelligence, documentation, and court proceedings is subdivided into an intelligence and documentation unit; an international administrative assistance unit organized to monitor relations with the Arab countries, the European Union, and other countries; and a court proceedings unit responsible for monitoring proceedings, especially in the judicial phase, as well as statistics and records.

204. This organizational structure reflects the interest that the authorities now have in combating money laundering and the financing of terrorism, in as much as a unit is dedicated to those issues, as well as their interest in international cooperation and the need to have analysis and statistical units.

205. The data that would have enabled the mission to analyze the customs violations identified (number and type) and make an overall assessment of the activities were not provided. The summary statement of foreign exchange seizures that was provided for 2005 indicates a total of D 1,117 million (US$893,000) in 99 seizures.

206. Violations of the customs laws and regulations can be established by customs agents, agents of other administrations, and by all representatives of authorities responsible for controlling the country's land and sea borders. Agents establishing such violations are authorized to seize any items eligible for confiscation, in the knowledge that an extensive list of such items is included in the definition of each customs violation. They are also authorized to retain any documents

[14] However, no sufficiently detailed statistical data have been provided to the mission.

related to the items seized and to preventively retain items to serve as security for any penalties incurred. Customs' powers defined both in the customs code and in the Penal Procedure Code, are sufficiently broad to encompass the confiscation of proceeds and items resulting from the violation as well as all goods used to commit the violations. Moreover, the possibility of guaranteeing the payment of large financial penalties with seized assets is an effective protective measure that is used regularly by customs services. Confiscation is also the first penalty among customs' coercive and punitive resources.

### *2.6.2 Recommendations and comments*

207. Tunisia should:

- Include in the Penal Procedure Code the possibility of controlled deliveries and even undercover operations
- Provide more specialized training for staff responsible for complex criminal matters, especially financial. The training of judges, police officers, and customs agents (in their sphere of authority) in complex investigations to gain an understanding of the workings of organized, financial, and terrorist crime should be organized in a more coordinated manner among the various participants.
- Promote the work of analyzing crime and the effectiveness of response units. The future work of the Legal and Judicial Research Center should be conducted in such a way as to help the enforcement, judicial, and administrative authorities fine-tune criminal policies. The work of analyzing crime and the effectiveness of responses should be shared with the CTAF in order to optimize its efficiency and develop concerted strategies with the CTAF, customs, the police, and, of course, the justice system.

### *2.6.3 Compliance with Recommendations 27, 28, 30, and 32*

| | Compliance rating | Summary of grounds (specific to section 2.6) for the overall compliance rating |
|---|---|---|
| R. 27 | C | |
| R. 28 | C | |
| R. 30 | LC | Lack of training for judges and investigative staff in combating money laundering |
| R. 32 | NC | No sufficiently detailed statistical data were provided to the mission, including by the Ministry of Justice and Human Rights, and therefore the relevance of the statistical tracking cited could not be evaluated. |

## 2.7 Cash couriers

### *2.7.1 Description and analysis*

208. The control of foreign exchange flows is viewed as a priority by the Tunisian authorities. Article 3 of the Decree of the Minister of Finance of September 10, 2004 (referring to Articles 70, 74, and 76 of Law 2003-75 of December 10, 2003) states that all imports or exports of foreign exchange in amounts equal to or greater than D 25,000 must be declared to customs upon entry, upon exit, and in the course of transit operations. Moreover, upon arriving in Tunisia, nonresidents must declare the foreign exchange they are importing into the country, regardless of the amount (Circular 94-13 of September 7, 1994). The summary statement of foreign exchange seized in 2005 indicates 99 seizures totaling D 1,117,000,000

(US$893,000,000). Upon leaving Tunisia, nonresidents cannot take out a larger amount, with a threshold of D 1,000 (Article 9 of the circular; this threshold was recently raised to D 3,000). The controls are especially effective at airports. The currency control legislation defines payment instruments in a large way, which includes all negotiable instruments. For this reason, the controls described here are applicable to these instruments. The powers available for the customs services – that derive both from the currency controls and customs legislations, allow for the control, seizure and sanctions for goods such as value goods, precious metals and precious stones – as those must be specifically declared and are subject to an enhanced regulation – notably on the conditions for import and export.

209. Customs is more particularly responsible for controlling the borders. Nevertheless, the police and security units also become involved, especially as part of targeted operations or because they have information on offenses that are being committed or on criminal networks. Such involvement may also take the form of joint operations with customs services and, at the very least, cooperation in the area of intelligence. These units are authorized, in implementation of the customs code and the code of criminal procedure, respectively, to seize illegally imported sums and, with all the more reason, if such sums are the result of criminal activities such as money laundering or the financing of terrorism, to confiscate them. Interagency coordination in this area is strengthened. Consequently, in addition to its internal network for real-time coordination among all its operational units, Customs coordinates each day with the Ministry of the Interior and the Central Bank on the subject of foreign exchange flows and sends foreign exchange declarations to those partners on a daily basis.

210. A foreign exchange database is in place at the port of La Goulette. A monthly interagency report is also prepared (Customs, Police, and National Guard).

211. Tunisia's customs personnel, acting in cooperation with the police, provide effective control in airport areas. Scanning is systematic (passengers, freight). In view of the extent of the land borders and the size of migratory transit flows, as well as the considerable activity at the port of Tunis in the case of maritime traffic (in season, six or seven boats arrive each day carrying approximately 1,300 people and 700 cars), systematic and comprehensive control remains difficult but is considered a priority. The customs authorities have thus assured that all containers are scanned upon arrival. Although these procedures are aimed essentially at detecting fraud other than "funds transfers," they nevertheless illustrate the efforts of the Tunisian authorities to control their borders.

212. Customs is continually forming partnerships with other administrations and with counterpart services in other countries, such as Italy, France, Algeria, and Libya, in particular because of the volume of trade (see section 6.5).

213. Tunisia has a system to control cross-border cash transactions. The means of enforcement are satisfactory in terms of both the penalties incurred and the possibility of confiscation. Finally, the information-sharing system is effective and statistical tools are in place, although they need improving.

214. Although computerization of the customs services is already well advanced, it should be continued in order to cover the entire national network. Tunisia now has effective tools for recording data on foreign exchange flows (databases of Customs, the Ministry of the Interior, the central bank, in which data are quickly entered and cross-checked, use of data in coordination with other agencies, and rapid feedback between administrations through reports, especially monthly reports). Operational coordination among the government agencies concerned as well as with the Central Bank is in place and is satisfactory. The coercive powers of customs and the police as well as the control of foreign exchange flows (exchange control) are strict and resolutely applied. Tunisia has does coordinate among the competent agencies on an almost daily basis and with its principal partner countries, which, however, cannot yet deal

effectively with challenges posed by sizable flows of people and goods passing through Tunisian territory.

### *2.7.2 Recommendations and comments*

215. The control mechanisms in place are not primarily aimed at the fight against money laundering and terrorism financing. Based on the interviews and its experience, it is however the mission's view that the current level of enforcement of the exchange controls (particularly at the borders) and its coverage of both in-bound and out-bound flows, do allow it to provide a significant contribution to achieving the AML/CFT objectives.

216. The Tunisian authorities should strengthen coordination among agencies and with its partner countries and improve its statistical control tools.

### 2.7.3 Compliance with Special Recommendation IX and Recommendation 32

| | Compliance rating | Summary of grounds (specific to section 2.7) for the overall compliance rating |
|---|---|---|
| SR. IX | LC | Exchange of information between Customs and CFAT not yet formalized nor effective |
| R. 32 | NC | Absence of statistical data |

## 3 Preventive Measures—Financial Institutions

**Customer due diligence and record keeping**

### 3.1 Risk of money laundering or terrorist financing

217. The AML/CFT mechanism covers all participants in the financial sector (cf.1.3). Although less AML/CFT due diligence is authorized for some transactions, listed restrictively in the regulation (cash transactions below certain thresholds for occasional customers, etc.), in situations covered by international standards no type of participant has been exempted from complying with the applicable AML/CFT provisions based on an assessment of low money laundering or terrorist financing risk.

### 3.2 Customer due diligence, including measures for increased or reduced identification (R. 5-8)

### *3.2.1 Description and analysis*

218. Arrangements for the licensing, regulation, and supervision of financial institutions are organized by sector (cf. 3.10).

Anonymous accounts and accounts under fictitious names

219. Financial institutions (FIs) are not authorized to maintain anonymous accounts or accounts under fictitious names. Article 74 of Law 2003-75 of December 10, 2003 states, in particular, that transactions may not be performed when the identity of the persons involved is not indicated.

220. Although the issuance and circulation of cash certificates and capitalization bonds in bearer form are still authorized, the tax provisions in force lift the anonymity of the individuals receiving the income[15] (cf. section 5.1)

Required due diligence measures—identification of co-contractors

221. Law 2003-75 states that FIs must establish the identity of their customers on the basis of official documents (Article 74(2)). The decree of September 10, 2004 issued by the Minister of Finance clarifies the relevant provisions requiring, in particular, that customers—including occasional ones—must be identified whenever they carry out cash transactions valued at more than D 10,000 (i.e., approximately US$7,500) or foreign exchange transactions valued at more than D 5,000 (i.e., approximately US$3,800 (Articles 2 and 4). Customer identification is also required for life insurance transactions whenever the single premium paid exceeds D 5,000 and whenever the periodic premium exceeds D 2,000 (i.e., approximately US$1,500 (Article 2(2) of the above-mentioned decree).

222. In the case of credit institutions, customer identification obligations were already largely in place before the promulgation of Law 2003-75 (see the 1996 circular on checks and, in particular, the BCT memorandum of 2001 to the banks). In addition, in the case of credit institutions and the national post office (ONP), the CTAF directive of April 20, 2006 states, on the one hand, that the customer's identity must be fully verified "at the start of the relationship" (Article 2(1)) and, on the other hand, the identification of occasional customers is not required when the amount of a transaction is below the above-mentioned thresholds, except in cases of suspicion or "repetition of the transaction by, or for the benefit of, the same recipient" (Article 3(2)).

223. Cases where a financial institution has doubts about the veracity or the pertinence of information supplied, makes a transfer for an occasional customer, or has suspicions of money laundering or terrorist financing regarding one of its regular customers are not the subject of detailed provisions but may be covered by the above-mentioned general obligation (Article 74(2) of Law 2003-75). Article 8 of the directive of April 20, 2006 states that credit institutions, offshore banks, and the ONP "must refuse any operation or transaction when the identity of the persons involved is not indicated or when it is incomplete or obviously false." There are no specific provisions on transfers ordered by occasional customers (cf. 3.5.1), although the BCT believes that the necessity of identifying anyone making a transfer of amounts on account covers the above-cited situation (Article 1 of BCT memorandum 2001/04 of February 16, 2001).

224. The CTAF directive of April 20, 2006 clarifies, in the case of credit institutions and the ONP, the type of information to be collected about Tunisian and foreign natural and legal persons (Article 2). The requirement with respect to legal persons is that certified official documents should be used to identify:

- Their articles of incorporation, company or corporate name, legal form of organization, head office, and the nature of their business;
- The identity and address of their executives and those with the power to undertake commitments for them and on their behalf; and
- The identity and addresses of the principal shareholders or partners.

[15] Memorandum 1/97 of the Directorate General of Taxes commenting on the provisions of the 1997 Budget Law thus states that banks and other institutions are required "to issue, on the occasion of each payment to a recipient of funds, a withholding certificate showing, among other details, the identity and address of the recipient."

As for natural persons, identity has to be proven via the national identity card for Tunisians, or an identity card issued by Tunisian authorities with the photo, address, and occupation of its holder on it for foreigners.

225. These requirements do not apply to companies listed on Tunisia's securities exchange or to state-owned enterprises, regardless of the level of public shareholding in them. The above-mentioned CTAF directive does not clarify the steps to be taken for legal arrangements not having the status of legal persons (e.g., foreign trusts or other similar instruments).

*Identification of the beneficial owner*

226. The features of Tunisia's arrangements regarding the identification of beneficial owners[16] are as follows:

- The obligation is not systematic; it is determined by the circumstances of an operation ("whenever the circumstances of the performance of an operation or transaction reveal that it is being carried out or would be carried out on behalf of a third party"—see Article 74(4) of Law 2003-75);
- Financial institutions are thus required "to verify the identity of beneficial owners and the powers of persons acting on their behalf" (Article 74(4) of Law 2003-75).

227. According to Article 5 of the CTAF directive of April 20, 2006, "If the circumstances of an operation or transaction indicate that it is or may be for the account of a third party who is the beneficial owner of the operation or transaction, credit institutions, offshore banks, and the National Post Office must verify the identify of the beneficial owner, its line of business, its address, and the powers of the agent acting on its behalf." The beneficial owner is defined as "any individual who owns or controls the customer or for the account of whom the operation is carried out, without a written power of attorney between the customer and the beneficial owner being required." The natural person controlling "in fine" or "as the last resort" is therefore not defined.

228. There is no obligation to identify the natural person who ultimately controls a legal person or a legal arrangement that does not involve a legal person (e.g., trusts and other similar instruments). As regards legal persons, Law 2003-75 creates the obligation to identify their executives and persons authorized to act on their behalf (Article 74(3)). For credit institutions and the national post office only, the CTAF directive also mentions the need to identify the principal shareholders or partners.

*Information on the purpose and intended nature of the business relationship*

229. Tunisia's AML/CFT arrangements do not contain a general obligation to obtain information systematically on the purpose and nature of the business relationship. Article 2 of the CTAF directive states that the institutions concerned must verify the intended purpose and nature of the business relationship. Numerous financial institutions visited during the mission emphasized the in-depth knowledge of customers that their employees who work with customers have, in particular as regards the purpose and nature of the business relationship.

*Ongoing due diligence with respect to business relationships*

[16] The FATF has adopted the following definition of the term "beneficial owner": the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

230. Law 2003-75 of December 10, 2003 does not contain any explicit provision requiring that financial institutions conduct ongoing due diligence on business relationships and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business, and their risk profile, including, where necessary, their source of funds.

231. This requirement for ongoing due diligence may nevertheless be broadly inferred from the obligations created by the law with respect to reporting to the CTAF and to internal detection mechanisms. In this latter area, Article 77 of Law 2003-75 thus requires that the authorities empowered to regulate financial institutions should prepare programs and practices that are appropriate for combating money laundering and terrorist financing. These programs are required to, among other things, "institute a system for detecting suspicious and unusual operations and transactions," internal audit rules aimed at assessing the effectiveness of the established system, and ongoing training programs for employees. The CTAF directive of April 20, 2006 requires credit institutions and the ONP to exercise constant vigilance towards their business relationships (Article 2) and confirms that they must have programs in place to detect unusual or suspicious operations or transactions (Article 11) and appoint a CTAF correspondent (Article 12).

*Obligation to keep information updated*

232. Law 2003-75 does not establish criteria to be followed by financial institutions when updating customer information, nor does it require them to undertake such updating (both concerning those persons who were customers at the time of entry into force of Law 2003-75 as well as those with whom financial institutions established a relationship after the entry into force of that law). Only in the case of the credit institutions and the ONP does the CTAF directive of April 20, 2006 establish a general obligation for the regular updating of customer information (Article 10).

*Enhanced due diligence obligation and lower risks*

233. Tunisia's AML/CFT law does not introduce the obligation to exercise enhanced due diligence. Such a concept is, however, contained in Article 6 of the CTAF directive, which stipulates that credit institutions, offshore banks, and the National Post Office must "have in place appropriate systems to manage the risks associated with high-risk accounts; obtain authorization from the directorate general or board of directors before opening such accounts; take all reasonable steps to identify the source of assets and the source of funds; and exercise enhanced and constant due diligence with regard to those accounts." Absent a clear legislative basis, the legal soundness of this single regulatory text could be called into question.

234. The obligations created by the AML/CFT law are reduced only in a limited number of cases consistent with international standards, even in the absence of an analysis of money laundering risks. These situations reflect either money laundering and terrorist financing risks that are deemed to be low, or the existence of publicly available information needed to exercise due diligence. The following cases (cf. also the paragraph "Required due diligence measures—identification of co-contractors" above) are of note:

- Identification requirements eliminated for companies listed on the Tunis securities exchange or state-owned enterprises, regardless of the level of public shareholding in them;
- Bookkeeping obligation eliminated for companies whose annual receipts or reserves are less than D 30,000 (Article 1 of the decree of September 10, 2004 issued by the Minister of Finance).

- Customer identification required for life insurance operations only when the one-time premium paid is more than D 5,000 (approximately US$3,800) or when the periodic premium exceeds D 2,000 (approximately US$1,500), in contrast to the US$2,500 and US$1,000 recommended by the FATF.

*Time of verification*

235. The provisions of Article 74 of Law 2003-75 do not authorize financial institutions to engage in an operation before completing their due diligence procedures with respect to customer identification. However, the identity of a customer does not necessarily have to be verified at the time of certain operations (cash transactions below a certain threshold for occasional customers, life insurance premiums below a certain threshold, etc.)

236. Only in the case of credit institutions and the ONP does the CTAF directive of April 20, 2006 require that the customer's identity be verified "at the start of the relationship" (Article 2(1)) and prohibit any operation while the identification of the persons involved is still incomplete (Article 8). There are no specific provisions prohibiting the conduct of operations when the beneficial owner or the purpose of the business relationship is unknown. In practice, however, verification of the identity of the beneficiary of a life insurance contract only occurs when the latter is paid out.

*Existing customers*

237. Law 2003-75 did not contain any provisions spelling out the steps to be taken regarding existing customers at the time of its entry into force. However, customer identification is formally required on the occasion of certain operations, such as the receipt of deposits, the investment of funds, cash transactions exceeding the threshold of D 10,000, or foreign exchange transactions valued at more than D 5,000.

238. In addition, regulations preceding Law 2003-75 required customer identification (above-mentioned circular of 1996 and memorandum of 2001 in the case of credit institutions, Articles 3, 36, and 39 of the insurance code, and Articles 50 and 51 of Decree 99-2478 in the case of intermediaries in securities market operations, among others). However, the requirement for identification did not always encompass the keeping of copies of official identity documents (for example, the identification of the underwriter of a life insurance contract was required, but verification of the identification and the keeping of a copy of the identity document presented were not). Above all, interviews conducted during the mission revealed that proper implementation of the provisions on customer identification that preceded Law 2003-75 was monitored only very intermittently by the supervisors.

*Politically exposed persons (PEPs)*

239. Law 2003-75 of December 10, 2003 is silent on the matter of politically exposed persons and on the specific due diligence measures that would be applicable to them. This topic is not directly addressed by the CTAF directive for credit institutions and the ONP, although Article 6—especially the reference to the identification of assets and the source of funds—may appear to be an implicit reference. FATF does not call as such for using the terminology "politically exposed person", but the definition by the Directive of the circumstances where this enhanced due diligence should be undertaken does not cover *systematically* all the persons that should be covered under the FATF definition. Article 6 of the Directive (which only deals with credit institutions, off-shore banks and the Post) indicates that additional due diligence should be undertaken for "high risk accounts", but does not spell out that PEPs are parts of these on a mandatory basis. Tunisia's AML/CFT arrangements therefore do not contain any obligation for the financial institutions to acquire management systems that enable them to identify PEPs, to obtain senior management approval for establishing business relationships with PEPs, to obtain information for all PEPs—and their

beneficiaries—on the source of their funds and their wealth, or to conduct ongoing due diligence with regard to PEPs. The interviews conducted by the mission revealed that a number of Tunisian financial institutions maintained relationships with foreign PEPs.

*Relationships with cross-border correspondent banks*

240. Law 2003-75 of December 10, 2003 is silent on the matter of relationships with cross-border correspondent banks. By contrast, the provisions of the CTAF directive of April 20, 2006 mirror the FATF Recommendations in this area. The directive thus requires credit institutions and the ONP to:

- Ensure that the correspondent bank is licensed and subject to oversight by the competent authorities in its country of origin or in the country where it is established;
- Gather sufficient information about the correspondent bank to identify the nature of its business and to determine from publicly available information the reputation of the institution and the quality of supervision to which it is subject;
- Check whether the correspondent bank has been the subject of money laundering or terrorist financing investigation or regulatory action;
- Assess the system of control to which the correspondent bank is subject in the AML/CFT context;
- Obtain approval from senior management or the board before establishing a relationship with a new correspondent bank; and
- Document the responsibilities of correspondent banks.

241. The last paragraph of Article 4 of the CTAF directive states that "the authorities responsible for the oversight of credit institutions, offshore banks, and the national post office shall establish the practical modalities of this article." No draft has been formulated as yet on this matter.

242. In addition, payable-through accounts are not authorized in Tunisia.

*New technologies and relationships not involving the physical presence of the parties*

243. There are no legislative provisions requiring that financial institutions should have procedures in place or take any other measure necessary to prevent the use of new technologies for money laundering or terrorist financing purposes. Article 9 of the CTAF directive specifies that covered institutions must "have procedures in place and take any other measures necessary to prevent the use of new technologies for money laundering or terrorist financing purposes."

244. It is nevertheless noteworthy that concerns about the suppression of illicit financial channels were taken into account by the Tunisian authorities upon the introduction of certain technologies in the country, such as electronic money. Regarding the latter product, offered only by the ONP since 2000 ("e-dinar"), there is a ceiling on the amount that electronic wallets can contain (D 500, or about US$380), the identity of any holder of an electronic wallet must be verified, and the latter may be used only for the payment of a limited number of non face-to-face services offered by Web sites approved by the ONP.

245. There are no legislative provisions requiring that financial institutions establish enhanced procedures for customer identification and due diligence for customers with which they have non face-to-face relationships. Article 9 of the CTAF directive states that covered institutions must "have enhanced identification and due diligence procedures in place for customers with whom they only have non face-to-face relationships. Entering into relationships without physical contact is supposedly rare, except for some operations of the offshore banks and securities market intermediaries. In contrast, the technologies provided by Tunisian financial institutions now enable their customers to carry out operations without physical contact with the employees of the institution in question (ATMs, Internet transactions, etc.). By way of example, in 2004 ONP customers carried out electronic funds transfers totaling D 316 million, or close to US$240 million.

### *3.2.2 Recommendations and comments*

246. The adoption of the Directive in April 2006 is a very positive step forward, and its content (which had been discussed with the mission during the on-site visit) brings useful complements and clarifications to the law. The assessors believe it a positive factor that priority has been given to the Banking sector (in a broad definition) in the preparation of the second Directive on the implementation of the AML/CFT framework. In this context, the requirements on the "high risk" accounts and transactions are welcome. In particular, although the wording used is similar to FATF's wording on PEPs, the directive does not require systematic monitoring of PEPs and does not define this category (even though the term PEPs is not required as such). In the same vein, the steps taken on the identification of the beneficial owner for the institutions covered by the Directive is encouraging, even if still incomplete. The overall progress therefore remains insufficient, but the mission takes note of the authorities' indications that the circular under preparation by the banking supervisor should introduce further steps in that respect.

247. The Tunisian authorities should:

- Require that nonbank financial institutions conduct ongoing due diligence with respect to their business relationships and scrutinize transactions undertaken throughout the course of those relationships;

- Establish in all cases an obligation for nonbank financial institutions to obtain information on the purpose and intended nature of the business relationship;

- Reduce the scope of the exemption of verification of the customer identity for companies with a state shareholding

- Specify and broaden the definition of beneficial owner so that:

  a. It encompasses all cases where a person owns or controls the customer as well as cases where the latter carries out an operation on behalf of a third party without any formal necessity for a "power" to be signed between the two parties, and

  b. Financial institutions are required to ascertain who the persons are that *ultimately* control a legal person or arrangement;

- Whenever they cannot satisfactorily identify the beneficial owner of a transaction or collect sufficient information on the purpose of a business relationship, the legislation should prohibit financial institutions from opening an account, starting a business relationship, or carrying out a transaction. Financial institutions should also have to consider whether to file a report with the CTAF in such circumstances;

- Ensure that measures to be taken by financial institutions to implement the CTAF directive are prepared and adopted as soon as possible (especially for the provisions on banking correspondents);

- Eliminate securities in bearer form as they encourage the anonymity of their holders (particularly when the bonds are being circulated among various parties without the knowledge of the financial institutions) as well as dematerialized securities kept in an escrow account taking into account international examples;

- Lower the thresholds beyond which the identification of persons paying life insurance premiums is required, so that they are consistent with the FATF recommendations and fully adapted to Tunisia's circumstances;

- Introduce explicit provisions regarding PEPs, requiring financial institutions to:

  a. Have appropriate risk management systems to determine whether the customer is a PEP,
  b. Obtain senior management authorization for establishing business relationships with such customers,
  c. Take reasonable measures to establish the source of wealth and source of funds,
  d. Conduct enhanced ongoing monitoring of the business relationship;

- Specify that new identification is required in situations where a financial institution has doubts about the authenticity or relevance of information provided, makes a transfer, or has suspicions of money laundering or terrorist financing about one of its customers;

- Require that nonbank financial institutions must have procedures in place or take any other measure necessary to prevent the use of new technologies for money laundering or terrorist financing purposes; and

- Ensure that nonbank financial institutions are required to establish enhanced procedures for customer identification and due diligence with respect to customers with which they have non face-to-face relationships.

### 3.2.3 Compliance with Recommendations 5-8

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 5 | NC | Requirement concerning identification of the beneficial owner of a transaction too restrictive<br>Lack of measures for implementing Law 2003-75 which, in certain [*cases*] only imposes very general obligations. The requirement of constant due diligence, the gathering of information concerning the purpose and nature of each business relationship, the updating of information, and the measures to be taken with regard to customers existing at the time of entry into force are not specifically mentioned in the law.<br>Lack of provisions requiring enhanced due diligence for categories posing higher risks for nonbank financial institutions.<br>Continuing existence of certain products that promote the anonymity of their holders<br>Lack of supervision of proper implementation of the applicable provisions of Law 2003-75<br>Non-implementation of the provisions of CTAF directive 02-2006 |
| R. 6 | NC | No explicit provision concerning politically exposed persons |
| R. 7 | PC | Lack of implementation of provisions on correspondent banking and absence of additional implementing measures<br>Lack of provisions on relationships equivalent to those of banking correspondents in the nonbank financial sector |
| R. 8 | PC | Non-implementation of the provisions on non face-to-face banking or the |

| | | |
|---|---|---|
| | | use of new technologies<br>Lack of provisions such as those instituted for credit institutions, offshore banks, and the ONP for nonbank financial institutions |

### 3.3 Third parties and introduced business (R. 9)

#### *3.3.1 Description and analysis*

248. The Tunisian legislation on the prevention of money laundering and terrorist financing does not contain specific provisions on third parties and introduced businesses. As a result, financial institutions are required to comply with all the provisions of Law 2003-75 and its implementing measures, including when an operation is carried out by the intermediary of a third party which is itself implementing those provisions and is supervised in that capacity.

249. In practice, certain financial institutions currently rely partly on procedures carried out by third parties. For instance, a securities broker may perform an operation on behalf of the customer of a bank, whereas the latter informs it of the identity of the customer only 48 hours after performing the operation. In the area of life insurance, identification measures are often carried out only by third parties (agents, brokers, or banking networks used to distribute insurance products).

#### *3.3.2 Recommendations and comments*

250. If financial institutions are authorized to use intermediaries or third parties to comply with certain aspects of the due diligence obligation or to introduce business themselves, it will then be necessary for:

b. Financial institutions to be required to obtain immediately from the third party the necessary information on customer identification, the beneficial owner, and the nature and purpose of the business relationship (on terms similar to those required when a financial institution is directly in contact with its customer);

c. Financial institutions to be required to take appropriate measures to ensure that the third party is able to provide, upon request and as soon as possible, copies of the identification details and other relevant documents related to customer due diligence;

d. Financial institutions to be required to ensure that the third party is subject to AML/CFT regulations and is the subject of monitoring, and that the third party has taken steps to comply with the due diligence obligations applicable to customers; and

e. Responsibility for customer identification and identity verification to fall ultimately on the financial institution that used the third party.

251. If financial institutions are not authorized to use intermediaries or third parties to comply with certain aspects of the due diligence obligation or to introduce business themselves, financial supervisors should ensure, as part of their on- and off-site supervision, that such prohibitions are respected.

#### *3.3.3 Compliance with Recommendation 9*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 9 | PC | Financial institutions are not authorized by Law 2003-75 to rely on third-parties. Such practices exist, however. Compliance with the above-mentioned provisions is not monitored by financial supervisors. |

### 3.4 Financial institution secrecy or confidentiality (R. 4)

#### *3.4.1 Description and analysis*

252. The legislation defining the attributions and powers of the various financial supervisors specifies that institutions monitored by the latter cannot invoke professional secrecy in support of noncompliance (Article 32 of Law 2001-65 of July 10, 2001 for credit institutions,[17] Article 36 of Law 94-117 of November 14, 1994 for institutions subject to oversight by the Financial Market Board (CMF), and Article 83 of the insurance code for insurance companies).

253. No legislative or regulatory provision governs cooperation among the financial supervisors. As a consequence, each financial supervisor is required to comply with professional secrecy requirements in its relations with its national counterparts and cannot share information covered by professional secrecy for money laundering and terrorist financing purposes (see R. 40 for the aspects related to international cooperation). Article 61 bis of the draft amendment to Law 58-90 creating and organizing the BCT should solve this problem for the banking supervisor. At the time of the mission, this draft was under consideration by Parliament.

254. Professional secrecy may not be invoked as grounds for noncompliance with CTAF requirements in the context of its work, neither by financial institutions nor by administrative authorities (Article 81 of Law 2003-75). The CTAF has not yet made use of its authority to request such information. The Ministry of Justice believes that these provisions apply to all administrative authorities, including the intelligence units.

255. The CTAF is, moreover, able to share the information collected with its foreign counterparts, once the latter are subject to professional secrecy and to the obligation not to forward or use the data and information passed on to them for purposes other than those of combating and punishing offenses as prescribed by Law 2003-75 (Article 82). Banking and professional secrecy is not an impediment, insofar as the CTAF capacity to access without restriction these information makes it possible to lift the professional and banking secrecy where necessary.

#### *3.4.2 Recommendations and comments*

256. As intended by the draft amendment to the law on the BCT for the banking supervisor, the Tunisian authorities should ensure that all financial supervisors are authorized to share information covered by professional secrecy requirements when this is needed for the accomplishment of their AML/CFT missions, and that they put into place mechanisms to facilitate this cooperation.

#### 3.4.3 Compliance with Recommendation 4

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 4 | C | |

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

#### *3.5.1 Description and analysis*

[17] Without explicitly mentioning that credit institutions may not invoke professional secrecy to the BCT, Article 32 indicates that they must provide it with "any document, clarification, or supporting information necessary for analyzing their situation and ensuring that they are complying fully with the regulation on credit and exchange control and the supervision of credit institutions."

Record keeping

257. Article 75 of Law 2003-75 requires financial institutions to keep the registers, business records, and other documents held in hard copy or in electronic form for 10 years, starting from the date on which an operation is carried out or an account is closed, for purposes of consultation, where applicable, of the various phases of financial transactions and operations undertaken by them or their intermediaries and to identify all those involved and to ensure their authenticity (these provisions do not cover attempted operations). Similar obligations existed before the enactment of Law 2003-75. CTAF directive 02-2006 confirms these provisions. Generally (see other sections of the report), competent authorities have access to the necessary information on a timely basis.

*Rules applicable to wire transfers*

258. The Tunisian standard NT 112.15, approved by decree of the Minister of Industry of May 8, 1999, defines the provisions applicable in Tunisia to bank and post office transfers. Regarding identification of the originator, this standard requires that mention must be made of the bank account identity (RIB) or post office account identity (RIP) of the originator. The form for the electronic recording of transfers has fields for the identity of the originator but not for the address. Also, Article 10-5 of the standard, NT 112.15, specifies that "when the originator does not have a bank checking account (CCB) or a post office checking account (CCP), he may pay in cash at a bank or a CCP center, which shall transfer the amount to the account of the beneficiary."

259. In addition, the above-mentioned standard states that "the bank of the originator must demonstrate due diligence and prudence regarding the contents of files shown, and in particular on the identity and the nature of the account to be debited." No specific obligation to verify the reliability of the originator's identification is placed on the beneficiary's bank.

260. The only standard requiring specific information on transfers abroad applies to bulk payments to foreign destinations. For these, mention must be made of the originator's RIB or RIP, the first and last names or company name, and address, as well as the beneficiary's account number, first and last names, and address.

261. There are no provisions requiring that financial institutions acting as intermediaries in the payment chain must ensure that all originator information accompanying an electronic transfer is kept with the transfer. There is no provision specifically requiring financial institutions to establish effective procedures based on a risk assessment to identify incoming wire transfers for which there is no complete originator information.

262. There are no provisions requiring that financial institutions ensure that nonroutine transactions are not processed in batches when that may lead to an increased risk of money laundering or terrorist financing.

263. There are no specific measures facilitating effective control of the application by financial institutions of the regulations on wire transfers.

### *3.5.2 Recommendations and comments*

264. The Tunisian authorities should:

- Require that financial institutions mention the originator's name and address in all transfers (a number of cases are not covered by the current arrangements);

- Ensure that the beneficiary's bank is required to verify the reliability of the identification of the originator;

- Require that financial institutions acting as intermediaries in the payments process ensure that all originator information transmitted with an electronic transfer is kept with the transfer;
- Specifically require that financial institutions establish effective procedures based on risk assessment to identify incoming wire transfers for which there is no complete originator information;
- Require that financial institutions ensure that nonroutine transactions are not processed in batches when such action may lead to an increased risk of money laundering or terrorist financing; and
- Introduce appropriate measures to facilitate effective control of the implementation by financial institutions of the regulations on wire transfers. This requires that the supervisor be able to assess the risk profile of each institution in this regard, which in turn requires knowledge of the risks associated with the various types of transfers, of the types and amounts of transfers carried out by each institution, and a periodic assessment of the effectiveness of the controls established by the supervised institutions.

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

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 10 | C | |
| SR. VII | NC | Lack of a provision governing the obligations of institutions acting as intermediaries in the payment chain or participating for the account of the beneficiary.<br>No requirement that institutions be able to identify incoming transfers when information about the originator is incomplete and ensure that nonroutine transfers are not processed in batches when doing so would increase risk.<br>No specific measure enabling supervisors to ensure proper implementation of the regulation on electronic transfers<br>Lack of appropriate measures for effectively monitoring the compliance of financial institutions with the regulation on electronic transfers |

**Unusual or suspicious transactions**

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

### *3.6.1 Description and analysis*

265. Law 2003-75 creates in its Article 85 an obligation to report unusual transactions to the CTAF. Covering all the activities described in Article 74 of the same law, this article states that the regulated professions "are required to report promptly to the CTAF in writing any suspicious or unusual operation or transaction likely to be related directly or indirectly to the proceeds of an illicit act qualified by the law as a misdemeanor or a crime, or to the financing of persons, organizations, or activities related to terrorist offenses." Article 86 of the same law (and Articles 87-89) creates an obligation to suspend temporarily the operations or transactions concerned, and states that the CTAF may convert that suspension into a temporary freeze (leeway that the CTAF seems to be planning to use in a more or less systematic way). Article 97 provides for a criminal penalty to be imposed for intentional noncompliance with this reporting obligation.

266. Law 2003-75 thus establishes an obligation to pay special attention to unusual operations or transactions, without defining the latter. Even if the law does not explicitly define the link, for unusual transactions, with no apparent economic or lawful purpose, the complexity of the operation or its unusually large size, the wording used is broad and covers operations or transactions that are unusual, compared to the normal structure of the customer's business or account flows.

267. The CTAF directive to credit institutions and the ONP provides clarifications about the concept of unusual transactions, which it defines as "an operation or transaction that is unusually complex; an operation or transaction involving an abnormally large amount" (Article 15(3)). The directive thus introduces a definition consistent with the FATF definition for two of the criteria defined by the FATF—operations having "no apparent economic or lawful purpose," which is stricter but close to the FATF definition of unusual operations, deriving, according to the directive, from suspicious operations. At the same time, Article 16 of the directive indicates, under the heading "reporting of suspicious or unusual operations," that the report must be filed "when the investigation raises a suspicion," thus reintroducing the confusion between suspicious operations and unusual operations.

268. Covered institutions are not required to make information about these operations or transactions and the result of any investigation made of the context and purpose of such transactions available to the competent authorities and external auditors, but they must make a report to the CTAF, which would lead to the immediate temporary suspension of the transaction or operation.

269. The regime established by Law 2003-75 raises several questions and problems, as follows:

a. It eliminates the distinction between an unusual, complex operation or an abnormally high amount on the one hand, and a suspicious operation on the other—both in the definition of these transactions and in the consequences that covered institutions should draw from them (report, temporary suspension). The CTAF directive partially removes this ambiguity, but creates two new ones: it introduces different provisions in the law and in a regulatory text, and thus creates a detrimental legal uncertainty. It also creates different regimes for credit institutions, offshore banks, and the ONP on the one hand, and the other regulated professions on the other. The systematic temporary suspension related to the reporting of transactions that are merely unusual is clearly a disproportionate measure compared to the underlying risk, quite apart from the fact that it presents a major risk of revealing to the customer the existence of a report to the CTAF;

b. It provides a criminal penalty for intentional failure to report unusual transactions or operations, thereby creating a very strong incentive for defensive reporting, with a low threshold in the definition of the unusual nature of the transaction or operation. This is clearly likely to lead to a very large flow of reports to the CTAF, impairing its ability to analyze reports in a normal way.

270. The Tunisian legal framework does not contain any legislative provision allowing for the establishment of an obligation to give special attention to, or exercise enhanced due diligence regarding, business relationships and transactions with countries that do not or insufficiently comply with the FATF Recommendations. The CTAF directive (Article 7) establishes such an obligation only for credit institutions, offshore banks, and the ONP, referring to the list of countries and territories not cooperating with the FATF. In the absence of a legislative provision, establishing such an obligation solely in a regulation poses a legal risk. The authorities plan to put these arrangements in place in the circular addressed to credit institutions on the implementation of their new AML/CFT obligations.

### *3.6.2 Recommendations and comments*

271. The current framework on unusual transactions or operations goes beyond FATF requirements. The mission welcomes in principle the authorities' willingness to be more ambitious, and would not criticize as such this approach. However, the mission is of the view that taken as whole (and notwithstanding the useful clarification brought forward by the FIU directive), the framework elicited by the authorities is inefficient by design, and excessively far-reaching when considering the risks attached to unusual transactions and operations. In addition, at this juncture, it is likely that the flow of reported transactions (unusual or suspicious) will represent a flow of information that the CTAF may not be equipped to handle, to the detriment of its capacity to analyze these declarations (particularly the suspicious ones).

272. Tunisia should change the legislative framework related to unusual transactions or operations in the following way:

a. Make a distinction between unusual and suspicious transactions or operations. This should be accompanied by a broadening of the notion of unusual transaction to include complex transactions and those for abnormally large amounts;

b. Eliminate the obligation to report unusual operations to the CTAF and create an obligation to review the context and purpose of those transactions and establish written records of the results;

c. Establish an obligation to keep the results of such reviews available to the competent authorities and external auditors for a period of at least five years.

273. Tunisia should also adopt a legislative or regulatory measure creating the possibility of requiring financial institutions (and other regulated professions) to give special attention to business relationships and transactions with counterparties resident in countries that do not or insufficiently apply the FATF Recommendations. These arrangements should, moreover, include a panel of appropriate, incremental counter-measures to be taken when such countries persist in not applying the FATF Recommendations or in applying them insufficiently.

### 3.6.3 Compliance with Recommendations 11 and 21

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 11 | PC | No distinction between an unusual transaction or operation and a suspicious transaction or operation<br>No obligation to make the results of the investigation of suspicious or unusual transactions available to the competent authorities and to external auditors |
| R. 21 | PC | No legal framework for instituting the requirement to give special attention/exercise enhanced due diligence, and no appropriate counter-measures for regulated nonbank professions |

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

### *3.7.1 Description and analysis*

274. Law 2003-75 creates in its Article 85 an obligation to report suspicious transactions to the CTAF. Covering all the activities described in Article 74 of the same law regarding due diligence obligations (see 3.2), this article states that the regulated professions "are required to report promptly to the CTAF in writing any suspicious or unusual operation or transaction likely to be related directly or indirectly to the proceeds of an illicit act qualified by the law as a misdemeanor or a crime, or to the financing of persons, organizations, or activities related to terrorist offenses." The scope of the predicate offenses in a report on suspicion is thus the same as for the criminalization of money laundering and terrorist financing, therefore including tax crimes and misdemeanors. The obligation to report does not cover attempted operations or transactions. Moreover, the wording used does not cover situations in which suspicion arises after completion of a transaction or operation—in particular, if new details were to come to the attention of the reporting institution, or if a subsequent transaction shed new light on a situation.

275. Article 87 creates a prohibition from disclosing to the person involved that a suspicious transaction report has been filed. The penalty for noncompliance with this obligation is described in Article 101 of the law but relates only to the executive or representative of a legal person whose personal liability is in question. While this provision has a positive dissuasive aspect applicable to the executives of reporting entities, it does not cover other staff and persons involved who have knowledge of reports of suspicion or who come into contact with the customers in question. The penalty for noncompliance with Article 97 states that reports made in good faith may not give rise to a suit for damages or for criminal liability against the reporting institution—nor against the CTAF in the context of its activities. Article 97 provides for a criminal penalty for intentional noncompliance with the obligation to report suspicion.

276. Article 86 of the same law (and Articles 87-89) creates an obligation for temporary suspension, which the CTAF may convert into a freeze, of the operations or transactions in question. Such freezes can be extended once, for 48 hours. Under Article 88, "if analyses have not confirmed suspicions about the operation or transaction covered in a report," the freeze shall be removed by the CTAF (the absence of an announcement by the CTAF at the end of the freeze period will itself signal that the freeze has been removed). On the other hand, if the CTAF has confirmed the suspicions, its findings and the pertinent documentation are forwarded to the public prosecutor—a further decision by the attorney general being necessary for a ruling on the freeze, within a period of 48 hours (either with a "case closed" classification and removal of the freeze, or with the opening of a legal investigation and maintenance of the freeze, except if a decision to the contrary is taken by the judicial authority to which the matter was referred).

277. In its Article 80, Law 2003-75 directs the CTAF to establish directives to enable regulated institutions to detect and report suspicious and unusual transactions. It also provides, in Article 77 for the authorities with oversight of the regulated institutions to be required to prepare programs and practices that are appropriate for combating money laundering and terrorist financing. The CTAF has just completed its directive on the model suspicious transaction report (STR) that can be used by all the regulated professions. The Tunisian authorities hope that the publication of this directive will lead to an upsurge in the rate of STR submissions (fewer than 5 STRs have been received by the CTAF since the promulgation of Law 2003-75). The BCT, the CMF, and the CGA said they would prepare specific circulars for the financial institutions they regulate and supervise, once the general directives of the CTAF on their respective activities have been adopted. The BCT can therefore proceed in that direction now that the CTAF directive on credit institutions has been adopted.

278. The CTAF directive to credit institutions, offshore banks, and the ONP defines a suspicious operation or transaction as "an operation or transaction that seems unrelated to the nature of the customer's business; an operation or transaction for which no documents or information stating its purpose have been submitted; an operation or transaction with no apparent economic or lawful purpose" (Article 15). For its part, Article 16 of the directive states that "whenever an investigation

raises a suspicion about an operation or transaction, credit institutions, offshore banks, and the national post office must promptly […] report said operation or transaction to the CTAF […]."

279. Finally, Law 2003-75 states that the CTAF must inform the author of an STR of the follow-up action taken at the end of the legal freeze period—that is, up to four days currently (Article 91), and that the prosecuting attorney must inform the author of the STR, within two days of receipt of the report from the CTAF, of the follow-up action taken. Moreover, Article 13 of the decree of August 11, 2004 establishing the structure and operating methods of the CTAF provides for annual reports to be prepared by the CTAF. No annual report has been published to date.

280. In implementation of Article 76 of Law 2003-75, authorized intermediaries and foreign exchange subagents are required to inform the BCT (not the CTAF) of any foreign exchange transaction (whether or not in cash) valued at more than D 5,000 (approximately US$3,800). The Tunisian legal framework does not create any systematic obligation to report cash transactions valued above a certain threshold, and the feasibility and relevance of such an obligation was not examined.

281. Apart from not covering attempts to engage in suspicious operations or transactions, the reporting mechanism adopted by Tunisia presents a major weakness related to the systematic suspension followed by freezing, decided by the CTAF, which follows this through. As far as transactions attempts are concerned, it is worth noting that the Tunisian Penal Code criminalizes the attempt of criminal activity; but to infer from this that the reporting requirement would also cover attempted transactions or operations would be an excessively extensive reading as, at that stage, there is still no proved criminal activity. The Tunisian authorities stated that they had established this mechanism for the following reasons:

- To emphasize the preventive aspect of the mechanism by preventing criminals from gaining access to the Tunisian financial system and sending a strong signal in this regard;

- To prevent attempts by criminals to get rid of their funds and place them out of reach of the authorities; and

- To prevent criminal and terrorist activities by blocking funds as far upstream as possible.

282. In addition, the law itself and, to a lesser extent, the CTAF directive seem to introduce an ambiguous system of incentives on the threshold of suspicion that should lead to reporting.

- On the one hand, the lack of distinction between unusual operations and suspicious operations and the threat of criminal penalty for failure to report suggest a low reporting threshold and thus a potentially large number of reports to the CTAF;
- On the other hand, the systematic suspension and even the freezing of such operations no longer serve as positive incentives for reporting operations to the CTAF.

283. The mission feels, for its part, that the objectives sought by Tunisia can be fully achieved without resorting to the suspension and freezing of transactions, for instance by establishing the possibility of suspension/freezing in exceptional circumstances requiring use of this measure. Such an approach would not only permit a response in exceptional circumstances but would also allow for:

- Recognition of the benefits, from the standpoint of the investigation, of not systematically blocking transactions or operations, especially when merely monitoring accounts and tracing transactions could be beneficial (and, in particular, allow for the identification of a criminal or terrorist network); and

- Improved consideration of the nature of the business of reporting institutions, and especially of the operational constraints faced by the CTAF—which, even in a context of optimal domestic

and international cooperation, will not be able in most cases to decide on the relevance of suspicions in the timeframe currently established.

284. Also, in light of the current wording of Article 88 of Law 2003-75 ("if analyses have not confirmed the suspicions"), such an approach would ensure that whenever the freeze is finally removed, the reporting institution is not sent a potentially counterproductive signal about either the stakeholders in the operation or the nature of the transaction—which might well reduce its diligence.

285. Finally, the scope of the coverage for the tipping-off is too restricted, and should cover any person informed of the STR.

### 3.7.2 Recommendations and comments

286. The Tunisian authorities should:

- Reconsider the effectiveness of the systematic suspension and freezing of transactions that are the subject of STRs, in light of the very objectives that they have set themselves. The establishment of the mere possibility of freezing suspicious transactions, for a limited period, would make it possible to maintain this mechanism whenever circumstances so warrant, while at the same time reducing the operational risks that a systematic approach can cause. Moreover, this would broaden the range of options available to the investigating authorities, especially with respect to account monitoring. Such an option would reduce the pressures for reporting institutions in maintaining a balance among the objectives of not disclosing to the customer that a report of suspicions has been made, maintaining normal business relationships with their customers, and fully participating, through their diligence, in AML/CFT efforts;

- Redefine in the law the notions of unusual transaction and suspicious transaction to make a clearer distinction between them and align them with the FATF definitions. The clarifications provided by the CTAF directive, which at present only concern some regulated entities, are a step in the right direction, but the authorities should eliminate the legal ambiguities between the legislation and the regulations;

- Spell out the procedures for making a report of suspicion when such a report is made, for legitimate reasons, after a transaction has been completed;

- Introduce an obligation to report attempted suspicious operations or transactions;

- Enlarge the scope of persons to be sanctioned in case of tipping-off;

- Study the feasibility of putting into place a system for the reporting for all financial institutions to a centralized national body of all cash transactions valued at more than a given amount, to be defined; and

- Use the annual report of the CTAF to provide appropriate general feedback to the institutions that are required to report suspicious operations, in accordance with pertinent best practices.

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

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 13 | PC | Ambiguous reporting "threshold"<br>No obligation to report attempted suspicious operations |

| | | |
|---|---|---|
| | | No obligation to report transactions after carrying it out if information obtained subsequently raises a suspicion<br>Lack of effective implementation of the system more than two years after the entry into force of the law |
| R. 14 | LC | Too limited scope of individuals liable in case of divulging the existence of an STR |
| R. 19 | PC | No study on the feasibility and usefulness of an obligation to report *all* cash transactions above a certain threshold for *all* financial institutions |
| R. 25 | NC | No guidelines issued for financial institutions<br>No feedback mechanism |
| SR. IV | PC | Ambiguous reporting "threshold"<br>No obligation to report attempted suspicious operations<br>No obligation to report transactions after the fact if information obtained subsequently raises a suspicion<br>Lack of effective implementation of the system more than two years after the entry into force of the law |

*Internal controls and other measures*

### 3.8 Internal controls, compliance, and foreign branches (R. 15 and 22)

#### *3.8.1 Description and analysis*

287. Article 12 of the Law on Financial Security indirectly creates an obligation for enterprises that issue securities to the general public to establish internal control systems.[18] Banks, insurance companies, and OPCVMs (mutual funds) are covered by the new obligation created by the Law on Financial Security, as they are defined as companies or institutions floating public issues by Law 94-117 of November 14, 1994 on the organization of the financial market. Article 77 of Law 2003-75 also creates an obligation for regulated institutions to establish internal audit rules to allow for assessments of the effectiveness of the AML/CFT system, but does not mention any link with the internal control system.

288. Certain general obligations or, on the other hand, closely targeted obligations already existed for credit institutions. Thus, Article 34 of Banking Law 2001-85 required the latter to organize standing audit committees with responsibility to "ensure that the appropriate internal control systems are established by the institution." However, these provisions did not lead to the issuance of an implementing directive or circular by the central bank. In the absence of any operational directive from the central bank, the internal practices of credit institutions are very diverse. For instance, some seem to have more or less contented themselves with creating an audit committee, while others (in particular, the subsidiaries of international banks) have established detailed operational internal control arrangements, comprising, in some cases, the creation of an independent compliance function with a structure and resources that allow them to cover all of the institution's activities (and now also AML/CFT obligations).

[18] A standing audit committee, created by the board of directors or the board of trustees, is responsible for ensuring "compliance by the company with the requirement to establish effective internal control systems, with a view to promoting efficiency, effectiveness, protection of the company's assets, reliability of financial reporting, and observance of the laws and regulations."

289. The regulation also requires credit institutions to establish certain controls to ensure the reliability of financial reporting and to promote, to a certain extent, credit risk control. Consequently, Circular 93-08 of July 30, 1993 to banks and financial services companies concerning accounting documents that must be forwarded to the BCT, and especially its Annex 15, provides—with a view to ensuring prudential operations and risk consolidation by recipients—for the constitution of a database of loan recipients. In addition, external auditors of credit institutions are required to prepare a specific report on organizational issues and a related management letter, which are forwarded to the regulator.

290. A draft amendment to the Banking Law is currently before Parliament. It is expected to broaden and clarify the obligations of credit institutions with respect to internal control (Article 34 *bis, ter,* and *quarter,* essentially). A draft implementing circular on internal control is under preparation by the BCT; it will cover obligations related to compliance assessment.

291. Article 13 of CTAF directive 02-2006 ("must establish internal control procedures") makes explicit reference to internal control only for credit institutions, offshore banks, and the ONP. The criteria for such internal control must be formulated by the supervisory authorities, who have not yet adopted a text on that subject.

292. There are as yet no detailed provisions setting out the various features that the internal control systems of insurance companies must have. In application of Accounting Standard 27, such companies are nevertheless formally required to establish effective internal control procedures. Their external auditors must also forward a special report on their work to the Minister of Finance, for purposes of assessment of the certification of accounts. The CGA has not yet distributed any circular on the new internal control obligations of insurance companies (Law on Financial Security), although a draft is being prepared on that subject.

293. Under Decree 99-2478 establishing the charter of intermediaries in securities market operations, they are required to put into place numerous internal control measures, in particular regarding the appointment of an ethics officer (Article 86) and the mechanisms to be established to ensure separation between own account and third party account business and assets. The CMF is currently preparing a recommendation to securities brokers on their AML/CFT obligations.

294. Article 14 of CTAF Directive 02-2006 requires credit institutions, offshore banks, and the ONP "to implement ongoing training programs." Only a few credit institutions, subsidiaries of international banks for the most part, seem to have started taking action to provide AML/CFT training to their personnel. The other credit institutions, as well as the insurance companies, have not yet begun such actions. The Tunisian professional association of banks and financial services companies (APTBEF) has started discussions with the BCT and the CTAF to this end and has prepared a preliminary training and awareness plan. The association of securities brokers, which has included AML/CFT measures in its pledge of honor that all agents are required to sign, has organized specific training for all ethics officers. The professional association of insurance companies has not prepared a training plan for its members.

295. All the regulated financial institutions are required to establish hiring procedures (based, in particular, on Article 83 of Decree 99-2478 for intermediaries in securities market operations), to ensure that recruitment takes place on the basis of strict criteria.

296. Article 14 of CTAF Directive 02-2006 requires credit institutions, offshore banks, and the ONP to ensure that their foreign subsidiaries and branches have customer identification and due diligence procedures equivalent to their own. It does not require notifying the prudential supervision authorities if such is not the case. Insurance companies and securities brokers are not required by law to ensure that their foreign branches and subsidiaries comply with AML/CFT measures—let alone report to the oversight authorities in their country of origin on any inability to comply with pertinent AML/CFT measures.

*Analysis*

297. With the exception of the securities markets, the general obligations imposed on the financial institutions with respect to internal control systems are recent at the legislative level and have not yet been transposed by the banking regulator or by the insurance regulator into more detailed and specific obligations. This means that the Tunisian financial sector has not yet fully assumed its role in a process based on the implementation of formalized mechanisms for the identification, measurement, and control of risks faced by all the activities of the institutions. This situation makes it more difficult for the financial institutions to achieve operational compliance with the AML/CFT obligations created by Law 2003-75. A draft circular on internal control is under preparation by the banking supervisor.

298. In the case of foreign subsidiaries and branches, the structure of the Tunisian financial sector makes the lack of pertinent obligations less problematic at this time, as no Tunisian financial institution currently has such subsidiaries or branches (although several Tunisian financial institutions have equity interests in a French bank, Union Tunisienne de Banques). In a context of Tunisia's increasing integration into the international and regional economies, the likelihood of Tunisian nonbank financial institutions expanding beyond Tunisia's borders is increasing. It is therefore reasonable to take steps now to ensure that the relevant AML/CFT obligations are defined in the legal framework. It should also be noticed that the Tunisian foreign exchange regulation only allows investment abroad in the productive sector.

### *3.8.2 Recommendations and comments*

299. Leveraging on the internal control obligations recently expanded to cover all financial institutions, Tunisia should:

- Spell out all the AML/CFT obligations in the area of internal control (due diligence measures, record keeping, detection of unusual transactions, compliance assessment, appointment of an independent compliance officer, in-service training for employees). Advantage should be taken of the novelty of the obligations imposed on the banking and insurance sectors, whereby they are required to establish internal control systems, to include AML/CFT measures fully into the broader risk management and internal control system;

- Establish an obligation for nonbank financial institutions with subsidiaries and branches abroad to ensure that such subsidiaries and branches comply with the strictest AML/CFT obligations existing in both Tunisia and the host country whenever the laws and regulations of the host country so allow;

- Establish an obligation for Tunisian financial institutions to inform their oversight authorities whenever their subsidiaries and branches are unable to apply appropriate AML/CFT measures.

### *3.8.3 Compliance with Recommendations 15 and 22*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 15 | NC | No detailed criteria for establishment of the internal control procedures that financial institutions are required to have. No directives on internal control issued by the supervisors of credit institutions and insurance companies.<br>No general or targeted training programs in the banking and insurance professions, particularly for compliance officers. |
| R. 22 | LC | Tunisian nonbank financial institutions not required to ensure that their subsidiaries and branches comply with AML/CFT obligations.<br>Tunisian financial institutions not required to inform their supervisors when |

| | | |
|---|---|---|
| | | their subsidiaries and branches are unable to implement appropriate AML/CFT measures. |

### 3.9 Shell banks (R. 18)

#### *3.9.1 Description and analysis*

300. The creation of shell banks is not allowed under Tunisian regulations issued by the Central Bank. Law no. 65 of 2001 specifically states that a license shall be given "based on the activity program of the institution requesting the license, the technical and financial means it intends to use, the capacity of capital contributors, and the capacity of their guarantors when necessary, and the reputation and proficiency of its operators."

301. By contrast, there are no provisions prohibiting Tunisian credit institutions from maintaining relations with shell banks, nor are Tunisian credit institutions required to take reasonable measures to "sufficiently ensure" that their correspondent banks do not maintain relations with shell banks. It has to be noticed that the Central Bank of Tunisia indicates its knowledge of all correspondence banking relationships existing in Tunisia.

#### *3.9.2 Recommendations and comments*

302. Credit institutions should not be authorized to maintain relationships with shell banks and should be required to take reasonable measures to ensure that their correspondent banks do not maintain relations with shell banks.

#### 3.9.3 Compliance with Recommendation 18

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 18 | PC | No prohibition against Tunisian credit institutions maintaining relations with shell banks.<br>Credit institutions not required to take reasonable measures to ensure that their correspondent banks do not maintain relations with shell banks. |

**Regulation, supervision, monitoring, and penalties**

### 3.10 The supervision and control system — Competent authorities and self-regulating organizations - Role, functions, obligations, and powers (including penalties) (R. 23, 30, 29, 17, 32, and 25)

#### *3.10.1 Description and analysis*

303. In Tunisia, the financial activities mentioned in the FATF Recommendations are performed primarily by credit institutions (onshore and offshore—see below), insurance companies, securities brokers, and the national post office. The Banking Law (Law 2001-65 of July 10, 2001 on credit institutions) states in its Article 14 that the business of banking must be performed solely by persons licensed for that purpose, any violation being penalized as a crime. Regarding transfers of funds, Tunisian law introduces the notion, under the exchange control regulations, of licensed exchange intermediaries and subagents (see the pertinent chapter describing the arrangements with regard to transfers of funds).

304. Law 2003-75 states in its Article 77 that “the authorities empowered to regulate banking and nonbank financial institutions […] shall be responsible for formulating programs and practices that

are appropriate for combating money laundering and terrorist financing, ensuring that they are implemented, and taking necessary disciplinary measures, where applicable, pursuant to the legislation in force."

*Credit and leasing institutions*

305. Tunisia has established a distinction between onshore credit institutions and offshore banks, based on exchange control considerations rather than on the status of the customers of these institutions. Onshore credit institutions are governed by the Banking Law (Law 2001-65). Offshore banks are governed by Law 85-108 of December 6, 1985 providing incentives for financial and banking institutions working essentially with nonresidents. Leasing activities are covered by Law 94-89 of July 26, 1994 on leasing.

306. Law 85-108 defines "offshore institutions" as follows: "Legal persons having Tunisian legal status and institutions in Tunisia that are owned by foreign legal persons authorized to operate under the current arrangements shall be deemed to be nonresidents under the Tunisian foreign exchange legislation." Section 1 of this law describes the transactions that can be performed by the institutions in question with nonresidents (under the foreign exchange legislation), while its Section 2 defines those that can be performed with residents. The Tunisian foreign exchange legislation (Law 76-18 of January 21, 1976 reorganizing and codifying the foreign exchange and foreign trade legislation governing the relations between Tunisia and the rest of the world) introduces the following definitions, complementing Foreign Exchange Notice 3 of October 5, 1982, issued by the Minister of Planning and Finance:

- Residents are natural persons having their normal residence in Tunisia and Tunisian or foreign legal persons for their institutions in Tunisia; and
- Nonresidents are natural persons having their normal residence abroad and Tunisian or foreign legal persons for their institutions abroad.

These two definitions are applicable, notwithstanding the specific definitions contained in Law 72-38 on industries involved exclusively in export that allows those industries, by extension, to be afforded the status of nonresidents.

*Onshore credit institutions*

307. Law 58-90 of September 19, 1958 on the creation and organization of the Central Bank of Tunisia states in its Article 33 that the BCT "shall control the circulation of money and the distribution of credit and shall ensure the proper functioning of the banking and financial system." Law 2001-85 specifies in its Article 32 that the BCT "shall carry out off-site and on-site supervision of credit institutions." The draft amendment to the charter of the Central Bank of Tunisia provides for the clarification of its competence to carry out banking supervision.

308. Article 9 of the Banking Law states that the licensing of banks, which occurs by decree of the Minister of Finance, is dependent on the status of those providing the capital (and, where applicable, their guarantors) and the propriety and qualifications of their executives. Article 26 of the same law states that "persons may not direct, administer, manage, control, or commit a credit institution if they have been convicted for falsification of accounts, theft, breach of trust, fraud, or misdemeanor punished by the laws on fraud, extortion of funds or securities of third parties, pilfering committed by public depositary, issuance of bad checks, possession of objects obtained by means of these offenses, or violation of the exchange regulations"—and any noncompliance with these provisions are punishable as crimes. Article 15 on the withdrawal of licensing states that a license may be withdrawn "whenever an institution does not meet the conditions on the basis of which the license was granted or

whenever an institution has obtained a license by means of false declarations or any other irregular means."

309. In practice, and within the framework of a broad interpretation of the law, the central bank manages licensing at two levels: licensing of the institutions themselves and licensing of the executives. It makes any changes in the capital structure of credit institutions subject to license renewal, based on Articles 9 and 10 of the Banking Law.

310. Article 42 of the Banking Law defines the disciplinary measures applicable to credit institutions, ranging from a warning to withdrawal of the license. The most severe penalties (beginning with prohibition from carrying out certain operations) are imposed by the Banking Commission,[19] the others falling under the exclusive purview of the BCT Governor. Fines are included among the applicable penalties, and "the amount may be up to five times the sum involved in the offense." Article 45 of the same law defines the penalties applicable to natural persons connected to an institution (members of the board of directors, members of management, members of the board of trustees, executives, and representatives), including temporary suspension, dismissal, and fines. These penalties are imposed by the Banking Commission. The fines are also proportional to the sum involved in the offense found. Penalties under the Banking Law are not published.

*Offshore banks*

311. Banks working essentially with nonresidents are subject to oversight by the BCT under Article 22 of Law 85-108, which states that credit institutions are required to comply "generally [with the] rules establishing the conditions under which the banking profession is exercised."

312. Banks are licensed by the Minister of Finance, after consultation with the National Credit Council and on the proposal of the BCT. The terms of these licenses, and in particular those relating to the propriety of those providing the capital and the executives, are not defined in Law 85-108. The other conditions for license withdrawal are similar to those for onshore credit institutions.

313. The oversight of offshore institutions is fully integrated with the activities of the BCT's banking supervision directorate, which is also responsible for resident credit institutions.

*Leasing institutions*

314. Law 94-89 on leasing states that only on- and offshore banking institutions can carry out leasing as a normal business. These institutions are subject to regulation and control by the Central Bank of Tunisia. All the provisions applicable to on- and offshore credit institutions are therefore also automatically applicable to them.

*Exercise of control by the BCT*

315. The banking supervisor is organized around three focal points: regulation and bank modernization, off-site control, and on-site control. Its staffing totals 46 persons, 16 of whom are assigned to inspection (on-site control). There is a plan to recruit the equivalent of 20 percent of the current staff to deal with the increase in its workload, generated in particular by the control of AML/CFT obligations. Offshore banks (see below) are fully integrated into this structure.

316. The division of responsibilities between the banking supervisor and the foreign exchange directorate of the central bank with regard to monitoring the compliance of foreign exchange subagents with their obligations is still confused, especially as there seems to be an expectation

[19] The commission is made up of four members (a magistrate who is the chair, a director general from the Ministry of Finance, a director general from the Central Bank of Tunisia, and the managing director of the Tunisian Professional Banking Association).

that the CTAF will itself exercise such controls. The foreign exchange directorate only covers foreign exchange activities. Quite apart from AML/CFT considerations, coordination and information exchanges between the foreign exchange directorate and the banking supervisor seem limited. The infrequency of on-site controls of the compliance of foreign exchange subagents with their obligations and the insufficient use of off-site control are additional factors that weaken control. The Tunisian authorities indicate that the creation in May 2006 of a General Directorate merging the General Inspection for Banking and the Inspection for Exchange controls should lead to a more effective supervision.

317. On-site controls take place once every two years, on average, and the supervision program includes elements of risk assessment. Central bank inspectors have access to all the information necessary for the performance of their mission.[20]

318. Central bank staff, including those assigned to banking supervision, are recruited by competitive examination. They are subject to propriety requirements. They are required to observe professional secrecy (Article 23 of Law 58-90 for the BCT Board and individuals it works with).

319. Employees responsible for the supervision of credit and leasing institutions have participated in a general training session on combating money laundering and terrorist financing, in the same way as all staff of the BCT involved in these issues. Several managers have participated in international seminars and in training for assessors of compliance with the FATF recommendations. Specific preliminary training for supervisors is planned for March 2006.

320. To date, the BCT has not yet has not included in its supervision activities (off- and on-site) the verification of compliance by credit institutions and leasing companies with their AML/CFT obligations. The BCT stated that before doing this, it was waiting for the CTAF to publish its directives on the reporting of suspicions and on credit and leasing institutions, on the basis of which it could then prepare and publish more specific circulars. The BCT does not therefore expect to start carrying out such verifications before, at best, the second half of 2006.

*Insurance companies*

321. Insurance companies are subject to the supervision and oversight of the General Insurance Committee (CGA), which is a unit of the Ministry of Finance. The authorities have started discussions with a view to granting administrative and financial autonomy to the CGA. As stated above with respect to credit institutions, Law 2003-75 includes in the CGA's supervisory and oversight mission, the assessment of compliance with AML/CFT obligations.

322. Insurance companies and intermediaries (insurance brokers and agents) are subject to licensing by the Minister of Finance. Experts and claims adjusters (for damage insurance), for their part, are subject to special terms and conditions. Licensing conditions refer to conditions of competence and propriety, the list of propriety-related offenses being the same as those contained in Article 26 of the Banking Law.

323. However, the CGA does not make any distinction between the licensing of an insurance company and the approval of its shareholders and executives. For instance, the CGA does not believe that insurance companies are under any obligation to report to it or, where applicable, to obtain the renewal of their license when there are changes in their shareholders or executives. Therefore, the conditions of properness and competence of shareholders or executives are not the subject of ongoing supervision.

[20] Article 32 of the Banking Law states that institutions must provide "any documents, information, clarifications, and explanations necessary for the review of their position and making it possible to ensure that they are correctly applying the regulations […] on the control of credit institutions."

324. A draft amendment to the insurance code calls for the inclusion of provisions allowing, on the one hand, for any acquisition of shares in an insurance company above a given ceiling to be made subject to prior approval by the CGA, and, on the other, imposing the obligation of informing the CGA of any appointment of an executive to a key post, with the Committee having the right to oppose such an appointment based on the criteria of competence and integrity.

325. In the event of noncompliance by insurance companies with their prudential obligations, the CGA may impose penalties on them, using a set of measures ranging from warning to license withdrawal. For the reasons mentioned above regarding the licensing of executives, the CGA cannot impose personal penalties on executives. The penalties imposed by the CGA are not published. The above-mentioned draft amendment also calls for the inclusion of provisions stipulating that executives are personally liable for their management, as well as the penalties that may be imposed on them.

326. The CGA has 30 staff members, including 18 to perform off-site and on-site inspections, working in two respective units. The CGA staff, including those assigned to supervision, are recruited by competitive examination. They are subject to requirements of propriety, as in the case of all civil servants. They are subject to professional secrecy (Article 83 of the insurance code).

327. Insurance supervisors are accredited to insurance companies and carry out off-site and on-site audits. There is no similar accreditation mechanism for insurance brokers.

328. The program of on-site inspections allows for the audit of four companies a year on average and visits can be comprehensive or focused on specific topics. The program of inspections takes account of a risk factor related to the financial position of the insurance company in question. There is no systematic program to inspect insurance brokers, and on-site audits of them take place only on request from the CGA or when there is a particular problem of which the CGA is aware. Insurance agents are often audited in the context of missions related to the insurance companies to which they are attached, but there is no specific program to supervise them. The CGA staff members have not received AML/CFT training. To date, the CGA has not carried out any audit relating to compliance with the AML/CFT obligations.

329. For the same reasons as mentioned above in the case of banking supervisors, the CGA has not yet disseminated a circular to insurance companies and insurance intermediaries on their AML/CFT obligations.

*Financial markets*

330. Securities brokers are subject to regulation and control by the Financial Markets Board (CMF), pursuant to Article 23 of Law 94-117 of November 14, 1994 organizing the financial market. The CMF supervises UCITS (open-end investment fund – SICAV – mutual funds and special purpose entities classified in that category) and exercises ongoing control over the Tunis Securities Exchange; securities brokers; the securities deposit, clearing, and settlement company; and portfolio management agencies acting on behalf of third parties (under Law 2005-96 of October 18, 2005 on the security of financial relations). Closed-end investment funds – SICAF – and risk-capital funds – SICAR – are no longer subject to CMF supervision.

331. The CMF issues licenses to securities brokers (Article 57 of Law 94-117) and trust companies[21] managing portfolios on behalf of third parties (Article 23 of Law 2005-96). The Minister of Finance appoints members of the board of directors of the Tunis Securities Exchange (Article 65). The CMF may suspend or withdraw the license of securities brokers (Article 57) and management

[21] The business of portfolio management on behalf of third parties may be carried out only by credit institutions, securities brokers, and management companies (which are business corporations whose purpose is to manage portfolios of securities on behalf of third parties).

companies acting on behalf of third parties (Article 23). The Minister of Finance may remove executives of the Tunis Securities Exchange. Procedures for the appointment of executives of the securities deposit, clearing, and settlement company are defined by the Company Code ; the members of the Board are designated by the General Assembly of Shareholders and the Chair of the Board is elected by the Board members. The Minister of Finance can oppose the nomination of the Chief Executive proposed by the Board. SICAVs must inform the CMF of their establishment by submitting a file containing the articles of incorporation, the structure of their capital, and the composition of their managing bodies. The CMF may also ask them for any information and statistics concerning their activities (Article 24 of Law 88-92). Article 58 of Law 94-117 specifies that securities brokers must present adequate guarantees of the propriety of their executives.[22] There is no similar legislative provision in the case of portfolio management on behalf of third parties. Law 94-117 does not explicitly spell out the conditions of propriety for executives of the Tunis Securities Exchange. Nor does it mention conditions of propriety for shareholders or those contributing capital with respect to the licensing of securities brokers. Article 6 of the Decree 99-2478 of November 1st, 1999 sets out a list of offences that forbids the exercise of a broker's activity ("cannot be broker, as a natural person or as manager, in whatever position, of a legal person being a broker, anyone who i) has been convicted of falsification of accounts, theft, breach of trust, fraud, or misdemeanor punished by the laws on fraud, extortion of funds or securities of third parties, pilfering committed by public depositary, issuance of bad checks, possession of objects obtained by means of these offenses, or violation of the exchange regulations, ii) has been convicted for an intentional offence and not been rehabilitated, iii) is under a definitive bankruptcy court decision and iv) is director or manager of a bankrupt company with the bankruptcy decision being extended to the individual or has been convicted under art 288 and 289 of the Penal Code related to Bankruptcy". The Decree 2006-1294 of May 8th, 2006 implementing Article 23 of the Law 2005-96 of October 18th, 2005 related to the Strengthening of Financial Security includes fit and proper requirements for managers of securities brokers (falsification of accounts, theft, breach of trust, fraud, or misdemeanor punished by the laws on fraud, extortion of funds or securities of third parties, pilfering committed by public depositary, issuance of bad checks, possession of objects obtained by means of these offenses….).

332. The CMF may perform off-site and on-site supervision of the institutions it regulates. Law 94-117 clearly defines in its Articles 35-39 the means of investigation available to the CMF, as well as its disciplinary power (Articles 41 and 42). Law 2005-96 states that the CMF is to oversee the activities of those engaged in management on behalf of third parties—the resources of the CMF for conducting inquiries and investigations being applicable to them—and grants them disciplinary power. Investigators have access to all the documents and papers necessary for their research and findings (Article 37 of Law 94-117).

333. The CMF is authorized to impose disciplinary penalties on the Tunis Securities Exchange, its executives, and its personnel; the securities deposit, clearing, and settlement company, its executives, and its personnel; securities brokers, natural and legal persons, their executives, and the personnel placed under their authority; and the executives, managers, and depositories of the assets of mutual funds. The penalties applicable are: warning, reprimand, fine, total or partial prohibition from exercising all or a part of a business, and license withdrawal. Fines can be imposed for a few instances of noncompliance (Article 40 of Law 94-117) and may not exceed D 20,000 (approximately US$15,000). When profits were made as a result of the offense in question, and depending on the seriousness of the acts involved, the fine may be set at up to five times the amount of those profits. The two latter penalties are not applicable to the Tunis Securities Exchange or to the securities deposit, clearing and settlement company. Disciplinary measures taken by the CMF are published

[22] Unlike the provisions applicable to credit institutions and insurance companies, Law 94-117 does not contain any list of offenses leading to prohibition from engaging in the business of a securities exchange intermediary.

"whenever their effects involve third parties," but are not necessarily explained. They are taken without prejudice to any criminal penalties associated with certain instances of noncompliance.

334. The CMF has a staff of 90 persons (16 are in the process of being hired). There are 16 sworn CMF inspectors. CMF employees are recruited by competitive exams. Investigations are carried out by employees who have been sworn in and authorized for that purpose by the CMF and have to be at a minimum level of seniority within the Tunisian civil service. Investigators and any other person required to take cognizance of the pertinent files are bound by professional secrecy.

335. The program of on-site control includes comprehensive inspections and other ad hoc audits focused on specific topics. On average, the CMF conducts on-site supervision of the majority of the institutions it supervises at least once a year. CMF employees have received general AML/CFT training. To date, the CMF has not carried out any controls of compliance with the AML/CFT obligations.

336. For the same reasons as mentioned above in the case of the banking supervisor, the CMF has not yet disseminated any circular to securities brokers on their AML/CFT obligations.

*National post office (ONP)*

337. The national post office is supervised by the Ministry of Information Technologies (Articles 14 and 15 of Law 98-1305 establishing the ONP).

338. With the exception of the BCT in the context of its monetary policy and exchange control responsibilities, there are no financial institutions in Tunisia engaging in financial operations described by the FATF and not falling into the categories described above.

Analysis

339. The financial sector supervisory authorities, including the post office supervisor, generally have powers to implement the AML/CFT legal framework. In practice, the BCT, the CMF, and the CGA carry out the controls (off-site and on-site) necessary for the effectiveness of their mission with respect to prudential matters. The absence of systematic control of insurance brokers (and to a lesser extent, insurance agents) is a notable weakness. Anti-money laundering obligations however, are not yet covered.

340. For the BCT, verification of the propriety of the shareholders and executives of credit institutions is an integral part of bank licensing (as an operating condition). The CMF does not have a corresponding legal basis in its supervision of securities brokers. The CGA does not have a clear legal basis for action in this regard and does not link this condition of propriety to licensing overall. In the cases where a restricted list defines the conditions of propriety, the reference to the absence of a criminal conviction—in particular with respect to money laundering and terrorist financing—is a major shortcoming.

341. The supervisors' powers to impose penalties are generally appropriate, effective, proportional, and dissuasive. The lack of publicity about penalties imposed on banks and insurance companies and the lack of a legal basis for the CMF to impose penalties are weaknesses. The BCT feels this would constitute a second penalty, and that an assessment of the appropriateness of publication remains necessary on a case by case basis. The link between the amount of a fine and the amount involved in an offense (for credit institutions and insurance companies) is a damaging constraint, as it quite often prevents the imposition of fines for noncompliance with internal control obligations. The BCT feels it can impose fines without the need for any direct link with a transaction, but it has not done so to date. In the same spirit, the list of defects that can lead to the imposition of a penalty by the CMF in the form of a fine does not include internal control shortcomings. In the case of the CGA, the absence of a legal basis for imposing fines on individual executives of a company weakens the dissuasive nature of the mechanism. Moreover, a draft law on the financial and

administrative autonomy of the CGA states that it will have the authority to publicize some of the penalties it imposes.

342. With the current recruiting of new staff, the CMF will have the necessary means to carry out its missions, and the initial training efforts are encouraging and should be pursued. Banking supervision staff should be increased, especially with a view to including the assessment of compliance with the AML/CFT obligations. The training of bank supervisors in money laundering and terrorist financing issues should now be more targeted to their functions of off-site and on-site control. The staffing of the CGA is inadequate, and the insurance supervisors have not received any AML/CFT training to date. An overall effort is necessary to train the supervisors of the entire financial sector, focused on the practical exercise of AML/CFT supervision.

### *3.10.2 Recommendations and comments*

343. The Tunisian authorities should, in order of priority:

- Adopt detailed circulars on implementation of the CTAF directive prepared for credit institutions, offshore banks, and the national post office;
- accelerate the training of banking supervisors in AML/CFT matters;
- strengthen the staffing of the banking supervisor;
- include the assessment of compliance with the pertinent obligations in the prudential supervision carried out by the banking supervisor;
- broaden, within the three pillars of the financial sector, the scope of the power to impose fines in the event of noncompliance with the internal control and compliance assessment obligations, and in particular the AML/CFT obligations;
- allow all penalties and the reasons for them to be made public;
- clarify and strengthen the legal basis, in the case of the three pillars of the financial sector, for the approval of capital contributors, shareholders, board members, and executives of financial institutions—particularly with regard to integrity—and the possibility of imposing penalties on them for noncompliance with their AML/CFT obligations;
- adopt a CTAF directive for securities brokers, as well as corresponding detailed circulars, on AML/CFT measures;
- include the assessment of compliance with pertinent obligations in the prudential supervision of the securities market by the supervisor;
- build the capacity and staffing of the insurance supervisor, in particular with respect to measures against money laundering and terrorist financing;
- adopt a CTAF directive for insurance companies and insurance intermediaries, as well as pertinent detailed circulars, on AML/CFT measures;
- strengthen control of foreign exchange subagents and clarify the respective responsibilities of supervisors; and
- include assessment of compliance with the pertinent obligations in the prudential supervision of the insurance supervisor and expand its coverage to include insurance intermediaries.

### *3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, and 25*

| | Compliance rating | Summary of grounds (specific to section 3.10) for the overall compliance rating |
|---|---|---|
| R. 17 | LC | No possibility of penalizing insurance company executives for nonfulfillment |

| | | |
|---|---|---|
| | | of AML/CFT obligations<br>For the three pillars of the financial sector, failure thus far to effectively implement penalty measures |
| R. 23 | PC | General failure of the supervision authorities thus far to monitor the compliance of supervised institutions with AML/CFT obligations. Particularly deficient control of foreign exchange subagents and ambiguity concerning the division of responsibilities between supervisors (banking supervisors and BCT foreign exchange directorate) in this area. Lack of effective oversight of insurance agents.<br>Lack of detailed directives from each financial sector supervisor on AML/CFT directives.<br>Little or no harmonization of the legal basis regarding the integrity of capital contributors, shareholders, board members, and executives of financial institutions. |
| R. 25 | NC | No guidelines issued by the competent authorities |
| R. 29 | LC | No possibility of penalizing executives for nonfulfillment of AML/CFT obligations in the insurance sector |
| R. 30 | LC | Overall lack of staffing for the banking supervisor and the insurance supervisor<br>No training for staff of the insurance supervisor<br>No training for staff of the banking supervisor |
| R. 32 | NC | No organized statistical tracking of supervision activities and related penalties |

## 3.11 Money or value transfer services (SR. VI)

### *3.11.1 Description and analysis (summary)*

344. In implementation of the provisions of Article 2 of Law 2001-65 of July 10, 2001 on credit institutions, the activity of making funds available to customers and managing payment instruments requires a license to operate as a credit institution. The national post office (ONP) is also authorized to offer money and value transfer services.

345. The provisions of Article 14 of Law 2001-65 define the BCT's powers to ensure compliance with the banking monopoly requirements. Also, the third chapter of Law 2003-75 contains provisions for suppressing illicit financial channels.

346. In practice, the information provided by the authorities suggests that if they do exist, informal funds or value transfer services handle only small volumes. Few efforts seem to be made to detect their existence and, where necessary, eliminate such activities.

### *3.11.2 Recommendations and comments*

347. The legal framework is satisfactory, but the authorities need to be more vigilant with regard to informal funds or value transfer systems, particularly by making use of the information that the intelligence or police units have.

### *3.11.3 Compliance with Special Recommendation VI*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| SR. VI | LC | Implementation still not adequate. |

## 4 PREVENTIVE MEASURES—DESIGNATED NONFINANCIAL BUSINESSES AND PROFESSIONS

### 4.1 Customer due diligence and record keeping (R. 12)
(in implementation of R. 5, 6, 8-11, and 17)

#### *4.1.1 Description and analysis*

348. Designated nonfinancial businesses and professions covered by the AML/CFT mechanism are defined in Tunisian law in Article 74 of the AML/CFT Law as "any persons who, in the exercise of their profession, carry out, control, or advise on financial operations or transactions leading to a flow of capital."

349. The Tunisian authorities explained that by "perform" they mean all financial transactions carried out *for the account* of a customer and that they believe, therefore, that this definition does not encompass the execution of any financial transaction in general, which would make the scope of the law excessively broad.

350. It should be noted that this definition of covered activities does not include a list of nonfinancial businesses and professions subject to the law. In practice, this means, in the opinion of the authorities, that any profession or any professional who carries out this type of transaction or operation for the account of a customer is then subject to the obligations of due diligence and detection. This approach differs from that of the FATF, which initially defines a minimal list of covered nonfinancial businesses and professions and then indicates for each the specific operations subject to those obligations.

351. Moreover, neither Article 74 nor any other article of the law of 2003 makes any distinction, based on activities or types of transactions, between due diligence obligations and those of detecting and reporting suspicious transactions. Consequently, the activities defined by the FATF for lawyers, notaries, other independent legal professionals, and accountants and which are not assumed to involve a financial transaction are not covered in the framework of customer identification and record keeping obligations by Tunisian law (this is especially so for the "preparation of transactions" as defined by the FATF, inasmuch as the verbs "carry out, control, or advise" do not seem fully to cover the "preparation" of the transactions listed by the FATF).

352. All the due diligence obligations described in section 3 of this report apply.

#### *4.1.2 Recommendations and comments*

353. The authorities should:

- amend their definition of the designated nonfinancial businesses and professions subject to due diligence obligations by explicitly listing the professions/professionals concerned and then the activities in question;

- make a determined effort to increase the awareness of professionals and thus ensure ownership of the system. This effort should also include full participation by the self-regulation agencies.

#### *4.1.3 Compliance with Recommendation 12*

| | Compliance rating | Summary of grounds (specific to section 4.1) for the overall compliance rating |
|---|---|---|

| | | |
|---|---|---|
| R. 12 | PC | Inadequate definition of designated nonfinancial business and professions<br>Nonfulfillment of obligations |

### 4.2 Reporting of suspicious operations (R. 16)
(in implementation of R. 13-15, 17, and 21)

#### *4.2.1 Description and analysis*

354. All the obligations described in section 3 apply *ipso facto*, as the system for reporting suspicious transactions is identical. Moreover, the weaknesses in the definition of the scope of the professions and their covered activities, described in section 4.1, apply to the reporting of suspicious operations.

#### *4.2.2 Recommendations and comments*

355. The recommendations on clarifying the coverage of designated nonfinancial businesses and professions and on the implementation of recommendation 13 apply in their entirety.

#### *4.2.3 Compliance with Recommendations 12 and 16*

| | Compliance rating | Summary of grounds (specific to section 4.2) for the overall compliance rating |
|---|---|---|
| R. 16 | NC | Inherent weaknesses in the procedure for reporting suspicious transactions (see recommendation 13)<br>Complete lack of implementation of the system |

### 4.3 Regulation, supervision, and monitoring (R.17, 24-25)

#### *4.3.1 Description and analysis*

Casinos

356. There are only four casinos operating in Tunisia, which are reserved exclusively for nonresidents. Casino games are regulated by Law 74-97 of December 11, 1974, Decree-Law 74-21 of October 24, 1994, Decree 76-114 of February 14, 1976, amended by Decree 90-315 of February 8, 1990, Ministry of the Interior and Tourism Ministry Circular 1515 of July 6, 1988, Law 77-12 of March 7, 1977, and Decree 76-115 of February 14, 1976 on the composition and methods of operation of casino games. These instruments indicate that the casino business is subject to prior authorization granted by joint decree of the Ministries of the Interior and Tourism after obtaining the opinion of the gaming commission (Decree 76-115 of February 14, 1976). This commission is made up of the director general of the tourism office, who is the chair, representatives of the Ministry of the Interior, the Ministry of Finance, the governor of the BCT, and the regional governor and the mayor of the commune in which the future casino will be located, or their representatives.

357. The BCT determines the procedure to be followed by the casino in handling foreign exchange. Accordingly, the casino is required to apply to a licensed dealer for the status of foreign exchange subagent, and to complete a form (designed by the BCT) concerning the sale of gaming disks and tokens for foreign exchange. The BCT authorizes the casino to return amounts of foreign

exchange to its nonresident customers for the repurchase of gaming disks and tokens after entering the corresponding amounts in the gaming disks and tokens buyback form. This form also serves as authorization to withdraw winnings. This authorization must match the equivalent in foreign exchange of the difference between the amount of gaming disks and tokens sold back to the casino and the amount of gaming pieces purchased initially, as indicated in the sell and buyback forms.

358. Every casino must keep separate accounts for gaming. These accounts are to be made available to representatives of the Ministries of the Interior and Finance and the BCT when they perform their oversight and supervision duties. The latter also have access to premises and their investigations must be facilitated, subject to criminal penalties. Every casino must have a manager and a management committee, regardless of its legal form. The manager is approved by the Ministry of the Interior. The same is true of the employees, who are either approved by or reported to the Ministry of the Interior, as applicable. Access to the gaming rooms requires the issuance of an admission card, for which proof of identity is required. The Ministry of the Interior may also request the exclusion of any individual.

Legal professions

- Lawyers

359. There are 4,295 lawyers in Tunisia. Law 89-87 of September 7, 1989 organizing the profession of lawyer defines the activity as the act of representing individuals and legal entities, assisting and defending them in all legal, administrative, and disciplinary proceedings, and giving legal advice (Article 2). There is a national bar council to which all lawyers in Tunisia must belong. It is presided over by the president of the bar association, who represents the bar in its dealings with all the central authorities. Three regional divisions of lawyers (Tunis, Sousse, Sfax) were created by law and have local administrative competence as well as competence in disciplinary, financial, asset management, contract, pension, and retirement matters, deriving from the national council. A lawyer is liable for disciplinary sanctions for neglecting his duties or for committing, through his behavior in the context of his profession or through his conduct outside it, any act that is damaging to the honor or reputation of the profession (Article 64). The sanctions are warning, reprimand, demotion, temporary suspension, and temporary or permanent removal from the bar roll. A special proceeding is provided for by the law, including in particular the adversarial principle, and appeals before the ordinary law courts (court of appeals). This system therefore subjects lawyers to possible disciplinary supervision if they do not fulfill their AML/CFT obligations.

360. The lawyers met with proved to be largely unaware of the system and have not applied it. The profession has not responded to its new obligations, including with regard to training and awareness. Some professionals seem to resent the very principle of their obligation to report as being contrary to the nature of their professional secrecy, while others believe that a balance must be struck between law enforcement (AML/CFT) and lawyers' professional secrecy.

361. It should also be noted that in Tunisia, lawyers may execute documents transferring ownership, particularly in the case of real property (goodwill, real estate, etc.). In practice, these documents are private and represent considerable competition for notaries, who are subject to stricter requirements regarding officially recorded instruments and the organization of their activities, which do not apply to lawyers. In this context, verification of the source of funds is minimal—the foreign exchange legislation being the only protection.

Notaries

362. Law 94-60 of May 23, 1994 organizes this profession of ministerial officials. The notary reports to the attorney general of the court of appeals and is under the direct supervision of the public

prosecutor of the district in which he serves. The roll of notaries is established by decree of the Minister of Justice. Notaries are subject to strict supervision by the public prosecutor, who inspects them every three months, and by the tax offices. Notaries are liable for disciplinary sanctions ranging from warning to dismissal. These sanctions are imposed by a disciplinary board attached to each court of appeals. The controls to which notaries are subject make fraud inherently difficult.

363. Notaries are responsible for drafting agreements and statements that the authorities and the parties wish to set out in an official document, conducting inquiries related to obligations, and determining portions based on death certificates. To be validly accepted, the documents must be drawn up by two notaries and entered in special registers with an indication of their date. The nature of the transactions and the identity of the parties are established in supporting documents.

364. In both cases, the registers are forwarded to and cross checked by the supervisory authorities. The law very clearly describes the formal obligations of these professionals. Despite the strict formality to which these professionals are subject, it is still difficult to verify the source of funds when the amounts are in cash. Nevertheless, the administration exercises strict due diligence with regard to assets and the parties to transactions. However, this strictness is undermined by the increasingly frequent reliance on attorneys, who can carry out real estate transactions in Tunisia under private seal and subject to far less restrictive formal rules. In these circumstances, verification of the source of funds and of the identity of the parties is less rigorous.

365. The profession has not been made aware of the AML system and to date has not submitted an STR.

Real estate agents

366. Law 81-55 of June 23, 1981 organizes the profession. A real estate agent is any individual or legal entity who, professionally or regularly, and with a view to realizing a profit, assists in one of the following operations involving the assets of another: the purchase, sale, leasing, or swap of real property, goodwill, or nonnegotiable corporate shares when the corporate assets include real property or goodwill. Any individual or legal entity who, professionally or regularly, and with a view to realizing a profit, manages real property belonging to another is also defined as a real estate agent.

367. Working in the profession requires a license from the Ministry of Economy. The rules governing access to the profession are strictly defined. A high degree of formality is required, particularly the keeping of a record of services indicating the services rendered and the remuneration thereof, as well as a detailed record of powers of attorney. Offers and requests related to the operations in question must be publicized in detail (Article 6). Real estate agents may not under any circumstances receive amounts, notes, or securities related to the operations, which must be deposited in a bank or postal account entitled “real estate management.” In any case, the transaction is finalized by a notary or, more and more frequently, by a lawyer.

368. The profession has not been made aware of the AML system and to date has not submitted an STR.

Certified public accountants

369. The profession is governed by Law 88-108 of August 18, 1988 and is supervised by the Ministry of Finance. Certified public accountants, in their own name and under their personal responsibility, organize, check, correct, and evaluate the accounts of business and agencies, to which they are not bound by an employment contract. They are also authorized to attest to the truthfulness and conformity of the accounts for businesses that have entrusted such responsibilities to them, whether contractually or pursuant to legal and regulatory provisions, particularly those related to the function of external auditor. Certified public accountants may also analyze the position and operation of businesses from economic, legal, and financial perspectives.

370. The rules governing access to the profession are strictly defined. There are approximately 450 professionals. A disciplinary board chaired by a magistrate is established at the Association of Certified Public Accounts and Corporate Auditors of Tunisia. Sanctions range from warning to removal from the association's roll. The association ensures external auditors' independence from the companies they audit. A commission is responsible for verifying that external auditors fulfill the obligations of independence and professional due diligence. International standards have been ratified by the Board (ISA 250) and professionals receive regular training. Special efforts to heighten awareness of AML issues are planned by the association and the Tunisian Institute of Certified Public Accountants.

371. The large firms associated with international networks are fully aware of AML obligations, and training seminars are held regularly. International standards are applied and some firms have a warning system and database at the group level. In Tunisia, the firms work in 95 percent of cases with known customers and, according to the individuals met with, money laundering can only involve foreign customers. The professionals the mission met with also noted that the establishment and secretariat of companies was entrusted more often to attorneys and that certified accountants work primarily on tax matters.

372. The profession of accountant exists and is less regulated, but the association of certified public accountants ensures that the profession's activities are limited in scope.

373. To date, no STR has been issued by the profession as a whole.

Dealers in precious metals or precious stones

374. Law 2005-17 of March 1, 2005 regulates the activity of any individual or legal entity who regularly buys, sells or processes precious metals or accepts them for safekeeping or repair. They are required to inform the Ministry of Finance of their profession and of the premises where business shall be conducted. Executives of such businesses must have a clean criminal record.

375. The profession of jeweler working in precious metals is regulated and controlled (Articles 8-10) as are import and gold distribution activities (Articles 11-12). The law states that judicial police officers, customs agents, and sworn tax inspection agents are responsible for inspections and the detection of violations in this field. All inspections are carried out by two agents. Heavy criminal penalties are provided for in the 2005 law.

376. A materials accounting record marked and signed by the staff of the Ministry of Finance must be kept on all premises, all of the operations of which must be reported. This record must be available for submission to employees of the Ministry of Finance at any time. Any sale or exchange of precious metal objects must be recorded in an invoice containing all technical information.

377. The individuals the mission met with did not mention any particular risks associated with this activity and stressed the strictness of the existing checks and cross-checks. The trade in precious stones is not considered a high-risk activity in Tunisia, especially in the absence of a market. No particular efforts are made to increase awareness of the risk of money laundering and terrorist financing as an adjunct to this system of controlling the activity.

### *4.3.2 Recommendations and comments*

378. Regarding the current degree of control of nonfinancial businesses and professions, the main challenge the Tunisian authorities need to focus on is the lack of awareness of the professionals concerned and the failure of the regulatory authorities or self-regulatory organisations to make known and then to monitor AML/CFT obligations and their implementation.

### *4.3.3 Compliance with Recommendations 24 and 25 (Criterion 25.1, DNFBP)*

| | Compliance rating | Summary of grounds s.4.3 for the overall compliance rating |
|---|---|---|
| R. 24 | PC | Lack of awareness on the part of professionals and their regulatory or self-regulation authorities<br>Complete lack of implementation of the system |
| R. 25 | NC | Lack of guidelines |

## 4.4 Other nonfinancial businesses and professions - Modern and secure techniques of money management (R. 20)

### *4.4.1 Description and analysis*

379. The authorities have thus far not conducted a systematic analysis of the risk of money laundering in Tunisia and therefore have not identified professions or businesses other than the designated nonfinancial businesses and professions likely to face a significant money laundering risk.

380. The Tunisian authorities strongly encourage the development of means of payment and money management that are less vulnerable to money laundering, particularly through actions to promote bank money and develop secure transfers.

### *4.4.2 Recommendations and comments*

381. Regarding the degree of effective implementation of the current AML/CFT system and the need to develop a more detailed map of these phenomena in Tunisia, it seems appropriate and necessary for the authorities to make a determined effort at this stage to ensure that the professions and businesses already covered by Law 2003-75 fulfill their obligations. It is worth noting that Recommendation 20 is not fully observed, as there has been no systematic risk analysis- a horizontal recommendation by the assessors.

### *4.4.3 Compliance with Recommendation 20*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 20 | LC | No systematic risk analysis |

# 5 LEGAL PERSONS AND ARRANGEMENTS, AND NONPROFIT ORGANIZATIONS

## 5.1 Legal persons—access to beneficial owner and control information (R. 33)

### *5.1.1 Description and analysis*

Types of legal persons

382. Law 2000-93 of November 3, 2000 on commercial companies (LSC) defines commercial companies as follows: on the one hand, partnerships (*sociétés en nom collectif*), limited partnerships (*sociétés en commandite simple*), and jointly-owned companies (*sociétés en participation*); and, on the other hand, limited companies (*sociétés à responsabilité limitée*) and joint-stock companies (*sociétés par actions*) that can be either corporations (*sociétés anonymes*—SA), whether or not they

issue securities to the public, or partnerships limited by shares (*sociétés en commandite par actions*). Strictly speaking only this latter group consists of legal persons.

383. For each type of company, with the exception of jointly-owned companies, Articles 15 and 16 of the LSC provide for the publication, in the *Journal Officiel de la République* (Official Gazette), of the instruments of incorporation as well as any amendment to those instruments and any appointment of company executives. Every commercial company, whether an SARL or another type, is required to appoint an external auditor, when it meets two of the three following criteria related to amounts determined by decree:

1. total balance sheet amount;
2. total amount of income;
3. average number of employees.

Limited companies

384. For limited companies, the instruments of incorporation must include data on the founding natural and legal persons involved. A limited company is validly incorporated only after it is listed in the trade register. A register of partners is maintained at the head office under the responsibility of the manager. When the equity capital is equal to or more than D 20,000, limited companies are required to appoint a statutory auditor.

Corporations

385. All corporations must also appoint an external auditor. Certain types of companies are required to appoint two external auditors who are certified public accountants.

386. A legal person may be appointed as a member of the board of directors of a corporation (Article 191). Persons convicted of a crime or misdemeanor against public decency, law and order, or company laws may not be a member of a board of directors. Article 314 of the LSC stipulates that the securities issued by a corporation, regardless of their category, must be registered. They must be recorded in an account maintained by the issuing legal person or by a licensed intermediary. The authorities stated that until 2000, corporations had been able to issue bearer shares. Following adoption of the law making on the dematerialization of securities in March 2000, a transitional period of two years was established, during which all securities were to be made paperless.

387. In cases where the holders of securities in bearer form did not show up by the end of the two-year period, the securities in question were liquidated, and the proceeds of the liquidation were deposited with the Deposit and Consignment Office. For an indefinite period, holders can come in and exchange their securities for the value of the corresponding liquidation, upon the presentation of identification. There therefore may still be bearer securities in circulation at this time. The mission was not informed of the total value involved.

Trade register

388. Law 95-44 on the trade register (the LRC) states that each court of first instance shall maintain a trade register in which all Tunisian companies headquartered in its jurisdiction must be listed. Article 6 states that the National Institute of Standardization and Industrial Property shall maintain a central trade register containing the information recorded in each local register. The registration of each company should include details (Article 11 of the LRC) on the amount of the company's equity capital, its address, its principal business, and data on the partners and on those with the power to head or manage the company or the general power to commit the company. The register is public (Article 63). Articles 68 and 69 provide for fines to be imposed on those failing to register or that give inaccurate or incomplete information.

389. The mission was informed but was unable to confirm whether in practice the data contained in the register are verified and whether they are updated. Aware that there are still weaknesses in

updating these data, the Ministry of Justice and Human Rights appointed a commission to analyze the current situation and propose legal, technical, and organizational solutions to improve the functioning of this tool.

390. The investment promotion code (December 27, 1993) introduced the principle of freedom for Tunisian and foreign nationals to invest in sectors covered by the code. Under certain conditions, investment – be it national or foreign – is subject, at the primary stage, to control by government bodies. Investment from abroad is subject to prior authorization when undertaken in a sector that is not covered by the Investment Code – the list of which, though decreasing, remains long- or when involving certain activities in the partially exporting services sector where the share of investment exceeds 50 % of the capital or when it exceeds in the secondary market 50 % of companies that are not labeled as SMEs.

391. Although the team was unable to confirm whether the law enforcement authorities can obtain any information they require on economic beneficiaries, and whether the available information is up-to-date, the Tunisian system makes this possible, in theory. As regards national corporate relations, the trade register provides information on executives and those who can act on behalf of a company. Even if the information in the register is not always correct, law enforcement agencies can collect needed information directly from the company involved (for the competencies of law enforcement agencies, see section 2.5.1). In the case of companies that issue securities to the general public, the information is also available from authorized intermediaries. For corporations, the information may be obtained from licensed intermediaries when the company has issued public securities or when it is a closed corporation that chooses to entrust the accounting of corporate securities to a licensed intermediary. Otherwise, the information is held by the company itself.

### *5.1.2 Recommendations and comments*

392. The authorities should strengthen the obligations to update data on the companies listed in the trade register and ensure that this is done. Inasmuch as Tunisia is gradually liberalizing foreign investment, the authorities should ensure that the resources available to them to access information on the beneficial owners of foreign investment continue to be effective.

393. The authorities should also institute a procedure for phasing out the former bearer securities.

### *5.1.3 Compliance with Recommendation 33*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 33 | LC | Lack of a mechanism to update required information in the trade register<br>Continuing possibility to sell off and liquidate bearer shares issued prior to 2000 |

## 5.2 Legal arrangements—access to beneficial owner and control information (R. 34)

### *5.2.1 Description and analysis*

394. Tunisia does not have trusts or similar legal arrangements. It is not a party to The Hague Convention. Trusts and similar legal arrangements are not mentioned in law and do not exist in practice. Such foreign legal entities can nevertheless have access, in theory, to the Tunisian financial system, in which case they would be subject to the usual identification requirements (under which beneficial owners do not have to be identified).

### *5.2.2 Recommendations and comments*

395. The authorities should clarify the obligations related to the identification of the founders, directors, and beneficiaries of legal entities establishing business relationships in Tunisia, particularly in the context of clarifying the obligations of identifying beneficial owners.

### *5.2.3 Compliance with Recommendation 34*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 34 | NA | |

## 5.3 Nonprofit organizations (SR. VIII)

### *5.3.1 Description and analysis*

396. Nonprofit organizations are governed by Organic Law 59-154 of November 7, 1959 on associations, as amended in 1992. To create an association, founders are required to file with their governorate a declaration, providing the name and purpose of the association, the relevant names and addresses, and official identity documents of the founders and those responsible for administering or managing the association. The Minister of the Interior may decide to reject an application. Associations are required to report to the Ministry of the Interior any changes that have occurred in their administration or management.

397. No foreign association may be created or engage in activities in Tunisia unless its charter has been approved by the Ministry of the Interior. It must provide all the same information as required of Tunisian associations. Approval may be granted on a temporary basis or be made subject to periodic renewal.

398. Article 69 of the AML/CFT Law states that legal persons, including nonprofit associations according to Article 68 of the same law, are required to adopt management rules that prohibits their receiving any grants or subsidies of unknown origin and any grants or other forms of financial assistance, regardless of the amount involved, except in cases of waivers under a special provision of the law. Even in cases where the legislation in force does not prohibit this, no funds from abroad can be received without the intervention of a licensed intermediary. Furthermore, Article 70 requires them to maintain an inventory of receipts and transfers with the rest of the world, including supporting documentation, the date they occurred, and identification of the originating natural or legal person. A copy is forwarded to the Central Bank of Tunisia. The Minister of Finance may rule that legal persons suspected of having links with terrorist persons, organizations, or activities, or that may have been guilty of violations of the management rules will be subject to prior authorization for the receipt of any transfers from abroad. The mission was unable to assess the procedures—strict but also very recent—for the implementation of this arrangement, in particular because the authorities are in the process of preparing to exercise these controls.

399. The rules governing the management procedures and executive appointments of nonprofit organizations are very strict. It is particularly noteworthy that foreign associations are never granted permanent “authorization” and are therefore subject to periodic reviews.

400. On the financial side, the rules prescribed in the AML/CFT Law are also very strict, especially as they relate to the receipt of grants.

401. The mechanism under ordinary law and the supplementary mechanism created by Law 2003-75 establish a very elaborate and detailed regulatory framework for nonprofit organizations, to prevent them from being misused for terrorist purposes and to ensure that funds made available to them are not used for other purposes.

### *5.3.2 Recommendations and comments*

402. The Tunisian system is very strict and highly restrictive. The challenge, then, is to implement it properly—with particular emphasis on nonprofit organizations, which are indeed at risk of being used for money laundering and terrorist financing purposes—especially in terms of efficient resource allocation and not imposing excessive constraints on the sector without assessing the risk.

### *5.3.3 Compliance with Special Recommendation VIII*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| SR. VIII | C | |

## 6 National and International Cooperation

### 6.1 National cooperation and coordination (R. 31 and 32)

### *6.1.1 Description and analysis*

403. Law 2003-75 explicitly requires the CTAF to organize cooperation and coordination at the national level with regard to defining the general objectives of the AML system. To date, this has not been done.

404. Moreover, the fact that financial sector supervisors are unable to exchange confidential information with one another is a serious shortcoming of the AML/CFT system.

405. As explained in the relevant sections of this report, the other authorities are able to cooperate on operational issues.

406. The Tunisian statistical compilation system has major shortcomings, described in the relevant sections of this report. Even in cases where statistical information does exist, it is still too general and comprehensive to be of use in a real review of the effectiveness of the AML system. Moreover, when more detailed statistical data do seem to exist, they are not disseminated widely enough, including among public authorities.

### *6.1.2 Recommendations and comments*

407. The Tunisian authorities should:

- permit cooperation on operational issues among financial sector supervisors
- establish statistical tools to monitor the effectiveness and proper functioning of the AML/CFT system in sufficient detail, and disseminate these data more broadly among public authorities and the general public.

### *6.1.3 Compliance with Recommendations 31and 32 (Criterion 32.1 only)*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 31 | PC | Cooperation on operational issues not possible among financial sector supervisors<br>Lack of effective implementation of the framework for coordination among public authorities on the preparation and implementation of the AML/CFT system |

| | | |
|---|---|---|
| R. 32 | NC | Lack of sufficiently detailed statistical monitoring of the effectiveness and proper functioning of the AML/CFT system and failure to disseminate these data more broadly among public authorities and the general public. |

## 6.2 The Conventions and Special Resolutions of the United Nations (R. 35 and SR. I)

### *6.2.1 Description and analysis*

408. Tunisia signed the Vienna Convention on December 17, 1989 and ratified it in Law 90/67 of July 24, 1990.

409. The Palermo Convention was signed on December 14, 2000 and ratified by Decree 698 of March 25, 2003. Although this convention was ratified in 2003, some of these provisions have not yet been implemented, including with regard to the components of an effective prevention system (cf. comments on recommendations 5, 12, 13, and 16).

410. The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism was signed on November 2, 2001 and ratified by Decree 441 of February 24, 2003.

411. Implementation of the United Nations International Convention for the Suppression of the Financing of Terrorism is as yet incomplete (cf. analysis of Special Recommendation III).

- Although the U.N. lists are disseminated to financial institutions, the financial supervisors have not performed any controls to ensure the implementation and effectiveness of inspections carried out by these institutions. No customer included on the above-mentioned lists has yet been identified.
- Tunisia does not have an administrative freezing mechanism consistent with the provisions of Resolutions 1267 and 1373 (cf. RS III).

### *6.2.2 Recommendations and comments*

412. Effective implementation of all the provisions of the Palermo Convention and of the convention on the suppression of the financing of terrorism requires correction of the deficiencies identified in recommendations 5, 12, 13, and 16.

### *6.2.3 Compliance with Recommendation 35 and the Special Recommendation I*

| | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| R. 35 | PC | Lack of conformity with the international cooperation aspects of recommendations 5, 12, 13, and 16 |
| SR. I | NC | Non-implementation of Resolutions 1267 and 1373 |

## 6.3 Mutual legal assistance (R. 36-38, SR. V, R. 32)

### *6.3.1 Description and analysis*

*Recommendation 36 and Special Recommendation V*

413. Tunisia has a legal framework allowing in most cases for mutual legal assistance in civil, commercial, and criminal maters and extradition. Some of the conventions take the form of international agreements called treaties, and others are simplified agreements such as protocols and memoranda. The framework is essentially composed of the following bilateral agreements on mutual legal assistance:

- Algeria: Algiers, 7/26/1963;
- Morocco: Tunis, 12/9/1964;
- Libya: Tripoli, 6/14/1961;
- Mauritania: Nouakchott, 11/17/1965;
- Egypt: Tunis, 01/09/1976;
- Syria: Tunis, 11/26/1980;
- Lebanon: Beirut, 3/28/1964;
- Jordan: Amman, 3/6/1965;
- Kuwait: Tunis, 6/13/1977;
- United Arab Emirates: Tunis, 2/7/1975;
- Mali: Bamako, 11/29/1965;
- Senegal: Dakar, 4/13/1964;
- Cote d'Ivoire: Abidjan, 7/8/1975;
- France: Paris, 6/28/1972;
- Italy: Rome, 11/15/1967;
- Belgium: Tunis, 4/27/1989;
- Germany: Bonn, 7/19/1966;
- Greece: Athens, 7/6/1994;
- Turkey: Ankara, 5/7/1982;
- Russia: Moscow, 6/26/1984;
- Poland: Warsaw, 3/22/1985;
- Hungary: Budapest, 12/6/1982;
- Romania: Tunis, 3/6/1971;
- Sweden: Stockholm, 9/16/1994;
- Yemen: Sana'a 3/8/1998;
- Spain: Tunis, 9/24/2001;
- Portugal: Tunis, 5/11/1998;
- China: Convention on Mutual Legal Assistance in Criminal Matters: Beijing, 11/30/1999; then Convention on the Extradition of Criminals: Beijing, 11/19/2001;
- India: Tunis, 4/4/2000.

414. In addition, Tunisia is a signatory to the Convention on Mutual Legal and Judicial Assistance concluded by the Arab Maghreb countries (Ras Lanouf, March 9-10, 1991). It has also concluded cooperation agreements concerning the administration of justice with several countries. These

agreements relate to the sharing of documents, legislation, and statistics in the areas of civil, commercial, and criminal justice.

415. The authorities indicated that they could, upon the request of a third country with which Tunisia has signed a convention, conduct investigations, including the freezing and seizure of the proceeds of an offense committed abroad. Once completed, the seizure can be followed up by repatriation of the proceeds of the offense in question to the requesting country.

416. A "typical convention" forwarded to the mission (concluded between Tunisia and Spain) confirms that the receiving country must grant the requests of the other party when the objective is to conduct investigations, forward objects produced in evidence, or deliver items, files, or documents. However, a request for mutual assistance can only be honored if the facts prompting the request are punishable in Tunisia. Moreover, the request may be denied if the facts are linked to political offenses or if the country receiving the request believes that complying with it may interfere with its sovereignty or public order. A mutual assistance request may be executed when the facts prompting it also involve tax matters. Informal relations between the "enforcement agencies" of the various states party to the above-cited conventions promote the rapid execution of mutual assistance requests.

417. If there is no convention between Tunisia and a foreign government, it may respond to a mutual assistance request put forward in written interrogatories. Article 331 of the Code of Criminal Procedure (CPP) provides in particular for the receipt through diplomatic channels of written interrogatories issued by a foreign authority, which are then forwarded to the Secretariat of State. In emergencies, written interrogatories may be exchanged directly between legal authorities.

418. The total number of requests received and issued is quite small (about five received and five issued each year).

419. The Tunisian authorities may make free use of their powers of investigation to grant a mutual assistance request. Banking and / or professional secrecy cannot be a ground to refuse international assistance.

420. There is no information indicating that Tunisia has considered the advisability of establishing a means of determining the venue for the prosecution of a person in Tunisia when that same person is subject to a similar proceeding abroad.

***Recommendation 37 and Special Recommendation V:***

421. Insofar as the facts described (predicate offenses) in a request for mutual legal assistance are also punishable under Tunisian law, mutual assistance may be granted by Tunisia, regardless of the technical differences between the Tunisian and foreign legislation in the qualification of the offense.

422. Regarding mutual assistance requests put forward by Tunisia, the Tunisian authorities have indicated that mutual legal assistance agreements allow for the gathering of information in foreign jurisdictions, even when the facts in question are not punishable there. This provision is not included, however, in the "typical convention" made available to the mission, which, on the contrary, calls for strict observance of the double incrimination principle. Moreover, the authorities informed the mission that in a number of treaties, the penalty provided for by the respective legislation must not be less than one year of imprisonment in order for the mutual legal assistance to be granted.

423. Although the degree of obligation with regard to strict observance of the double incrimination principle is high in Tunisian law, the fact that Tunisia has criminalized all serious offenses and adopted a definition of money laundering that covers all crimes and misdemeanors makes it easily possible in practice to meet this condition, which should not be so restrictive as to prevent Tunisia from participating in mutual legal assistance.

***Recommendation 38 and Special Recommendation V:***

424. As indicated in Chapter 6.3.1, Tunisia can implement all the legal measures provided for by Tunisian law to fulfill an international request for mutual legal assistance. This includes, in particular, the identification, freezing, and seizure of assets related to the offenses of money laundering and terrorist financing.

425. Regarding the execution of a foreign confiscation order, Article 332 of the CPP deals with the notification of such an order to an individual residing in Tunisia. Moreover, in the case of extradition (see 6.4 below), Article 328 states that the court of criminal appeal decides whether there are good reasons for forwarding all or some of the securities, items of value, money, or other objects seized. For example, it is stated in the mutual assistance and extradition treaty with France that in cases of extradition, the government receiving the request seizes and hands over items that may serve as evidence and which, linked with the offense, were found before or after the delivery of the person sought or which were acquired in exchange for the proceeds of the offense.

426. Apart from this procedure, which is part of the extradition arrangement, there is no explicit provision in Tunisian law on the acknowledgment and execution of foreign decisions regarding the confiscation of assets in Tunisia belonging to persons who do not reside in Tunisia or on the repatriation of such assets to the requesting countries. Confiscation may only be decided by a court in cases where a jurisdictional link is established, in which case the confiscation is carried out for the benefit of the Tunisian treasury.

427. In addition, Article 82 of Law 2003-75 provides for the conclusion of memorandums of agreement between the CTAF and its counterparts abroad "with a view to sharing financial information that may provide an early warning about the offenses described in this law and prevent their commission."

428. There is no provision in Tunisia providing for the coordination of seizure and confiscation actions with foreign authorities. Tunisia has not considered the advisability of creating a fund financed with confiscated assets nor, after the assets have been seized in a coordinated action with a foreign authority, of dividing such assets between Tunisia and that authority.

### 6.3.2 Recommendations and comments

429. The Tunisian authorities should:

- consider the advisability of establishing a means of determining the conditions in which the prosecution of a person in Tunisia can be ordered when that same person is subject to a similar proceeding abroad.
- provide for the coordination of seizure and confiscation actions with foreign authorities and consider the advisability of creating a fund financed with confiscated assets and, after the assets have been seized in a coordinated action with a foreign authority, dividing the proceeds with that authority.
- establish a procedure for the confiscation of assets based on a decision in a third country, under acceptable conditions (including for nonresidents).

### *6.3.3 Compliance with Recommendations 36-38, Special Recommendation V, and Recommendation 32*

| | Compliance rating | Summary of grounds (specific to section 6.3) for the overall compliance rating |
|---|---|---|
| R. 36 | LC | No consideration of the advisability of establishing and implementing a means of determining the most appropriate venue for prosecutions in cases subject to prosecution in several countries |

| | | |
|---|---|---|
| R. 37 | C | |
| R. 38 | PC | No provision for coordinating seizure and confiscation actions with foreign authorities and no procedure for the confiscation of assets based on a decision in a third country, under acceptable conditions |
| SR. V | LC | Idem for R36 and 38 |
| R. 32 | NC | No sufficiently detailed statistical data on mutual legal assistance |

### 6.4 Extradition (R. 37, R. 39, SR. V, and R. 32)

#### *6.4.1 Description and analysis*

430. Articles 308 *et seq.* of the CPP apply to extradition procedures. They stipulate that the Tunisian government may extradite any foreign national prosecuted or convicted by the requesting country. Extradition is granted, on the one hand, when the offense prompting the request is punished under Tunisian law with a criminal penalty and on the other when the penalty incurred under the law of the requesting country involves a custodial sentence of at least six months.

431. Extradition is not granted when the individual is a Tunisian citizen; when the crimes or misdemeanors were committed in Tunisia; when the crimes or misdemeanors, although committed outside Tunisia, were prosecuted and a final decision was handed down there; when the public right of action or the penalty is prescribed under Tunisian law or the law of the requesting country; when the crime is of a political nature or when the offense consists of the violation of a military obligation.

432. Examining extradition requests is the responsibility of the court of criminal appeal of the Tunis court of appeals. The foreign national is required to appear no more than 15 days after the notice of arrest (Article 321 CPP). There are two types of extradition procedures:

(a) Legal procedure leading to an unappealable decision of the criminal court of appeal (Article 323 CPP),

(b) Simplified procedure whereby the person whose extradition is requested waives the benefit of the legal procedure (Article 322 CPP).

433. If the court of criminal appeal believes that the legal conditions are not met, it issues a negative opinion, which is final. When the opinion is favorable, the government is free to grant the extradition or not.

434. In emergencies, and upon the direct request of the judicial authorities of the requesting country, prosecutors may, acting on a simple opinion, order the provisional arrest of the foreign national. Article 316 of the CPP states that "any request for extradition shall be sent to the Tunisian government through diplomatic channels [...]. In emergencies, Article 325 states that prosecutors [...] may, acting on a simple opinion [...] order the provisional arrest of the foreign national." A legal opinion on the request must be submitted at the same time through diplomatic channels.

435. Specifically regarding the financing of terrorism, Article 60 of Law 2003-75 stipulates that "terrorist offenses shall result in extradition, pursuant to Article 308 *et seq* of the Code of Criminal Procedures, if they were committed outside the territory of the Republic by a subject that is not a national of Tunisia against a foreigner or foreign interests or a stateless person if their perpetrator is on Tunisian territory."

436. However, Tunisian legislation does not allow for the possibility of extraditing Tunisian nationals. The Tunisian authorities stated that in such cases they would prosecute the Tunisian citizens locally, but they acknowledge that Tunisian law does not impose any obligation to do so. If such proceedings were instituted, the mutual legal assistance treaties signed by Tunisia would allow it

to obtain the information necessary to institute proceedings in Tunisia from the country submitting the extradition request.

437. Although, in Article 30 of the CPP, Tunisian law establishes the principle of the advisability of proceedings, which enables the public prosecutor to decide how to follow up the complaints and accusations he receives or which are forwarded to him, the authorities have indicated that if a Tunisian suspected of an offense is not extradited, an investigation will be opened to ascertain all the facts needed to determine the truth. Article 47 of the CPP states on this subject that a preliminary investigation is mandatory in criminal matters.

438. When one or both countries have criminalized the predicate offenses in equal measure, there is in fact no legal or practical obstacle to granting such mutual assistance.

439. The authorities provided the following statistics on extradition.[23]

| Number of requests | Issued by Tunisia to foreign countries | Requests denied or unanswered | Received from foreign countries | Requests denied or unanswered |
|---|---|---|---|---|
| 2003 | 3 | 3 | 2 | 1 |
| 2004 | 4 | 3 | 2 | 2 |
| 2005 | 5 | 5 | 1 | 0 |

### *6.4.2 Recommendations and comments*

### *6.4.3 Compliance with Recommendations 37 and 39, Special Recommendation V, and Recommendation 32*

| | Compliance rating | Summary of grounds (specific to section 6.4) for the overall compliance rating |
|---|---|---|
| R. 39 | C | |
| R. 37 | C | |
| SR. V | LC | |
| R. 32 | NC | No sufficiently detailed statistics on the subject |

## 6.5 Other forms of international cooperation (R. 40, SR. V, and R. 32)

### *6.5.1 Description and analysis*

440. Regarding the supervisors of the financial sector (credit and leasing institutions, insurance companies, and securities brokers), the current Tunisian legal arrangements are as follows:

- the supervisor of credit and leasing institutions is not authorized to engage in international cooperation with its foreign counterparts over and above the sharing of general or public information. Nor does it seek the cooperation of its foreign counterparts over and above the sharing of general or public information. Indeed, the BCT feels that in the absence of explicit

[23] The Tunisian authorities indicated that they had issued 52 requests concerning Tunisian terrorists between 1993 and 2005, which have thus far gone unanswered.

authorization from the legislators to that effect, it may not engage in such cooperation. The draft new central bank charter provides for the creation of this possibility;

- the supervisor of insurance companies is in the same legal situation. Nevertheless, in the absence of an explicit legal prohibition, this authority has approached a foreign counterpart for the conclusion of a bilateral cooperation agreement, which would be its first. If such an agreement is concluded, the CGA then plans to submit it to the process applicable for the ratification of international agreements, which is a parliamentary one, and thus obtain the agreement of the legislators. The authorities stated that the draft law on the reform of the CGA (with a view to making it autonomous) would clarify its ability to cooperate at the international level;

- the Law of 1994 states in its Article 46 that the CMF may collaborate with counterpart foreign agencies and sign cooperation agreements "after obtaining the approval of the competent Tunisian authorities." By law, and subject to the existence of such agreements, the CMF may therefore participate in international cooperation spontaneously and at the request of its counterparts, including in investigations on behalf of those counterparts. The Law of 1994 does not impose restrictions under professional secrecy requirements. The CMF has just concluded its first cooperation agreement and requested an opinion from the Tunisian Ministry of Foreign Affairs on the necessity of submitting it to the parliamentary ratification process[24]. The ability of the CMF to provide such cooperation quickly, constructively, and efficiently has not yet been tested.

441. In practice, none of the financial sector supervisors is in a position to engage immediately in international cooperation actions with foreign counterparts. Currently, and notwithstanding the possibility offered by the Law of 1994, the CMF does not therefore have an operational vehicle for engaging in international cooperation. In practice, the dialogue maintained by each of these three authorities with foreign partners is limited to the sharing of general information and experiences, and technical cooperation. The various subcomponents of Recommendation 40 are therefore not fulfilled.

442. On the other hand, the Law of 2003 (Article 82) provides for the cooperation of the financial intelligence unit (CTAF) with its counterparts. The CTAF is authorized to share any helpful information once it has signed a memorandum for sharing information with the counterpart unit. The latter must, however, be subject to professional secrecy requirements and commit to using any information received in this context solely for combating money laundering and terrorist financing. The CTAF is currently negotiating with the French and Argentine FIUs for the signing of memoranda. Also, it is currently being sponsored by the French FIU to become a member of the Egmont Group. Legally, in the absence of any memorandum to date, the CTAF is not yet in a position to share information with foreign intelligence units.

443. Customs has cooperated extensively with the countries with which the flows of migration and goods are the most significant: Algeria, Libya, France, and Italy in particular. It participates actively in the activities of the World Customs Organization. In the region, thematic operational meetings are held quite regularly to promote the rapid circulation of information.

[24] The securities supervisor informed the mission several months after the on-site visit that the Ministry of Foreign Affairs does not deem it necessary that such MoU be ratified by Parliament. It has also informed the mission that cooperation agreements have been concluded with France, Egypt and United Arab Emirates, and that the CMF has applied to the signature of the IOSCO "multilateral memorandum of understanding" and to be on the B list of the MMOU.

444. Regarding police cooperation, Tunisia participates in a highly effective intelligence network, in particular with France, Italy, and Germany. According to the authorities, the general process for cooperation is highly effective. Tunisia has signed numerous agreements on organized crime, agreements with France in 1988 on organized crime and security; with Italy in 1988; with Germany in 2003, with Portugal, Malta, Greece, and Libya in 1984; and with Morocco in 2000. Apart from these formal agreements, de facto cooperation exists with numerous countries.

445. Tunisia is a member of Interpol and benefits especially from the organization's IT resources, as well as the training courses. Tunisia also participates in European projects, particularly those of MEDACEPOL (JAI). In addition, Tunisia is the headquarters of the Council of Ministers of the Arab Convention against Terrorism.

### *6.5.2 Recommendations and comments*

446. Tunisia should, by law, explicitly authorize the three supervisors of the financial sector to cooperate as broadly as possible with their foreign counterparts, whether information is sought from them by those counterparts or they request information themselves. The bilateral cooperation agreements that these supervisors may be called upon to conclude (memoranda of understanding) should not be subject to the same process as that applicable to the ratification of international agreements, so as to ensure the operational independence of these three authorities.

### *6.5.3 Compliance with Recommendation 40, Special Recommendation V, and Recommendation 32*

| | Compliance rating | Summary of grounds (specific to section 6.5) for the overall compliance rating |
|---|---|---|
| R. 40 | PC | Inability of financial sector supervision agencies to participate in international cooperation |
| SR. V | LC | Inability of financial sector supervision agencies to participate in international cooperation |
| R. 32 | NC | No relevant statistics |

## 7 Other Matters

TABLES



**Table 1. Ratings of Compliance with the FATF Recommendations**

Compliance with the FATF Recommendations should be rated on the basis of four levels of compliance established in the 2004 Methodology: Compliant (C), Largely Compliant, (LC), Partly Compliant (PC), and Noncompliant (NC), or, in exceptional cases, marked Not Applicable (NA).

**Authorities' Response to the Assessment**

| Forty Recommendations | Compliance rating | Summary of grounds for the compliance rating |
|---|---|---|
| Legal systems | | |
| 1. The offense of money laundering | LC | Impossibility of prosecuting the perpetrator of the principal offense on money laundering charges when the latter also launders the proceeds of its offense, although there is no general principle of Tunisian law supporting such an impossibility |
| 2. The offense of money laundering—Intentional element and liability of legal persons | LC | Threshold making legal persons liable for prosecution set too high<br>No statistical data (on the FT offence) |
| 3. Confiscation and temporary measures | C | |
| Preventive measures | | |
| 4. Laws on professional secrecy compatible with the Recommendations | C | |
| 5. Customer due diligence | NC | Requirement concerning identification of the beneficial owner of a transaction too restrictive<br>Lack of measures for implementing Law 2003-75 which, in certain cases only imposes very general obligations. The requirement of on-going due diligence, the gathering of information concerning the purpose and nature of each business relationship, the updating of information, and the measures to be taken with regard to customers existing at the time of entry into force of the law are not specifically mentioned in the law.<br>Lack of provisions requiring enhanced due diligence for categories presenting higher |

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| | | risks for non-bank financial institutions.<br>Residual existence of certain products that promote the anonymity of their holders<br>Lack of supervision of proper implementation of the applicable provisions of Law 2003-75<br>Lack of implementation of the provisions of CTAF directive 02-2006 |
| 6. Politically exposed persons | NC | No explicit provision concerning politically exposed persons |
| 7. Correspondent banking relationships | PC | No implementation of the provisions on correspondent banking relationships, as well as of additional implementation measures<br>Absence of provisions on arrangements similar to correspondent banking relationships for the non-bank financial sector |
| 8. New technologies and remote business relationships | PC | Lack of implementation of provisions non face-to-face banking relationships or the use of new technologies<br>Lack of provisions on relationships equivalent to those applying to banking institutions, off-shore bank and the post office for the non-bank financial sector |
| 9. Third parties and introduced businesses | PC | Financial institutions are not authorized by Law 2003-75 to rely on third-parties. Such practices exist, however. Compliance with the above-mentioned provisions is not monitored by financial supervisors. |
| 10. Record keeping | C | |
| 11. Unusual transactions | PC | No distinction between an unusual transaction or operation and a suspicious transaction or operation<br>No obligation to make the results of the examination of suspicious or unusual transactions available to the competent authorities and to external auditors |
| 12. Designated nonfinancial businesses and professions—R. 5, 6, and 8-11 | PC | Inadequate definition of designated non-financial business and professions<br>Lack of implementation of the related obligations |
| 13. Suspicious transaction reports | PC | Ambiguous reporting “threshold”<br>No obligation to report attempted suspicious operations<br>No obligation to report transactions after |

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| | | carrying them out if information obtained subsequently raises a suspicion<br>Lack of effective implementation of the system more than two years after the entry into force of the law |
| 14. Protection and prohibition from warning the customer | LC | Too limited scope of individuals liable in case of divulging the existence of an STR |
| 15. Internal controls and compliance | NC | No detailed criteria for establishment of the internal control procedures that financial institutions are required to have. No directives on internal control issued by the supervisors of credit institutions and insurance companies.<br>No general or targeted training programs in the banking and insurance professions, particularly for compliance officers. |
| 16. Designated nonfinancial businesses and professions—R. 13-15 and 21 | NC | Inherent weaknesses in the requirement to report suspicious transactions (see recommendation 13)<br>Complete lack of implementation of the system |
| 17. Penalties | LC | No possibility of sanctioning insurance company executives for failure to comply with AML/CFT obligations<br>For the three pillars of the financial sector, lack of effective implementation of the sanctioning measures |
| 18. Shell banks | PC | No prohibition against Tunisian credit institutions maintaining relations with shell banks.<br>Lack of requirement for credit institutions to take reasonable measures to satisfy themselves that their correspondent banks do not maintain relations with shell banks. |
| 19. Other forms of reporting | PC | No study on the feasibility and usefulness of an obligation to report *all* cash transactions above a certain threshold for *all* financial institutions |
| 20. Other non-financial businesses and professions and secure techniques of money management | LC | No systematic risk analysis |
| 21. Special attention for countries representing a higher risk | PC | No legal framework for instituting a requirement to give special attention / exercise enhanced due diligence, and no appropriate counter-measures for regulated non-bank professions |
| 22. Branches and subsidiaries abroad | LC | Tunisian non-bank financial institutions not |

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| | | required to ensure that their foreign subsidiaries and branches comply with AML/CFT obligations.<br>Tunisian financial institutions not required to inform their supervisors when their foreign subsidiaries and branches are unable to implement appropriate AML/CFT measures. |
| 23. Regulation, supervision, and monitoring | PC | General lack of implementation thus far of the supervision authorities' monitoring of the compliance of supervised institutions with AML/CFT obligations. Particularly deficient control of foreign exchange subagents and ambiguity concerning the division of responsibilities between supervisors (banking supervisors and BCT foreign exchange directorate) in this area. Lack of effective oversight of insurance intermediaries.<br>Lack of detailed directives from each financial sector supervisor on AML/CFT obligations.<br>Little or no harmonization of the legal basis regarding the integrity of capital contributors, shareholders, directors, and managers of financial institutions. |
| 24. Designated nonfinancial businesses and professions - regulation, supervision, and monitoring | PC | Lack of awareness on the part of professionals and their regulatory or self-regulation authorities<br>Complete lack of implementation of the system |
| 25. Guidelines and feedback | NC | No guidelines issued for financial institutions<br>No feedback mechanism |
| Institutional and other measures | | |
| 26. The FIU | PC | Lack of clarity about the relationships between employees from outside the CTAF and their original administrations, leading to excessive ambiguity about the CTAF"s independence and operational autonomy.<br>Lack of security at the current CTAF premises, which places at risk the protection of data held by the unit<br>Unit not operating effectively |
| 27. The criminal prosecution authorities | C | |

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| 28. Powers of the competent authorities | C | |
| 29. Oversight authorities | LC | No possibility of sanctioning executives for non compliance with AML/CFT obligations in the insurance sector |
| 30. Resources, propriety, and training | LC | CTAF employees lack of specific AML/CFT training<br>At present, lack of technical resources and suitable premises for the CTAF<br>Lack of training for judges and investigative staff in combating money laundering<br>Overall lack of staffing for the banking supervisor and the insurance supervisor<br>No training for staff of the insurance supervisor<br>Insufficient training for staff of the banking supervisor |
| 31. Cooperation at the national level | PC | Cooperation on operational issues not possible among financial sector supervisors<br>Lack of effective implementation of the framework for coordination among public authorities on the preparation and implementation of the AML/CFT system |
| 32. Statistics | NC | General lack of statistical data on both predicate offenses and AML/CFT ones.<br>Lack of statistical data on FT convictions<br>Lack of sufficiently detailed statistical data on confiscation<br>No sufficiently detailed statistical data were provided to the mission, including by the Ministry of Justice and Human Rights, and therefore the relevance of the statistical tracking cited by the authorities could not be evaluated.<br>No organized statistical tracking of supervision activities and related sanctions<br>Lack of sufficiently detailed statistical monitoring of the effectiveness and proper functioning of the AML/CFT system and failure to disseminate these data more broadly among public authorities and the general public.<br>No sufficiently detailed statistical data on |

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| | | mutual legal assistance |
| 33. Legal persons—beneficial owners | LC | Lack of clear requirement on the transparency of foreign legal entities establishing business relationships in Tunisia |
| 34. Legal arrangements—beneficial owners | NA | |
| International cooperation | | |
| 35. Conventions | PC | Lack of conformity with the international cooperation aspects of recommendations 5, 12, 13, and 16 |
| 36. Mutual legal assistance | LC | No consideration of the advisability of establishing and implementing a means of determining the most appropriate venue for prosecutions in cases subject to prosecution in several countries |
| 37. Dual criminality | C | |
| 38. Mutual legal assistance in the areas of confiscation and freezing | PC | No provision for coordinating seizure and confiscation actions with foreign authorities and no procedure for the confiscation of assets based on a decision in a third country, under acceptable conditions |
| 39. Extradition | C | |
| 40. Other forms of cooperation | PC | Inability of financial sector supervision agencies to participate in international cooperation |
| Nine Special Recommendations | Compliance rating | Summary of grounds for the compliance rating |
| SR. I - Implementation of the instruments of the UN | NC | Non-implementation of Resolutions 1267 and 1373 |
| SR. II - Criminalization of terrorist financing | C | |
| SR. III - Freezing and confiscation of terrorist funds | NC | No legal basis for power to freeze the assets of persons designated by the United Nations under Resolution 1267 *et seq.*<br>Definition of funds subject to freezing too restrictive<br>Lack of clear, rapid, formal, and effective procedures for the implementation of asset freeze decisions<br>Lack of clarity concerning the legal basis for the implementation of Resolution 1373 |
| SR. IV - Suspicious transaction reports | PC | Ambiguous reporting “threshold”<br>No obligation to report attempted suspicious operations |

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| | | No obligation to report transactions after the fact if information obtained subsequently raises a suspicion<br>Lack of effective implementation of the system more than two years after the entry into force of the law |
| SR. V - International cooperation | LC | Idem for R36 and 38<br>Inability of financial sector supervision agencies to participate in international cooperation |
| SR. VI - AML/CFT obligations applicable to money or value transfer services | LC | Implementation still not insufficient. |
| SR. VII - Rules applicable to wire transfers | NC | Lack of a provision governing the obligations of institutions acting as intermediaries in the payment chain or participating on behalf of the beneficiary.<br>No requirement that institutions be able to identify incoming transfers when information about the originator is incomplete and ensure that non-routine transfers are not processed in batches when doing so would increase risk.<br>No specific measure enabling supervisors to ensure proper implementation of the regulation on electronic transfers<br>Lack of appropriate measures for effectively monitoring the compliance of financial institutions with the regulation on electronic transfers |
| SR. VIII - Nonprofit organizations | C | |
| SR. IX - Cash couriers | LC | Exchange of information between Customs and CFAT not yet formalized nor effective |

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

| AML/CFT System | Recommended Action (by order of priority) |
|---|---|
| 1. General | The authorities should quickly undertake an analysis of vulnerabities to ML and FT risks. |
| 2. Legal system and other related measures | |
| Criminalization of money laundering (R. 1, 2, and 32) | The Tunisian authorities should<br>• Introduce the possibility of prosecuting the perpetrator of the principal offense on money laundering charges when the latter also launders the proceeds of its offense<br>• Lower the threshold whereby legal persons incur criminal liability<br>• Put in place a system for collecting statistics on predicate offenses and money laundering. |
| Criminalization of terrorist financing (SR. II, R. 32) | The authorities should establish statistical monitoring mechanisms. |
| Confiscation, freezing, and seizure of the proceeds of crime (R. 3 and 32) | The authorities should quickly rectify the shortcomings in their statistical tracking system, including, when necessary, for purposes of better demonstrating its performance. A more detailed monitoring of decisions on confiscation, seizure and freezing would be necessary, with a break-down by categories of offences. |
| Freezing of funds used to finance terrorism (SR. III) | The authorities should create an asset freezing framework in line with the requirements of UNSCR 1267 and 1373. They should in particular:<br>• Establish a complete legal mechanism and implementing procedures in conformity with Resolution 1267 and subsequent resolutions, enabling it to freeze immediately the funds and other assets of persons targeted by the Sanctions Committee against Al-Qaeda and the Taliban;<br>• Clarify the legal basis for the implementation of Resolution 1373, specifically by indicating whether it is based on Articles 94 *et seq.* of the law of December 2003;<br>• Expand the definition of assets subject to freezing to include “funds or other assets owned or |

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| | controlled, wholly or jointly, directly or indirectly;"<br>• Put in place mechanisms and procedures for disseminating lists and removals from lists; for contesting freeze orders; for releasing funds frozen erroneously; for access to funds to cover certain basic expenses and certain types of commissions, fees, and payments for services or extraordinary expenses;<br>• Establish a procedure for analyzing the freezing measures adopted by other countries and, where applicable, their "appropriation" by Tunisia. |
| The financial intelligence unit and its functions (R. 26, 30, and 32) | The Tunisian authorities should adopt the following measures:<br>• Clarify the decision-making process regarding the follow-up to the operational unit's proposals on the dissemination of STRs following their analysis. This clarification should to provide a legal framework for the independence of the CTAF towards the Central Bank – mainly by ensuring the collegiality of its decisions.<br>• Provide the CTAF with appropriate, clearly secured premises as well as the materials and equipment needed for autonomous operation<br>• Strengthen the policies and procedures for staff and members to ensure the objective of independence and confidentiality vis-à-vis their original administration<br>• For reasons of efficiency, and especially with a view to being reactive and preserving confidentiality on a day-to-day basis, all members of the operating unit, particularly those seconded by Customs and the Ministry of the Interior, should work in the unit's own offices.<br>• Adopt by-laws containing job descriptions, rules governing the separation of employees' activities, rules of confidentiality—not only in terms of principles but also in specific operational terms. |
| Law enforcement authorities, investigating authorities, or other competent authorities (R. 27, 28, 30, and 32) | Tunisia should<br>• Include in the Penal Procedure Code the possibility of controlled deliveries, and even undercover operations |

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| | • Provide more specialized training for staff responsible for complex criminal matters, especially financial. The training of judges, police officers, and customs agents (in their sphere of authority) in complex investigations to gain an understanding of the workings of organized crime, financial and terrorist, should be organized in a more coordinated manner among the various participants.<br>• Promote the work of analyzing crime and the effectiveness of response units. The future work of the Legal and Judicial Research Center should be conducted in such a way as to help the enforcement, judicial, and administrative authorities fine-tune criminal policies. The work of analyzing crime and the effectiveness of responses should be shared with the CTAF in order to optimize its efficiency and develop concerted strategies with the CTAF, customs, the police, and, of course, the justice system. |
| 3. Preventive measures—financial institutions | |
| Risk of money laundering or terrorist financing | |
| Due diligence obligation, including enhanced or reduced identification measures (R. 5-8) | The authorities should<br>- Require that non-bank financial institutions conduct ongoing due diligence with respect to their business relationships and scrutinize transactions undertaken throughout the course of those relationships;<br>- Establish in all cases an obligation for non-bank financial institutions to obtain information on the purpose and intended nature of the business relationship;<br>- Specify and broaden the definition of beneficial owner so that:<br>a. It encompasses all cases where a person owns or controls the customer as well as cases where the latter carries out an operation on behalf of a third party without any formal necessity for a "power" to be signed between the two parties, and<br>b. Financial institutions are required to ascertain who the persons are that *ultimately* effectively control a legal person or arrangement;<br>- Whenever they cannot satisfactorily identify the beneficial owner of a transaction or collect sufficient information on the purpose of a business |

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| | relationship, the legislation should prohibit financial institutions from opening an account, starting a business relationship, or carrying out a transaction. Financial institutions should also have to consider whether to file a report with the CTAF in such circumstances;<br>- Ensure that measures to be taken by financial supervisors to implement the CTAF directive are prepared and adopted as soon as possible (especially for the provisions on correspondent banking);<br>- Eliminate securities in bearer form as they encourage the anonymity of their holders (particularly when the bonds are being circulated among various parties without the knowledge of the financial institutions) as well as dematerialized securities kept in an escrow account taking into account international examples;<br>- Lower the thresholds beyond which the identification of persons paying life insurance premiums is required, so that they are consistent with the FATF recommendations and fully adapted to Tunisia's circumstances;<br>- Introduce explicit provisions regarding PEPs, requiring financial institutions to:<br>a. Have appropriate risk management systems to determine whether the customer is a PEP,<br>b. Obtain senior management authorization for establishing business relationships with such customers,<br>c. Take reasonable measures to establish the source of wealth and source of funds,<br>d. Conduct enhanced ongoing monitoring of the business relationship;<br>- Specify that new identification is required in situations where a financial institution has doubts about the authenticity or relevance of information provided, makes a transfer, or has suspicions of money laundering or terrorist financing about one of its customers;<br>- Require that non-bank financial institutions must have procedures in place or take any other measure necessary to prevent the use of new technologies for money laundering or terrorist financing purposes; and<br>- Ensure that non-bank financial institutions are required to establish enhanced procedures for |

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| | customer identification and due diligence with respect to customers with which they have non face-to-face relationships. |
| Third parties and introduced businesses (R. 9) | If financial institutions are authorized to use intermediaries or third parties to comply with certain aspects of the due diligence obligation or to introduce business themselves, it will then be necessary for:<br>a. Financial institutions to be required to obtain immediately from the third party the necessary information on customer identification, the beneficial owner, and the nature and purpose of the business relationship (on terms similar to those required when a financial institution is directly in contact with its customer);<br>b. Financial institutions to be required to take appropriate measures to ensure that the third party is able to provide, upon request and as soon as possible, copies of the identification details and other relevant documents related to customer due diligence;<br>c. Financial institutions to be required to ensure that the third party is subject to AML/CFT regulations and is the subject of monitoring, and that the third party has taken steps to comply with the due diligence obligations applicable to customers; and<br>d. Responsibility for customer identification and identity verification to fall ultimately on the financial institution that used the third party.<br>If financial institutions are not authorized to use intermediaries or third parties to comply with certain aspects of the due diligence obligation or to introduce business themselves, financial supervisors should ensure, as part of their on- and off-site supervision, that such prohibitions are respected. |
| Secrecy or confidentiality of financial institutions (R. 4) | As intended by the draft amendment to the law on the BCT for the banking supervisor, the Tunisian authorities should ensure that all financial supervisors are authorized to share information covered by professional secrecy requirements when this is needed for the accomplishment of their AML/CFT missions, and that they put into place mechanisms to facilitate this cooperation. |

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| Record keeping and wire transfer rules (R. 10 and SR. VII) | The Tunisian authorities should<br>- Require that financial institutions mention the originator's name and address in all transfers (a number of cases are not covered by the current arrangements);<br>- Ensure that the beneficiary's bank is required to verify the reliability of the identification of the originator;<br>- Require that financial institutions acting as intermediaries in the payments process ensure that all originator information transmitted with an electronic transfer is kept with the transfer;<br>- Specifically require that financial institutions establish effective procedures based on risk assessment to identify incoming wire transfers for which there is no complete originator information;<br>- Require that financial institutions ensure that nonroutine transactions are not processed in batches when such action may lead to an increased risk of money laundering or terrorist financing; and<br>- Introduce appropriate measures to facilitate effective control of the implementation by financial institutions of the regulations on wire transfers. This requires that the supervisor be able to assess the risk profile of each institution in this regard, which in turn requires knowledge of the risks associated with the various types of transfers, of the types and amounts of transfers carried out by each institution, and a periodic assessment of the effectiveness of the controls established by the supervised institutions. |
| Monitoring of transactions and business relationships (R. 11 and 21) | Tunisia should modify its legislative framework related to unusual transactions and operations along the following lines:<br>a. Make a distinction between unusual and suspicious transactions or operations. This should be accompanied by a broadening of the notion of unusual transaction to include complex transactions and those for abnormally large amounts;<br>b. Eliminate the obligation to report unusual operations to the CTAF and create an obligation to review the context and purpose of those transactions and establish written records of the results;<br>c. Establish an obligation to keep the results of such reviews available to the competent authorities and |

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| | external auditors for a period of at least five years.<br><br>Tunisia should also adopt a legislative or regulatory measure creating the possibility of requiring financial institutions (and other regulated professions) to give special attention to business relationships and transactions with counterparties resident in countries that do not or insufficiently apply the FATF Recommendations. These arrangements should, moreover, include a range of appropriate, incremental counter-measures to be taken when such countries persist in not applying the FATF Recommendations or in applying them insufficiently. |
| Suspicious transaction reports and other reporting (R. 13-14, 19, and 25, and SR. IV) | The Tunisian authorities should<br>- Reconsider the effectiveness of the systematic suspension and freezing of transactions that are the subject of STRs, in light of the very objectives that they have set themselves. The establishment of the mere possibility of freezing suspicious transactions, for a limited period, would make it possible to maintain this mechanism whenever circumstances so warrant, while at the same time reducing the operational risks that a systematic approach can cause. Moreover, this would broaden the range of options available to the investigating authorities, especially with respect to account monitoring. Such an option would reduce the pressures for reporting institutions in maintaining a balance among the objectives of not disclosing to the customer that a report of suspicions has been made, maintaining normal business relationships with their customers, and fully participating, through their diligence, in AML/CFT efforts;<br><br>- Redefine in the law the notions of unusual transaction and suspicious transaction to make a clearer distinction between them and align them with the FATF definitions. The clarifications provided by the CTAF directive, which at present only concern some regulated entities, are a step in the right direction, but the authorities should eliminate the legal ambiguities between the legislation and the regulations;<br><br>- Spell out the procedures for making a report of suspicion when such a report is made, for legitimate reasons, after a transaction has been completed;<br><br>- Introduce an obligation to report attempted |

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| | suspicious operations or transactions;<br><br>- Enlarge the scope of persons liable in case of "tipping-off" the customer on the existence of an STR;<br><br>- Study the feasibility of putting into place a system for the reporting for all financial institutions to a centralized national body of all cash transactions valued at more than a given amount, to be defined; and<br><br>- Use the annual report of the CTAF to provide appropriate general feedback to the institutions that are required to report suspicious operations, in accordance with relevant best practices. |
| Cross-border declarations and disclosure (SR. XI) | The Tunisian authorities should strengthen coordination among agencies and with its partner countries and improve its statistical control tools. |
| Internal controls, compliance, and foreign branches (R. 15 and 22) | Building on the internal control requirements recently extended to all financial institutions, Tunisia should<br><br>- Spell out all the AML/CFT obligations in the area of internal control (due diligence measures, record keeping, detection of unusual transactions, compliance assessment, appointment of an independent compliance officer, in-service training for employees). Advantage should be taken of the novelty of the obligations imposed on the banking and insurance sectors, whereby they are required to establish internal control systems, to include AML/CFT measures fully into the broader risk management and internal control system;<br><br>- Establish an obligation for non-bank financial institutions with subsidiaries and branches overseas to ensure that such subsidiaries and branches comply with the strictest AML/CFT obligations existing in both Tunisia and the host country whenever the laws and regulations of the host country so allow;<br><br>- Establish an obligation for Tunisian financial institutions to inform their oversight authorities whenever their subsidiaries and branches are unable to apply appropriate AML/CFT measures |
| Shell banks (R. 18) | Credit institutions should not be authorized to maintain relationships with shell banks and should be required to take reasonable measures to ensure that their correspondent banks do not maintain relations with |

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| | shell banks. |
| The supervisory and oversight system- competent authorities and self-regulating organizations<br><br>Role, function, obligations, and powers, including penalties (R. 23, 30, 29, 17, 32, and 25) | The Tunisian authorities should adopt, in the following order of priority<br>- Adopt detailed circulars on implementation of the CTAF directive prepared for credit institutions, offshore banks, and the national post office;<br>- accelerate the training of banking supervisors in AML/CFT matters;<br>- strengthen the staffing of the banking supervisor;<br>- include the assessment of compliance with the relevant obligations in the prudential supervision carried out by the banking supervisor;<br>- broaden, within the three pillars of the financial sector, the scope of the power to impose fines in the event of noncompliance with the internal control and compliance assessment obligations, and in particular the AML/CFT obligations;<br>- allow all penalties and the reasons for them to be made public;<br>- clarify and strengthen the legal basis, in the case of the three pillars of the financial sector, for the approval of capital contributors, shareholders, board members, and managers of financial institutions—particularly with regard to integrity—and the possibility of imposing penalties on them for noncompliance with their AML/CFT obligations;<br>- adopt a CTAF directive for securities brokers, as well as corresponding detailed circulars, on AML/CFT measures;<br>- include the assessment of compliance with relevant obligations in the prudential supervision of the securities market by the supervisor;<br>- build the capacity and staffing of the insurance supervisor, in particular with respect to measures against money laundering and terrorist financing;<br>- adopt a CTAF directive for insurance companies and insurance intermediaries, as well as pertinent detailed circulars, on AML/CFT measures;<br>- strengthen control of foreign exchange subagents and clarify the respective responsibilities of supervisors; and<br>- include assessment of compliance with the pertinent obligations in the prudential supervision of the insurance supervisor and expand its coverage |

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| | to include insurance intermediaries. |
| Money or value transfer services (SR. VI) | The legal framework is satisfactory, but the authorities need to be more vigilant with regard to informal funds or value transfer systems, particularly by making use of the information that the intelligence or police units have. |
| 4. Preventive measures - designated nonfinancial businesses and professions | |
| Due diligence obligation and record keeping (R. 12) | The authorities should<br>- amend their definition of the designated non-financial businesses and professions subject to due diligence obligations by explicitly listing the professions/professionals concerned and then the activities in question;<br>- make a determined effort to increase the awareness of professionals and thus ensure ownership of the system. This effort should also include full participation by the self-regulation agencies. |
| Reporting of suspicious operations (R. 16) | The recommendations on clarifying the coverage of designated non-financial businesses and professions and on the implementation of recommendation 13 apply in their entirety. |
| Regulation, supervision, and monitoring (R. 24 and 25) | Regarding the current degree of control of non-financial designated businesses and professions, the main challenge the Tunisian authorities need to focus on is the lack of awareness of the professionals concerned and the failure of the regulatory authorities or self-regulatory organisations to make known and then to monitor AML/CFT obligations and their implementation. |
| Other nonfinancial businesses and professions (R. 20) | Regarding the degree of effective implementation of the current AML/CFT system and the need to develop a more detailed map of these phenomena in Tunisia, it seems appropriate and necessary for the authorities to make a determined effort at this stage to ensure that the professions and businesses already covered by Law 2003-75 fulfill their obligations. This said, Recommendation 20 is not fully complied with as no systematic risk-assessment has taken place – which need is an horizontal recommendation of the assessors |
| 5. Legal persons and arrangements and nonprofit organizations | |
| Legal persons—access to beneficial owner and control information | The authorities should strengthen the obligations to update data on the companies listed in the trade |

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| (R. 33) | register and ensure that this is implemented. Inasmuch as Tunisia is gradually liberalizing foreign investment, the authorities should ensure that the resources available to them to access information on the beneficial owners of foreign investment continue to be effective.<br>The authorities should also institute a procedure for phasing out the former bearer securities. |
| Legal arrangements—access to beneficial owner and control information (R. 34) | The authorities should clarify the obligations related to the identification of the founders, managers, and beneficiaries of legal arrangements establishing business relationships in Tunisia, particularly in the context of clarifying the obligations of identifying beneficial owners. |
| Nonprofit organizations (SR. VIII) | The Tunisian system is very strict and highly restrictive. The challenge, then, is to implement it properly—with particular emphasis on nonprofit organizations, which are indeed at risk of being used for money laundering and terrorist financing purposes—especially in terms of efficient resource allocation and not imposing excessive constraints on the sector without assessing the risk |
| 6. National and international cooperation | |
| National cooperation and coordination (R. 31, R. 32) | The Tunisian authorities should<br>- permit cooperation on operational issues among financial sector supervisors<br>- establish statistical tools to monitor the effectiveness and proper functioning of the AML/CFT system in sufficient detail, and disseminate these data more broadly among public authorities and the general public. |
| Conventions and special Resolutions of the UN (R. 35 and SR. I) | Effective implementation of all the provisions of the Palermo Convention and of the convention on the suppression of the financing of terrorism requires correction of the deficiencies identified in recommendations 5, 12, 13, and 16 |
| Mutual legal assistance (R. 32, 36-38, SR. V) | The Tunisian authorities should<br>• consider the advisability of establishing a framework to determine the conditions in which the prosecution of a person in Tunisia can be ordered when that same person is subject to a similar proceeding abroad.<br>• provide for the coordination of seizure and confiscation actions with foreign authorities and consider the advisability of creating a fund financed with confiscated assets and, after the assets have been seized in a coordinated action |

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| | with a foreign authority, sharing the proceeds with that authority.<br>• establish a procedure for the confiscation of assets based on a decision in a third country, under acceptable conditions (including for nonresidents). |
| Extradition (R. 32, 37, and 39, and SR. V) | |
| Other forms of cooperation (R. 32 and 40, and SR. V) | Tunisia should, by law, explicitly authorize the three supervisors of the financial sector to cooperate as broadly as possible with their foreign counterparts, whether information is sought from them by those counterparts or they request information themselves. The bilateral cooperation agreements that these supervisors may be called upon to conclude (memoranda of understanding) should not be subject to the same process as that applicable to the ratification of international agreements, so as to ensure the operational independence of these three authorities. |

**Table 3: Authorities' Response to the Assessment**

| Recommendations | Comments |
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| **A. General comments.** | |
| | **1**. We do welcome that the MENAFATF fifth Plenary (Dead sea April 2-3, 2007) and the assessors considered Tunisia's comments on the mutual evaluation report and upgraded unanimously the ratings of compliance with FATF recommendations related to suspicious transactions report obligation in money laundering, suspicious transactions report obligation in financing of terrorism, shell banks and foreign branches and subsidiaries.<br>We also do welcome that the MENAFATF seventh Plenary (Abu Dhabi April 7-9, 2008) considered Tunisia's request to mention in table 3 of the report the trends recorded in AML and CFT measures during the period between the date of carrying out the assessment (Februrary – April 2007) and the dates of its discussion by the Plenary (April 2007) as well as Tunisia's comments. |
| | **2**. we do appreciate that the report outlined the efforts made by Tunisia in the legal framework of economic, financial and banking transactions to meet international standards on governance, transparency and technological progress.<br>We also do appreciate that the report outlined the quality of the tunisian AML and CFT measures in several fields, notably those regarding incrimination, confiscation, sanctions, the efficiency of judicial and prosecutorial authorities, law enforcement authorities, supervisory authorities and the tunisian Financial Analysis Commission (FIU), the mutual legal assistance, the extradition, the international cooperation, cash couriers, non-profit organizations, money value transfer services as well as the farwarding of lists provided by the Security Council under Resolution 1267 *et seq.* to Tunisian financial institutions in order to check the existence of accounts in the name of any listed persons or entities.<br>We'd rather hoped that the report outlined in a distinct paragraph that the Tunisian law related to combating money laundering and terrorism financing institutes measures that exceed FATF standards, notably regarding the following issues:<br>- All crimes and offences are predicate crimes and offences to money laundering infringement. This means that Tunisian's legislation goes beyond the FATF standards which draw up a list of predicate crimes and offences.<br>- The law institutes the obligation to report even unusual transactions. This means that that Tunisian's legislation goes beyond the FATF recommendations which don't institute such obligation.<br>- Compared to FATF's minimum threshold (15.000 USD/ EUROS), the minimum threshold to apply customer due diligence is lower (11.740 USD for financial transactions in Dinar made in cash and 5.870 USD for transactions in foreign currency).<br>- The minimum period for record-keeping (10 years) is the double of FATF's one (5 years). |

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| | **3**. The main trends recorded by Tunisia during the period between the assessment date and its discussion by the Plenary are the following:<br>* Enacting the law of May 15, 2006 modifying the articles of association of the Central Bank of Tunisia (CBT) entitling CBT, as banking supervisor, to cooperate and exchange information with supervisory authorities of stock market and insurance sectors in Tunisia and its counterparts abroad.<br>* Working out of an in depth study in order to amend some provisions of the AML/CFT law, the findings of which were submitted to the Government. The proposed amendments deal in particular with the following topics:<br>- Systematic suspension of the operation as early as the reporting is done.<br>- Unusual operations report obligation.<br>- The reporting of attempted and realized operations and transactions.<br>- The identification of the beneficial owner's and customer due diligence measures.<br>- Extending sanctions to anyone who knew about the existence of a suspicious operation or transaction reporting.<br>* Submitting to the Government a draft of law related to the implementation of precise and detailed measures and procedures of freezing assets under Security Council Resolution 1267 *et seq*.<br>* Working out a draft of law entitling the Financial Market (Stock market supervisor) Council to cooperate and exchange information with supervisory authorities of banking and insurance sectors in Tunisia and with its counterparts abroad.<br>* April 2007: Adoption of the « directives » of the Tunisian Financial Analysis Commission related to combating money laundering and terrorism financing in the financial market.<br>* April 2007: Adoption of the Central Bank circular laying down the credit institutions and non resident banks AML/CFT duties.<br>* Setting up of a database at the Tunisian Financial Analysis Commission with the support of the Republic of France.<br>* March 2007: Adoption of the internal procedures of the Tunisian Financial Analysis Commission.<br>* March 2007: Adoption of an internal decision on the separation between the Central Bank's dispatch office and the Tunisian Financial Analysis Commission's one.<br>* Setting up of appropriate AML/CFT structures and procedures in many credit institutions and other regulated persons.<br>* Reinforcing the capacities of the Cell of the Centre of Legal and Judicial Studies, the latter carried out many studies on underlying criminality in Tunisia (robbery or theft, narcotic drugs…).<br>* Providing training to the managers and the staff in charge of supervising credit institutions.<br>* Providing training to the staff of the Central Bank of Tunisia in charge of AML/CFT. |

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| | * Providing training to the managers and the staff in charge of supervising operators on the stock market.<br>* Providing training to the managers and the staff in charge of compliance in banking sector.<br>* Providing training to credit institutions' staff and other regulated persons. |

| **B. As far as the content of the report on the compliance with some recommendations is concerned, we would like to make the following comments and point out that Tunisia ratings of compliance could be upgraded in view of the Methodology.** | |
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| **Recommendation 5: Customer Due Diligence**. | - The Tunisian banking market has a relatively small size. The report confirms the fact that banks consider they know well their customers.<br>- The Identification of permanent and occasional customer is satisfying.<br>- Any information on holdings or groups (3010) and their subsidiaries (12421), notably the information on the managers of the aforesaid holdings or groups and subsidiaries are recorded at the Database managed by the CBT ( i.e. : a very sophisticated Database, the establishment of which has required important investment and logistical means). Credit institutions established in Tunisia are allowed to get access to the information stored in this Database. Data related to the individual who ultimately owns or controls the holding or group and the subsidiary (the beneficial owner) are among the information recorded by the aforesaid Database. |
| **Recommendation 6: Politically exposed persons.** | - The Tunisian regulations use the wording « high risk accounts », such wording has a wider meaning than the one used by FATF insofar as it includes risks of political, economic and even social nature (trade unions). |
| **Recommendation 7: Correspondent banking.** | - The Tunisian law into force adopted all preventive measures provided for by FATF recommendation 7. Moreover, the report confirms it (paragraph 240).<br>- A checking of all lists of Tunisian correspondent banks was made and the Central Bank found out that Tunisian correspondent banks meet conditions of FATF recommendation 7.<br>- The implementation of the recommendation leads to two hypothesis:<br>* The hypothesis where the Tunisian bank acts as a correspondent bank of a foreign bank set up in a country endowed with AML/CFT measures; in this case, the foreign bank has to comply with the obligations provided for by the aforesaid recommendation.<br>* The hypothesis where the foreign bank is set up in a country, which is not endowed with such measures; in this case, the Tunisian bank has to comply with the aforesaid obligations.<br>- Regarding correspondent of stock market intermediaries, the report doesn't distinguish between financial flows forwarded in all cases through banks and order flows forwarded by stock market intermediaries only. |
| **Recommendation 8: New Technologies and non face-to-face businesses.** | - It is unusual to legislate on situations that are still non-existing.<br>- Relations with customers are carried out face to face.<br>- The report recognizes that non face to face transactions are rare except for some transactions carried out by non resident banks and stock market intermediaries.<br>- For stock market intermediary, the third party is always a bank; the |

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| | intermediary is in most cases a bank's subsidiary.<br>- In opening accounts, the law forbids non-resident banks to carry out non face to face relations.<br>- Regarding the use of internet, foreign exchange regulations forbid and penalize severely funds direct transfer without banks intermediation.<br>- Concerning the use of internet in Tunisia, e-Dinar users are submitted to customer due diligence measures. |
| **Recommendation 9: Third parties and introducers.** | - The foreign exchange regulations into force allow the performance of banking transactions only through banks. Any infringement of this condition is severely prosecuted.<br>- The case mentioned in the report is a case, which consists in the performance of a transaction by a stock market intermediary on behalf of the bank keeping in mind that this intermediary is in most cases a subsidiary of this bank.<br>- The intermediary can only carry out technically the transaction on behalf of the bank.<br>- The report states that the bank conveys to the stock market intermediary useful data to the identification of the customer within 48 hours following the performance of the transaction. |
| **Recommendation 11: Unusual Transactions.** | - The distinction between suspicious transactions and unusual transactions has not any useful effect insofar as the law institutes the obligation of reporting for both types of transactions, whereas the FATF recommendations institute the reporting only for suspicious transactions.<br>- Yet and for statistical needs, the database of the Tunisian Financial Analysis Commission makes a distinction between suspicious transactions and unusual ones. |
| **Recommendation 12: Designated non-financial businesses and professions.** | - The report states (paragraph 348) that the law has not exempted any regulated person from the obligation of meeting the provisions related to AML/CFT duties on the ground that the degree of risks is low. This is to credit Tunisia with this achievement.<br>- Assessors recommend in the report (paragraph 45 of the summary) to adopt a gradual approach granting priority to the banking sector, then to the stock market sector and and then the insurance sector. |
| **Recommendation 13: Suspicious transaction reporting.** | - The Tunisian Financial Analysis Commission recorded an increase in the number of suspicious transaction reporting as programs on AML/CFT and training of regulated persons are evolving.<br>- The law holds that in case of a reporting to the Tunisian Financial Analysis Commission, the carrying out of the transaction or operation must be suspended without any need for an order to this effect. This implies that attempted transactions or operations have been taken into account.<br>- In practice, reporting on already carried out operations or transactions was submitted to the Tunisian Financial Analysis Commission. This proves that the interpretation adopted in the report doesn't tally with the one adopted by regulated persons in Tunisia. |
| **Recommendation 18: Shell banks.** | - All cross-border correspondent banks of Tunisian banks are recorded in the database of the Central Bank. Tunisian banks inform the Central Bank of their correspondent banks' quality.<br>- The supervisory authority conducted useful enquiries in order to be sure of the quality of correspondent banks of Tunisian banks and hasn't noticed the existence of shell banks. |

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| **Recommendation 19: Other forms of reporting.** | - Tunisian legislation went beyond insofar as it institutes the obligation to report unusual operations.<br>- A survey was conducted on this topic the findings of which showed that the Tunisian society still uses cash insofar as fiduciary money represent 14 % of money supply. We encourage banks to absorb foreign currency banknotes in order to combat parallel market and mobilize resources in foreign currencies. |
| **Recommendation 22:Foreign branches and subsidiaries.** | - Tunisian banks have no foreign branches and subsidiaries except for a bank set up in France and submitted to the law of this country.<br>- The international rules and practices imply for branches and subsidiaries set up in the host country the implementation of the most severe rule. We considered the French legislation and think that it is sufficiently severe. |
| **Recommendation 25: Guidelines and Feedback.** | - The Tunisian Financial Analysis Commission set up internal procedures that secure:<br>* acknowledgement of receipt of reporting.<br>* conveying to the public prosecutor of Tunis in case of serious suspicion.<br>* communication between the Commission and the reporting person or any other person or a supervisory structure in order to get access to data and useful additional documents to process the file.<br>- The Commission encourages unofficial contacts with reporting entities for pedagogical purposes, arising the awareness and reinforcing mutual confidence. |
| **Recommendation 26: the FIU.** | - There is a clear separation between the functions of the Governor of the Central Bank and the functions handed down to him as president of the Tunisian Financial Analysis Commission.<br>- The Commission's main mandates consist in working out programs and cooperation with different concerned national and foreign authorities and agencies. The Secretary General of the Commission is empowered with the daily tasks such as reception, analysis and treatment of reporting by the oerating unit as well as contacts with the reporting persons.<br>- The premises of the Tunisian Financial Analysis Commission are secured insofar as the protection of the head office of the Central Bank is ensured by security forces pursuant to the articles of association of the CBT.<br>- Data processing security is also ensured by the separation between the Central Bank's dispatch office and the Tunisian Financial Analysis Commission one and by the separation of data processing networks of each of them. As for files, they are stored at the office of the Secretary General of the Tunisian Financial Analysis Commission.<br>- External agents are members of the Commission and they fulfill their functions as so and within the premises of the Commission. They are forbidden from carrying outside the premises of the Commission any document related to their functions.<br>- External agents who carry out their tasks within this Commission are not allowed to take files out of the premises of the Commission.<br>- It is not compulsory that external members be permanently on secondment.<br>- The presence of external agents facilitated the tasks of the Commission notably as for the promptness in obtaining additional information to process reporting.<br>- It is forbidden to members of the Commission to submit reports to the institutions they belong to. |

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| **Recommendation 31: National cooperation.** | - Operational cooperation is a reality owing to the fact that all supervisory authorities are being represented in the Tunisian Financial Analysis Commission (the ministry of finance for insurance sector, auditors and dealers of jewellery – the financial market council for stock market intermediaries and others in the stock market sector- the Central Bank for the banking sector- the ministry of justice and human rights for legal professionals…).<br>- The law obliges all authorities and entities to convey to the Tunisian Financial Analysis Commission all useful information to carry out its mandates and forbids them to invoke professional secrecy. |
| **Recommendation 32: Statistics.** | - Recommendation 32 mentions on a restrictive basis the statistics related to money laundering and terrorism financing.<br>- There is no obligation to provide statistics on predicate offences and yet assessors were provided with global statistics on the types of predicate offences in Tunisia as mentioned in the report, but there is rather the obligation to draw up statistics on predicate offences when they concern money laundering and terrorism financing.<br>- The Tunisian Financial Analysis Commission has at its disposal comprehensive statistics on:<br>* Suspicious transactions reports.<br>* Unusual transactions Reports.<br>These reports are broken down by category of regulated persons and according to whether they were analyzed and stored or submitted to judicial authorities. |
| **Recommendation 40: Other forms of cooperation.** | - The amendment of the law related to the Central Bank of Tunisia dated May 15, 2006 allows the Central Bank as supervisory authority of credit institutions and non-resident banks to cooperate and exchange data with foreign counterparts.<br>- The Tunisian Financial Analysis Commission meets all membership conditions of Egmont Group and submitted an application to this effect.<br>- The Tunisian law doesn't impose severe conditions to the conclusion of cooperation conventions between the Tunisian Financial Analysis Commission and its foreign counterparts. |
| **SR I : Implement UN instruments**<br><br>**SR III : Freeze and Confiscate terrorist assets** | - Security Council Resolutions are enforceable without any need to a law insofar as Tunisia is a United Nations member.<br>- The report states that the Central Bank forwarded the lists to all credit institutions and that no one of the listed names has appeared among their customers. |