

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



*Executive Summary Of
The Mutual Evaluation Report
Of*

*The Republic of Tunisia
On
Anti-Money Laundering and Combating Financing of
Terrorism*

This executive summary is part of the Detailed Assessment Report on anti-money laundering and combating the financing of terrorism for Tunisia which 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 Report by the MENAFATF Plenary on April 3rd, 2007.

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1. GENERAL INFORMATION

1. This report provides a summary of the Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) measures in place in Tunisia as the time of the on-site visit (January 16-28, 2006, 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) or immediately thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Syria's levels of compliance with the FATF Recommendations based on the AML/CFT methodology 2004. (See attached table on the Ratings of Compliance with the FATF Recommendations).
2. 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.
3. The financial sector is relatively well developed, but Tunisia is still not a significant international financial market. The partial convertibility of the Tunisian dinar¹ (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.
4. 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 transparency².
5. 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.
6. 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

¹ The exchange rate is \$ 1 = DT 1.3.

² Fitch, Oct. 2005, "Tunisian companies preparing for the 2008 deadline".

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

7. 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.
8. 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

9. 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.
10. 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.
11. 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.

12. 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.
13. 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 entities³, 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.
14. 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.
15. 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.
16. 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,

³ The conduct of these checks by financial institutions has not been the subject of verification on significant samples by the supervisors.

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.*

17. 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."
18. 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.
19. Tunisia should establish a mechanism for the freezing of assets in accordance with the requirements of Resolutions 1373 and 1267.
20. 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.
21. 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.
22. 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.

23. 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.
24. 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.
25. 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

26. 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).
27. 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.
28. 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.
29. 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.

30. 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 contracts⁴ 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.
31. 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.
32. 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

⁴ Life insurance is as yet not very developed in Tunisia

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.

33. 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.
34. 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 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.
35. 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.
36. 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.
37. 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.

38. 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).
39. 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

40. 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.
41. 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.
42. 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.
43. 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.

44. 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

45. 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*).
46. 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.
47. 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

48. Law 95-44 concerning 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.

49. 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.
50. 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

51. 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.
52. 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.
53. The AML/CFT Law states in its Article 69 that NPOs⁵ 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.
54. 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

55. 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.

⁵ In the same way as legal persons

56. 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.
57. 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.
58. 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 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.

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).

Forty Recommendations	Compliance rating	Summary of grounds for the compliance rating
Legal systems		
1. The offense of money laundering	LC	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ Threshold making legal persons liable for prosecution set too high ▪ 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	<ul style="list-style-type: none"> ▪ Requirement concerning identification of the beneficial owner of a transaction too restrictive ▪ 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. ▪ Lack of provisions requiring enhanced due diligence for categories presenting higher risks for non-bank financial institutions. ▪ Residual existence of certain products that promote the anonymity of their holders ▪ Lack of supervision of proper implementation of the applicable provisions of Law 2003-75 ▪ Lack of implementation of the provisions of CTAF directive 02-2006
6. Politically exposed persons	NC	<ul style="list-style-type: none"> ▪ No explicit provision concerning politically exposed persons
7. Correspondent banking relationships	PC	<ul style="list-style-type: none"> ▪ No implementation of the provisions on

		<p>correspondent banking relationships, as well as of additional implementation measures</p> <ul style="list-style-type: none"> ▪ Absence of provisions on arrangements similar to correspondent banking relationships for the non-bank financial sector
8. New technologies and remote business relationships	PC	<ul style="list-style-type: none"> ▪ Lack of implementation of provisions non face-to-face banking relationships or the use of new technologies ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ No distinction between an unusual transaction or operation and a suspicious transaction or operation ▪ 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 non financial businesses and professions—R. 5, 6, and 8-11	PC	<ul style="list-style-type: none"> ▪ Inadequate definition of designated non-financial business and professions ▪ Lack of implementation of the related obligations
13. Suspicious transaction reports	PC	<ul style="list-style-type: none"> ▪ Ambiguous reporting “threshold” ▪ No obligation to report attempted suspicious operations ▪ No obligation to report transactions after carrying them out if information obtained subsequently raises a suspicion ▪ 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	<ul style="list-style-type: none"> ▪ Too limited scope of individuals liable in case of divulging the existence of an STR
15. Internal controls and compliance	NC	<ul style="list-style-type: none"> ▪ 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. ▪ No general or targeted training programs in the banking and insurance professions, particularly for compliance officers.
16. Designated non financial businesses and	NC	<ul style="list-style-type: none"> ▪ Inherent weaknesses in the requirement to

professions—R. 13-15 and 21		<p>report suspicious transactions (see recommendation 13)</p> <ul style="list-style-type: none"> ▪ Complete lack of implementation of the system
17. Penalties	LC	<ul style="list-style-type: none"> ▪ No possibility of sanctioning insurance company executives for failure to comply with AML/CFT obligations ▪ For the three pillars of the financial sector, lack of effective implementation of the sanctioning measures
18. Shell banks	PC	<ul style="list-style-type: none"> ▪ No prohibition against Tunisian credit institutions maintaining relations with shell banks. ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ No systematic risk analysis
21. Special attention for countries representing a higher risk	PC	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ Tunisian non-bank financial institutions not required to ensure that their foreign subsidiaries and branches comply with AML/CFT obligations. ▪ 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	<ul style="list-style-type: none"> ▪ 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. ▪ Lack of detailed directives from each financial sector supervisor on AML/CFT obligations. ▪ 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	<ul style="list-style-type: none"> ▪ Lack of awareness on the part of professionals and their regulatory or self-regulation authorities ▪ Complete lack of implementation of the system
25. Guidelines and feedback	NC	<ul style="list-style-type: none"> ▪ No guidelines issued for financial institutions ▪ No feedback mechanism
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> ▪ 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. ▪ Lack of security at the current CTAF premises, which places at risk the protection of data held by the unit ▪ Unit not operating effectively
27. The criminal prosecution authorities	C	
28. Powers of the competent authorities	C	
29. Oversight authorities	LC	<ul style="list-style-type: none"> ▪ No possibility of sanctioning executives for non compliance with AML/CFT obligations in the insurance sector
30. Resources, propriety, and training	LC	<ul style="list-style-type: none"> ▪ CTAF employees lack of specific AML/CFT training ▪ At present, lack of technical resources and suitable premises for the CTAF ▪ Lack of training for judges and investigative staff in combating money laundering ▪ Overall lack of staffing for the banking supervisor and the insurance supervisor ▪ No training for staff of the insurance supervisor ▪ Insufficient training for staff of the banking supervisor
31. Cooperation at the national level	PC	<ul style="list-style-type: none"> ▪ Cooperation on operational issues not possible among financial sector supervisors ▪ 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	<ul style="list-style-type: none"> ▪ General lack of statistical data on both predicate offenses and AML/CFT ones. ▪ Lack of statistical data on FT convictions ▪ Lack of sufficiently detailed statistical data on confiscation

		<ul style="list-style-type: none"> ▪ 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. ▪ No organized statistical tracking of supervision activities and related sanctions ▪ 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. ▪ No sufficiently detailed statistical data on mutual legal assistance
33. Legal persons—beneficial owners	LC	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ Lack of conformity with the international cooperation aspects of recommendations 5, 12, 13, and 16
36. Mutual legal assistance	LC	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ Non-implementation of Resolutions 1267 and 1373
SR. II - Criminalization of terrorist financing	C	
SR. III - Freezing and confiscation of terrorist funds	NC	<ul style="list-style-type: none"> ▪ No legal basis for power to freeze the assets of persons designated by the United Nations under Resolution 1267 et seq. ▪ Definition of funds subject to freezing too restrictive

		<ul style="list-style-type: none"> ▪ Lack of clear, rapid, formal, and effective procedures for the implementation of asset freeze decisions ▪ Lack of clarity concerning the legal basis for the implementation of Resolution 1373
SR. IV - Suspicious transaction reports	PC	<ul style="list-style-type: none"> ▪ Ambiguous reporting “threshold” ▪ No obligation to report attempted suspicious operations ▪ No obligation to report transactions after the fact if information obtained subsequently raises a suspicion ▪ Lack of effective implementation of the system more than two years after the entry into force of the law
SR. V - International cooperation	LC	<ul style="list-style-type: none"> ▪ Idem for R36 and 38 ▪ Inability of financial sector supervision agencies to participate in international cooperation
SR. VI - AML/CFT obligations applicable to money or value transfer services	LC	<ul style="list-style-type: none"> ▪ Implementation still not insufficient.
SR. VII - Rules applicable to wire transfers	NC	<ul style="list-style-type: none"> ▪ Lack of a provision governing the obligations of institutions acting as intermediaries in the payment chain or participating on behalf of the beneficiary. ▪ 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. ▪ No specific measure enabling supervisors to ensure proper implementation of the regulation on electronic transfers ▪ 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	<ul style="list-style-type: none"> ▪ Exchange of information between Customs and CFAT not yet formalized nor effective