



1st Follow-Up Report

EL SALVADOR

December 2010

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I. Introduction

1. This document summarizes the CFATF’s analysis of the actions the country states it has taken to overcome the shortcomings identified in the mutual evaluation report discussed in the Plenary of May 2010 and published on September of the same year. It is based on information submitted extemporaneously by the country on October 27, 2010 and it was approved after the Plenary, through the round-robin procedure (via email).

2. El Salvador se encuentra bajo seguimiento expedito del GAFIC y por ello debe presentar un informe de avance en cada reunión semestral del Pleno. Las calificaciones de cumplimiento fueron de NC o PC en 26 de las recomendaciones del GAFI, entre ellas cinco de las recomendaciones esenciales y clave, como se observa en la siguiente tabla.

Key and Core Recommendations

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Calific.	MC	MC	C	PC	MC	MC	PC	PC	C	MC	MC	C	C	MC	PC	PC

All recommendations rated PC or NC

Partially Compliant (PC)	Non Compliant (NC)
5. Customer Due Diligence	06. PEPs
8. New technologies & non face-to-face business	07. Corresponding Banking
9. Third parties and introducers	12. DNFBPs– (R.5, 6, 8-11)
17. Sanctions	16. DNFBPs– R.13-15 & 21
21. Special attention to high-risk countries	24. DNFBPs– Regulation, Supervision, Monitoring
22. Foreign branches and subsidiaries	30. Resources, Integrity, Training
23. Regulation, supervision and monitoring	32. Statistics
25. Guidance and Feedback	RE.VI Money/Value Transfers
26. The FIU	
29. Powers of Supervisors	
31. Domestic Cooperation	
33. Legal persons –beneficial owner	
39. Extradition	
RE.IV Report suspicion of FT	
RE.V International Cooperation	
RE.VII Wire Transfers	
RE.VIII NPOs	
RE.IX Cross Border cash	

3. El Salvador did not provide the information necessary to complete the table about the size and international interdependence of its financial system.

Data as of --- (date)		Banks	Other Credit Inst.	Securities	Insurance	TOTAL
Number						
Assets	US\$					
Deposits	Total: US\$					
	Non-residents: US\$					

	Non-residents %					
International Links	Foreign-owned (number):					
	Subsidiaries abroad (number)					

II. Summary of progress made by the country since the last evaluation.

4. In the six months since the adoption of the Mutual Evaluation Report El Salvador has given priority to addressing the weaknesses of the five key/core recommendations that were rated PC, by undertaking the following actions:

- a) Passed and entered into effect a new law (Decree 342 of the Legislative Assembly, June 7, 2010) that corrects the deficiencies identified in the "Special Law Against Acts of Terrorism" (CFT Law).
- b) Proposed amendments to the AML Act, presented it to the Legislative Assembly.
- c) Drafted amendment to the "FIU Instructions" (regulations of the AML Act); currently under consultation with the obliged institutions of the private sector.
- d) Drafted new "minimum requirements for managing ML/FT risks ", which the Superintendency of the Financial System (SSF) circulated for consultation with financial institutions.
- e) Drafted Bill to give powers to the SSF to regulate, monitor and sanction companies or persons engaged in money transfer services, which are currently obligated under the AML Law but lack governmental oversight. This draft is completed but not yet submitted to Congress.

5. The CFATF Secretariat has not received the text of these reform proposals or information about the estimated timeframe for their finalization.

6. The following paragraphs summarize the information provided by El Salvador, which relates only to developments in the five key/core recommendations rated PC. The authorities explained, however, that they are committed to resolve all deficiencies identified in the mutual evaluation report and they will be informing accordingly during the next Plenary.

Rec. 5 CDD

7. All actions recommended in the report with respect to Rec 5 remain outstanding but the authorities are already in the process of reforming the "FIU Instructions" which contain the AML/CFT regulations applicable to all reporting entities. Currently there is a reform proposal that is in a phase of consultation with the private sector.

8. The Superintendency of the Financial System (SSF) also prepared a draft circular to set "minimum standards for managing ML/FT risks", which is under consultation with financial institutions. The bill prohibits the opening of new accounts encrypted, and obliges to consider them a hazardous product.

9. Additionally, the authorities presented to the Congress a proposed amendment to Article 9 of the AML Law in order to reduce to \$10,000 the threshold at which it is mandatory to report cash transactions. The Secretariat notes that according to this description, the proposal would have no positive impact on the implementation of Rec. 5 unless it states that:

- a) Identification of all regular customers is mandatory regardless of the amount of their transactions, as specified in Article 10 of the AML Law.

- b) The identification threshold for occasional customers is reduced to the maximum amounts provided by the FATF.

Rec. 23 Supervision

10. The bill to give the SSF powers of regulation and supervision of money transfer businesses will address one of the recommendations made in the evaluation report. It is unclear whether it also refers to supervision of other nonbank financial institutions that are not part of Financial Conglomerates. Nor have the authorities considered the possibility of transferring the regulatory function for AML/CFT to the SSF and the Superintendency of Securities, for their respective supervised institutions.

11. The authorities also mentioned as an advance the drafting of "Minimum requirements for managing ML/FT risks" prepared by the SSF. The Secretariat is unaware of the relationship between these draft requirements and Rec. 23.

Rec. 26 FIU

12. A new law/act (Decree 342 of the Legislative Assembly, June 7, 2010), corrected the mistakes of the "Special Law Against Acts of Terrorism (CFT Law) that limited the FIU's legal powers in this area. Thanks to this legal change, in July 2010 the Egmont Group lifted the membership suspension that it had imposed on the FIU.

13. The FIU is preparing a project for the acquisition of technological equipment and related training of personnel, which could improve their data transmission system, reporting, query and analysis of information. The project has already passed the stages of "cost analysis, relevance and significance", and is in the process of getting approval of funding. The investment in this project will be approximately US\$ 250.000.

RE. IV. Report suspicions of FT

14. Decree 342 which amended the CFT Act imposes an obligation on financial institutions to report suspicious transactions of FT in general, not just in cases in which the subject is included in lists of terrorists. It also gives broad powers to the FIU to analyze these reports and to share information with other countries in the course of an investigation and/or for intelligence purposes, without having to sign memoranda of understanding.

15. With this reform El Salvador overcomes almost all the deficiencies noted in the mutual evaluation regarding RE.IV. It is still necessary to establish a clear obligation to report attempted transactions, as well as suspicion of terrorist financing with funds of legal origin (an action recommended under Rec.13).

RE.V. International Cooperation on FT

16. The authorities mentioned the augmented powers of the FIU with respect to CFT (Decree 342 of 2010), as an improvement. However, it is unclear what aspects of this Decree help to enhance mutual legal assistance (the possibilities of cooperation of the FIU positively impact compliance with R.40, but not SR.V).

III. Conclusion

17. Only six months have passed since the presentation of the mutual evaluation report to the CFATF Plenary. The amendment of the CFT Act in 2010 was a very important and urgent step made by El Salvador. In addition, there is already a draft amendment to the FIU Instructions (the AML/CFT regulations of El Salvador) and a draft circular of the Superintendency of the Financial System on the matter.

18. However, El Salvador only reported on progress on the five key/core recommendations that had significant deficiencies, none of which is totally overcome. Additionally, it is expected that information will be provided in the next report on actions with respect to the remaining FATF recommendations that were rated PC or NC.

19. The Secretariat recommends that the Plenary keeps El Salvador under expedited follow up. Their next report would be presented to the Plenary meeting of May 2011.

EL SALVADOR

1st Matrix of Progress presented by the country with respect to Mutual Evaluation approved in May 2010
III Round of Mutual Evaluations

FATF 40 Rec.	Rating	Factors underlying rating	Recommended Actions	Actions Informed by Country
5. Customer Due Diligence	PC	<ul style="list-style-type: none"> • Lack of clarity, scope and clear and differentiated requirements in the instructions related with compliance with prevention and control of ML and FT • Legal deficiencies and important deficiencies concerning the implementation of CDD requirements for money transmitters or remittance companies • Inappropriate CDD indicator of US\$57,142.86 for obligation of reporting operations in cash and transaction monitoring. • Absence of a concrete requirement to accomplish CDD in all cases in which there is suspicion of ML/FT or doubt with respect to whether the information from customer is sufficient and/or in case of uncertainty about veracity, modifications or 	<ul style="list-style-type: none"> • Undertake a Country Risk Study in relation with ML-FT in order to determine the risk areas that require more attention as well as the regulatory needs and control needs in accordance with vulnerabilities encountered per each type of regulated entity. • To review US\$57,142.86 threshold contained in the Law for the control of cash operations. • To review FIU Instructions in order to extend its scope, simplify structuring, increase clarity and congruence of thereof. • To issue regulations related with adequate management of risks making special emphasis in specific needs for each sector. • To review application environment for AML/CFT requirements for remittance companies to guarantee they include concrete obligations consisting in environment with AML/CFT provisions. • CE 5.1 Determine the real existence of coded accounts and in such case consider it as risk products that require higher control limiting the use of such numbered and coded accounts to certain institutions and circumstances. • CE 5.2 Extend clarity and increase consistency of instructions that are indicated by the five thousand colones or USD\$500.00 threshold for the identification of a client. 	<ul style="list-style-type: none"> • Bill submitted to Congress to amend Article 9 of the AML Law, in the sense of changing the threshold required to make cash transaction reports when the operation reaches US\$10,000. • The FIU Instruction has been the subject of analysis, comments and proposals for reform, currently in the consultation phase with obligated institutions before proceeding to its reform and approval. • At the initiative of the FIU, a draft bill has been prepared to grant powers to the supervisory bodies of the financial system for the control and approval of companies engaged in the transfer of funds. • The SSF drafted a circular titled "Minimum requirements for ML/FT Risk Management", it prohibits the maintenance of numbered accounts in financial institutions.

FATF 40 Rec.	Rating	Factors underlying rating	Recommended Actions	Actions Informed by Country
		<p>alterations in the identification documents.</p> <ul style="list-style-type: none"> • Deficient identity verification requirements for beneficial owners • Lack of general requirement for the obtention of information about actual nature and purpose of the business relation. • Absence of regulations and insufficient guidelines for CDD based on risk • Absence of controls and risk reduction for postponement of the verification of identification, including recently organized companies. 	<ul style="list-style-type: none"> • Money exchange businesses transmission and remittance centers, who fixed business relations that are identified and accomplish CDD, must be demanded regardless of the amount of operations of clients and extend the control threshold from US\$57,142.86 to present FIU reports. • In FIU Instructions and issued provisions related with ML-FT, indicate clear requirements that differentiate CDD for the establishment of business relations and occasional client conduct taking into account the need to have reasonable indicators for occasional transactions in all sectors. • Consider CDD concrete provisions that demands the amount of related transactions below US\$57,142.86 indicator (15 000 US dollars in accordance with FATF) • c5.2 (b)) Require CDD for all transactions and activities provided it is worth it and there is suspicion with respect to the veracity of client information or whenever it differs from its profile. (See c5.15 and c5.16) • CE5.3 (and CE5.14) Review all regulations to clarity/guarantee that provisions for the alternative identifications and verification measures do not reduce CDD in assumptions that the identification documents show modifications, amendments and/or are false according to and likewise determine rules to limit operations of the accounts, concerning clients that have not completed documentation thereof. • CE 5.4 and CE 5.5 Concretely require that FI to establish/require that applicants of businesses indicate in the documents, the capacity with which they act and not only in the cases in which there are “indicators” that they are acting in 	

FATF 40 Rec.	Rating	Factors underlying rating	Recommended Actions	Actions Informed by Country
			<p>representation of third parties.</p> <ul style="list-style-type: none"> • Require specific requirements for the opening of trust accounts, Civil Associations, and State entities and other legal structures. • Review identification exception of clients in accordance with the risk establishing volume limits of operations and other control measures • CE 5.6 Require that all FI obtain information with respect to the purpose and object of the business relation and actual economic activity regardless of the client risk level and financial institution size. • EC 5.8 Demand KYC implementation based on risk in all provisions beyond risks related with clients and users transactions in order to include all elements necessary for establishment of client’s profile; additional client categories; economic activity; geography, etc. See CE 5.9 and CE 5.12 • EC 5.9 Review adequation of the exempt client list and request a minor risk classification before applying simplified CDD. • EC 5.12 Provide adequate guidelines to assist FI in the development of risk management system. • EC 5.14 Review reasonable term to complete verification of identification of recently organized moral persons, including strict requirements for risk reduction such as financial transaction prohibition of certain amounts or special characteristics such as transfers, regional check books, etc. • Request from all regulated entities to reject to open an account or accomplish a transaction provided the required identification documents may not be obtained or verified adequately, always that there is thought that they have been 	

FATF 40 Rec.	Rating	Factors underlying rating	Recommended Actions	Actions Informed by Country
			<p>altered and/or are false.</p> <ul style="list-style-type: none"> • 5.17 Demand update of client files that already exist in appropriate times. 	
<p>23. Regulation, supervision, monitoring</p>	<p>PC</p>	<ul style="list-style-type: none"> • Insufficient resources (personal, equipment, training) by supervision entities to accomplish their oversight functions. • Lack of control and supervision of remittance entities and other non-banking financial entities that do not form part of a Financial Conglomerate 	<ul style="list-style-type: none"> • Provide supervision entities with human resource, Technology and training sufficient to comply with legal obligations related with AML- CFT matters. • Reinforce compliance supervision of AML-CFT of preventive nature and review the obligation of SSF to analyze information submitted by regulated entities and in turn submitted to FIU whenever there is warning that in reported operations are irregular or suspicious in accordance with the provisions contained in Article 8 of the Regulation of Anti-Money Laundering Law, being this an essence a tasks of FIU in addition to imply large operative burden given the lack of available resources. • Reinforce AML-CFT compliance supervision from the preventive view point and review the supposed duty of SSF to analyze irregular or suspicious operations, since this is the essential tasks of FIU. • Develop supervision methods and manuals based on risks adequate to specific conditions of the different types of regulated entities. • C23.1. Reconsider the convenience and efficacy of having granted in Law of FIU regulatory powers in terms of ML-FT concerning financial institutions and evaluate the possibility to assign them to the relevant supervision entities, specialized in financial matters. • C 23.1 and C 23.2 Place all non-banking financial entities which are not part of financial conglomerates and are not subject to control 	<p>Plan:</p> <ul style="list-style-type: none"> • Amend the law of the Superintendencia del Sistema Financiero to give it authority to monitor and penalize these companies. This draft is finalized for presentation to the Legislature. <p>[Note by the Secretariat: it is not clear which companies referred]</p>

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			<p>entities, under the regulation and supervision of an entity with the sufficient capacity and resources to do so.</p> <ul style="list-style-type: none"> • C23.5 and 23.6 Remittance entities for their importance must have a special registration, receive license permit, and be ruled by a supervision entity in order to guarantee compliance with legal AML/ CFT requirements. • Intensify the supervision of national FI with activities abroad and increase the use of memorandums of understanding in matters supervision to facilitate consolidated transborder supervision. • Ensure in inspection that insurance and guarantee companies comply with the training obligation in AML/LFT topics for their agents and brokers, prioritizing those who accept cash from clients and the detection and notice of irregular or suspicious activities. 	
26. FIU	PC	<ul style="list-style-type: none"> • Simultaneous delivery of STR, both to FIU as to SSF which affect confidentiality of reports and creates parallel FIU in other entities. The number of officers that make up FIU, and their capacity to analyze information is very reduced relative to the number of reports received. • FIU has insufficient autonomy to accomplish its tasks. Attorney General of the Republic frequently 	<ul style="list-style-type: none"> • Amend Agreement N° 356 issued by the Attorney General's Office of the Republic in order for report procedure of STR to be made only before FIU. • Establish a feedback mechanism that allows orientation to obliged subjects on the adequate manner to submit STR. • Implement technological tools that allow rapid informatic Access to data bases to State entities and institutions or private companies. • Establish procedural manuals that reach a division between STR analysis and criminal investigation. • Assign more provisional personnel for both analysis and investigation area. 	<ul style="list-style-type: none"> • There is no provision or law that grants FIU functions to the SSF or other agencies. • Part of the efforts made by the FIU are implementing or improving the system of data transmission, reporting, query and analysis of information through advanced technological tools. • This project involves the acquisition of technological equipment as well as proper training for both the analysis area and the technology area. • With regards to the legal limitations identified in the mutual evaluation, which resulted in the suspension of the FIU's membership by the Egmont Group, they were fully corrected by Decree No. 342 issued by the Legislative Assembly, • On July 14, 2010 the President of the Egmont Group, Mr.

FATF 40 Rec.	Rating	Factors underlying rating	Recommended Actions	Actions Informed by Country
		<p>removes attorneys from FIU to assign it to other tasks of the Attorney General's Office and is empowered to give instructions to FIU about which cases are considered priority and which not.</p> <ul style="list-style-type: none"> • There is no adequate access to databases of public entities and private subjects authorized by ML Law • There is no operative division among analysis and criminal investigation, with the judicial function having higher priority, which reflects lack of technical autonomy in the essential work to produce financial intelligence. • Public information about statistics and typologies is not produced. • FIU is suspended by the Egmont Group. • There is no permanent training program for FIU officers 	<ul style="list-style-type: none"> • Strengthen FIU's autonomy and provide higher labour stability to officers that integrate FIU, thus avoiding transfers to other specialized Prosecutors' Offices. • To provide periodical reports to obliged subjects on cases reported criminal statistics typologies, and trends, that shall be considered as suspicious operations. • To resolve all the legal limitations that grounded the suspension of the membership of Egmont Group of Financial Intelligence Units. • To establish a permanent training program for FIU officers. 	<p>Boudewijn Verhelst, officially notified the Financial Investigation Unit's full restitution of our status as an active member of the Egmont Group. This took effect immediately and rehabilitated our access to the Egmont Group's secure network for sharing financial information with other intelligence units worldwide.</p>
SR.IV Report suspicion of FT	PC	<ul style="list-style-type: none"> • Obligation to report is limited to operations of persons mentioned in the lists of the Attorney General's Office or 	<ul style="list-style-type: none"> • Extend the reporting obligation to clearly cover suspicions of terrorism financing with legal origin funds. • Give feedback to reporting entities to improve quality, usefulness and timeliness of STRs. 	<ul style="list-style-type: none"> • Through legal reform of May 7 this year (amendment to the CFT Law), there is an obligation for FI to report transactions suspicious of FT in general terms, without any limitation. • It is important to note that in the Salvadoran legal system

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		<p>international entities</p> <ul style="list-style-type: none"> • The law establishes a limited obligation to report suspicious of FT without considering it a precedent crime of ML • STRs for Non-concluded (attempted) suspicious operations are not required nor reported. 	<ul style="list-style-type: none"> • Review, update and clarify the FIU Instruction, which has not been modified since 2002, in order to incorporate recent international developments in terms AML/CFT and to eliminate ambiguities existing in several of its provisions. 	<p>any criminal activity that produces goods, funds or rights either directly or indirectly is a criminal activity that generates money laundering. See Article 6, paragraph one. (This clarification was made to the assessment team and was inexplicably not taken into account)</p> <p><i>[Note by the Secretariat: criticism in the report relates specifically to funds <u>other</u> than proceeds of crime]</i></p> <ul style="list-style-type: none"> • Pursuant to the provisions of Article 10 paragraph e Roman III of the AML Law, FI's are required to report any relevant information on management of funds, which involves reporting attempted transactions (This clarification was made to the assessment team who considered our arguments valid). <p><i>[Note by the Secretariat: according to the report there is still a need for an explicit requirement]</i></p>
SR.V International Cooperation	PC	<ul style="list-style-type: none"> • Lack or no real implementation of measures established to cooperate internationally in terms of FT. • The same deficiencies with respect to R.36 and 39 affect compliance with RE.V with respect to extraditions and other forms of cooperation: low implementation of measures to cooperate internationally; lack of laws and procedures that clearly regulate extradition; absence of statistics about practical implementation 	<ul style="list-style-type: none"> • Develop formal work agendas for the existing inter-agency groups, to analyze compliance with the principles covered in the Law and regulations, considering the degree of compliance and implementation, and operational effectiveness. • Implement the practice of coordination and create a real public policy on coordination. • Establish second or third degree rules to develop the instruments or principles established by law. 	<ul style="list-style-type: none"> • With regards to the legal limitations identified in the mutual evaluation, which resulted in the suspension of the FIU's membership by the Egmont Group, they were fully corrected by Decree No. 342 issued by the Legislative Assembly, <p>On July 14, 2010 the President of the Egmont Group, Mr. Boudewijn Verhelst, officially notified the Financial Investigation Unit's full restitution of our status as an active member of the Egmont Group. This took effect immediately and rehabilitated our access to the Egmont Group's secure network for sharing financial information with other intelligence units worldwide.</p>