

**ASIA/PACIFIC GROUP**
**ON MONEY LAUNDERING**

# APG 2nd MUTUAL EVALUATION REPORT ON

# Indonesia

**Against the FATF 40 Recommendations (2003) and 9 Special Recommendations**

**Adopted by the APG Plenary**

**9 July 2008**

## PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF INDONESIA

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Indonesia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Indonesia, and information obtained by the Evaluation Team during its on-site visit to Indonesia from 29 October to 12 November 2007, and subsequently. During the on-site visit the Evaluation Team met with officials and representatives of all relevant Indonesian government agencies and the private sector. A list of the bodies met is set out in Annex 3 to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and financial regulatory issues. The Evaluation Team consisted of:

   ***Legal Expert***

   Mr Graham Goodman, Senior Government Counsel, Department of Justice
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   ***Financial/Regulatory Experts***

   Ms Hyun Soo Kim, Deputy Director, Planning and Administration Office, Korea Financial Intelligence Unit, Ministry of Finance and Economy, Korea

   Mr Vinay Baijal, Chief General Manager, Dept of Banking Operations & Development, Reserve Bank of India

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   ***Law Enforcement Expert***

   Mr Paul DerGarabedian, Senior Policy Advisor, US Department of the Treasury, Office of Terrorist Financing & Financial Crimes, United States

   ***APG Secretariat***

   Mr David Shannon, Principal Executive Officer

3. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

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## EXECUTIVE SUMMARY

### Background Information

1. This report provides a summary of the AML/CFT measures in place in Indonesia as at the date of the on-site visit in November 2007 or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Indonesia's levels of compliance with the FATF 40+9 Recommendations.

2. Indonesia has made very significant progress in recent years with its implementation of AML measures, but relatively little implementation of CFT measures has occurred.

3. In 2002 Indonesia enacted Law No. 15 of 2002 concerning the Crime of Money Laundering which was amended by Law Number 25 Year 2003 (the AML Law) which imposed AML/CFT requirements on financial institutions. Indonesia has now developed a strong FIU. Since 2004 Indonesia has begun to investigate and prosecute ML cases. Indonesia is set to significantly amend its AML Law and is in the process of passing specific proceeds of crime legislation.

4. A range of significant money laundering (ML) and very significant terrorism and terrorist financing (TF) risks exist in Indonesia. The scale of the terrorism threat is evidenced by Indonesia's success in apprehending terrorists, with 423 arrests and 367 convictions of terrorists. In addition to domestic laundering of proceeds of crime, Indonesia notes a particular challenge from the movement of funds to regional financial centres. Indonesia is emerging from a period marked by weak rule of law and extreme levels of corruption. Corruption remains a very significant issue for all aspects of Indonesian society and a challenge for AML/CFT implementation. Combating corruption and strengthening rule of law are priorities for Indonesia.

### Legal Systems and Related Institutional Measures

5. Indonesia has criminalised ML under Articles 3 and 6 of the AML law. Indonesia's ML offence uses a combined list and threshold approach to cover predicate offences. The scope of property subject to the ML offence is narrow and does not cover interest in any such movable or immovable property, and legal documents evidencing title to such property. The offence covers relevant types of ML activity, with the exception of conversion, simple possession and disguising the true nature, disposition, movement, rights with respect to, or ownership of property, or helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions. Criminal sanctions for money laundering are generally proportionate and dissuasive. The AML Law creates corporate criminal liability for the ML offence; however there are concerns that application of corporate liability has not been tested in practice for any offence.

6. Since 2004, there have been 176 ML investigations, 18 prosecutions and 11 convictions. Most of the prosecuted ML cases have been limited to the proceeds of corruption or fraud. There are few investigations and prosecutions of ML cases in parallel with predicate offences. The number of prosecutions is increasing, although the size of the country and the risk of ML should be noted.

7. Terrorist financing is criminalised in articles 11-13 of *Law No.15 of 2003 Concerning Government Regulation in Lieu of Law Number 1 Year 2002 concerning Combating* Criminal *Acts of Terrorism* (the Anti-Terrorism Law), which came into force in October 2002. Article 11

covers the collection and provision of funds for terrorist acts, but does not cover indirect provision or collection. 'Funds' is not defined and would be limited to its common meaning. Article 12 provides for the collection and provision of the more widely defined 'assets', to support terrorist acts related to nuclear materials, chemical & biological weapons etc. Article 13 covers provision of funds and other assets to the perpetrator of a specific criminal act of terrorism. The TF offence does not cover funding for all of the terrorist offences that are listed in UN TF Convention (1999). The TF offence appears to require that funds were actually used to carry out or attempt carry out a criminal act of terrorism. The activity of collecting funds for terrorists or terrorist organisations (either for the purpose of committing a terrorist act or any other purpose) is not clearly criminalised. Corporate criminal liability is available for the TF offence; however the assessment team has raised concern with the application of corporate liability. Sanctions for natural persons are limited to imprisonment, but available terms are dissuasive (3-15 years). Only fines are available for legal persons and these are dissuasive (up to US$100 million).

8. Despite the very serious terrorism threats in Indonesia, there has been very limited use of the TF offence and very few TF investigations. At the time of the onsite visit, only one TF prosecution had been carried forward and this resulted in a conviction.

9. The regime to seize, freeze and confiscate criminal property is generally limited. The AML Law provides for provisional measures related to the ML offence, while the Criminal Code and Criminal Procedure Code provide for limited forfeiture, freezing and seizing of criminal proceeds, instruments of crime and property intended to be used in the commission of an ML or TF offence. Articles 38 to 49 of the Criminal Procedure Code provide for provisional measures and confiscation and these provisions are used in cases of corruption, fraud, criminal breach of trust, cheating, and illegal logging. Amounts of proceeds of crime forfeited are low, which can be attributed to the first cases only being pursued in 2005 and time constraints on progress of criminal matters through the courts. Provisions of the Criminal Code and Criminal Procedure Code (Articles 38 to 46) have application to seize property pursuant to TF offences committed under Articles 11, 12 and 13 of the Anti-Terrorism Law.

10. Indonesia lacks an effective system or legal powers to give effect to its obligations to freeze assets held in Indonesia of entities designated by the UN 1267 Committee on its Consolidated List. Indonesia is unable to freeze assets of designated terrorist without delay and without prior notice. Indonesia relies on the investigative process and upon existing measures under the Criminal Procedure Code to freeze funds of entities listed on the UNSCR 1267 Consolidated List and to freeze assets of persons in accordance with UNSCR 1373.

11. Indonesia's FIU, PPATK is the focal-point AML/CFT agency in Indonesia. It is an independent body that reports directly to the President. PPATK is shown to be working effectively to receive and analyse STRs, CTRs and other information and to disseminate financial intelligence to law enforcement agencies to support the investigation of ML, predicate offences and TF. PPATK encourages cooperation with domestic and international agencies with regards to preventing and eradicating ML and TF

12. The Indonesian National Police (POLRI) is the competent authority for investigating ML and TF offences, while POLRI, Corruption Eradication Commission (KPK), Customs and various other agencies are responsible for predicate offences. POLRI, as a matter of priority, has trained a significant number of its officers for AML/CFT, but given the size of the country and the ML and TF threats, POLRI lacks capacity to proactively pursue the ML and TF offences. There is a need to systematically investigate ML offences in parallel with investigation of

predicate offences. POLRI works closely with PPATK on ML and TF investigations. Statistics show POLRI needs to systematically pursue TF cases, despite over 300 terrorist being successfully prosecuted in recent years. POLRI has successfully arrested over 400 terrorists in recent years, but has not investigated terrorist financing related to those cases.

13. Indonesia has a declaration system for cross border movement of currency, but does not cover bearer negotiable instruments. Indonesia has very long and porous border and while efforts are being made, detection capacity is weak and limits effectiveness. There are not clear powers to restrain currency when a false or no declaration is made. Effective, proportionate and dissuasive penalties are not available and the limited available penalties are not being applied. Statistics do not show effective implementation. As of July 2007, 20 investigations were from cross-border reports.

**Preventive Measures – Financial Institutions**

14. Indonesia has not excluded any of the 13 financial activities on a risk-based approach. Non-bank money remitters are currently outside of the AML/CFT regime.

15. Indonesia has issued laws, regulations, and other enforceable instruments for preventive measures. The AML Law sets out STR, CTR and customer identification/verification requirements, including beneficial ownership, applicable to all providers of financial services. Each sector regulator has issued generally similar CDD requirements through regulations, decrees, or other enforceable means and sector-specific instruments address licensing, regulation, supervisory powers and sanctions. These CDD instruments show a degree of compliance with the FATF Recommendations; however effective implementation of the regime needs to be further pursued.

16. The concept of identification and verification of beneficial owners in Indonesia is not in line with the FATF standard, particularly in relation to corporate customers. Financial institutions do not appear to have a clear understanding of the extent of obligations on identification and verification of beneficial owners. Financial institutions still need to establish clear internal control policies to implement enhanced CDD measures.

17. Obligations on banks to identify PEPs are largely in line with the FATF standards and encompass both foreign and domestic PEPs; however similar requirements are not available for other sectors. There remains a need for banks to establish effective risk management measures to enable them to identify PEPs.

18. The absence of general controls on correspondent banking relationships is a significant weakness. Indonesia has implemented controls in relation to shell banks. For high-risk countries or high-risk businesses, financial institutions lack clear internal controls.

19. Record keeping requirements are generally comprehensive, but do not clearly extend to maintaining business correspondence. Powers exist to lift bank secrecy for AML/CFT, although the absence of controls on correspondent banking and introduced business impedes information sharing between financial institutions.

20. Indonesia has not established comprehensive controls or oversight over the provision of wire transfers. This is a significant shortcoming in preventative measures for the financial system.

21. Comprehensive instructions are lacking for application of AML/CFT norms to subsidiaries outside Indonesia. Financial institutions are obliged to take steps to determine high risk countries, but the level of effectiveness across all sectors is not clear, due, in part, to a lack of guidance at the time of the onsite visit.

22. The AML Law requirement to identify suspicious transactions (Article 1 (7)) includes a limited requirement to identify unusual transactions. Indonesia lacks explicit requirements for comprehensive measures to monitor unusual transactions.

23. Indonesia's STR regime is broad; however the obligation to report terrorism-related STRs is not sufficiently direct and does not clearly cover funds to be used by terrorist organizations or individual terrorists. Statistics do not show effective implementation of the STR reporting obligations across all sectors or in relation to CFT. Financial institutions and their employees are provided with necessary 'safe harbour' for reporting STRs.

24. Due to improving supervision in recent years, major banks have well established internal control systems and procedures for AML/CFT. Insurance companies appear to be implementing AML/CFT requirements. However, gaps were found in respect of securities companies, particularly with mutual funds.

25. In relation to supervision and monitoring, primary supervisory authorities exercise their powers under sector-specific legislation, which includes supervision of KYC/CDD obligations. PPATK is empowered to supervise implementation of STR and CTR reporting under the AML Law. PPATK has MOUs with both Bank Indonesia (BI) and the Capital Market Supervisory Agency (BAPEPAM-LK) to coordinate their various responsibilities for supervision of KYC/CDD and STR reporting obligations.

26. Statistics for examinations and sanctions show an enhanced focus on AML supervision by BI in the last two years. Banks confirmed that AML examination capabilities of BI appear to have significantly improved. BAPEPAM has been increasing its compliance audits of securities companies in recent years. However, there had been a lack of supervision of securities companies until recent years and supervision of mutual funds was below par. Until late 2007 mutual funds relied on custodian banks for KYC/ AML controls.

27. PPATK has conducted comprehensive onsite supervision for STR reporting; however PPATK cannot apply administrative sanctions. PPATK inspection reports are sent to sector regulators for action, including possible administrative sanctions by the sector-specific regulator.

28. BI and BAPEPAM have powers to monitor and ensure compliance of regulated financial institutions. BI and BAPEPAM have powers of enforcement, although there are some inadequacies in relation to the quantum of monetary sanctions available. BAPEPAM is not authorised to see materials which a reporting party has provided to PPATK as an STR, which impedes its power of supervision.

29. Implementation of effective sanctions is not consistent across all sectors. Effectiveness has been hampered by an avoidance of monetary penalties and a reliance on other administrative sanctions by BI and BAPEPAM-LK.

30. Some guidelines have been issued by regulators which appear to have been translated into internal policies and procedures of financial services providers. Examples of suspicious transactions provided by PPATK have been found helpful by reporting entities. Reporting

entities make use of daily emails being sent by PPATK to update risk profiles and 'red flags' for STRs. Case specific feedback on STRs is not provided by PPATK or other regulators.

**Preventive Measures – Designated Non-Financial Businesses & Professions (DNFBP)**

31. DNFBP sectors are not presently subject to AML/CFT requirements in Indonesia.

32. A proposed amendment to the AML Law will include DNFBPs and other businesses under the AML/CFT regime. Since 2006 PPATK has conducted constructive outreach with DNFBPs to obtain their input on possible future AML/CFT regulation.

**Legal Persons and Arrangements & Non-Profit Organisations (NPOs)**

33. Legal persons are not required to maintain a record of beneficial owners or whether company shares are held beneficially. A publicly available central registry of ownership information for legal persons is not yet established. POLRI and regulatory agencies can obtain some information on beneficial ownership, but the adequacy of such information is questionable.

34. Indonesia does not have a system of trust law and does not recognise express and discretionary trusts. There is no prohibition on foreign trusts operating in Indonesia or from being a customer of an Indonesian financial institution. Indonesian financial institutions have faced challenges in performing effective CDD on customers which are foreign trusts.

35. There is very weak transparency and governance in the NPO sector and few measures in place to prevent and detect the abuse of NPOs for TF. There is no effective regulation, oversight or supervision of NPOs in Indonesia, either by government agencies or by self-regulatory bodies within the NPO sector. Efforts to implement some regulatory controls over the sector have been ineffective.

36. PPATK has reached out to the NPO sector to raise awareness of TF risks; however NPO regulators have not taken up issues of transparency, good governance and compliance with laws and regulations. This is major weakness, given the very serious TF risks in the sector.

**National Coordination**

37. Indonesia's AML coordination mechanism is clearly effective to develop and implement policies and measures to combat ML. The coordination mechanism established to address CFT issues does not appear to be effective.

**International Cooperation**

38. At the time of the onsite visit Indonesia was in the process of ratifying the UN Palermo Convention. Indonesia is party to the UN Vienna and Terrorist Financing Conventions, but full implementation has not yet been achieved. Indonesia has not yet fully implemented UN Security Council Resolutions 1267 and 1373 and successor resolutions.

39. Indonesia's mutual legal assistance mechanisms are set out in the Mutual Legal Assistance in Criminal Matters Law 1/2006 (MLAC). The Ministry of Law and Human Rights (MLHR) is the designated central authority under the MLAC. Indonesia may provide MLA based on a treaty or agreement, or on request.

40. MLA is available in relation to most serious offences. The obligations of MLA apply to TF and terrorist offences in the same manner as they do to other serious offences. Dual criminality is a mandatory ground for refusal, although the principle is applied flexibility in practice. In the

absence of dual criminality mutual legal assistance under the MLAC may still be given, in cases of non-intrusive measures.

41. Indonesia provides MLA where both countries criminalise the conduct underlying the offence. Technical differences between laws do not appear to impede the provision of assistance.

42. Indonesia's ability to respond to foreign requests for freezing, seizing and confiscation are hampered by the narrow definitions of property subject to such measures under Indonesian laws. Non criminal assets of equivalent value to criminal proceeds cannot be confiscated. Corporeal, incorporeal and instrumentalities are not included in the definitions of property or assets. There are no clear provisions for confiscation of non-criminal proceeds to a value equivalent of criminal proceeds and there is only ad hoc sharing of confiscated assets. Statistics were not available to demonstrate effective implementation.

43. Given its size and the significant ML and TF risks, Indonesia does not receive or make a large number of requests for MLA, although the number of requests received is increasing. In general Indonesia appears to provide MLA in a cooperative manner, although the MLAC legislation is yet to be fully utilised

44. Extradition matters are governed by the *Extradition Law 1/1979* and coordinated through the MLHR. Indonesia has concluded extradition treaties with seven other jurisdictions in the region. Indonesia is able to consider extradition requests from countries where there is no bilateral or regional extradition treaty, or multilateral convention.

45. Indonesian officials advised that Indonesian nationals have been extradited to face prosecution in foreign countries. They advised that to date Indonesia has only once been requested to prosecute an Indonesian national in lieu of extradition, which occurred.

46. It appears that extradition from Indonesia cannot be granted on the basis only of warrants of arrest or judgments; however such measures may be waived, subject to a bilateral treaty. The principle applies to simplified extradition subject to a bilateral treaty. Indonesia has made or received very few extradition requests and none have related to ML or TF.

47. Dual criminality appears to be a requirement when considering extradition. Indonesia is able to extradite persons where both countries criminalise the conduct underlying the offence. The Evaluation Team has been advised that a restrictive approach is not taken when considering how the requesting country categorises or names the relevant offence, and technical differences between laws do not appear to impede the provision of extradition assistance.

48. Indonesia takes and open approach to international cooperation, including less formal channels of cooperation and information exchange with foreign counterpart authorities.

49. There is a need to further strengthen this international cooperation, particularly with regional partners.

50. Indonesia is limited in the regulator to regulator cooperation it can provide in relation to the money remittance sector and NPO regulations.

# MUTUAL EVALUATION REPORT

# 1 GENERAL

## 1.1. GENERAL INFORMATION ON INDONESIA

1. Indonesia consists of 17,504 islands, of which 1,000 are permanently settled. It is the fourth most populous country in the world with a population estimated in 2006 of 232 million.

2. Indonesia's population includes 300 different ethnic groups with 500 local languages and one national language, Bahasa Indonesia. The Indonesian population consists of a number of ethnic groups and religions. Indonesia includes the world's largest Muslim population making up 87% of the population, Protestants 6%, Catholics 3%, Hindus 2%, and other religions 1%.

### Political System

3. Indonesia is an independent constitutional republic.

4. The President is directly elected and is both chief executive and head of state.-The President has wide powers, including the power to rule by decree in emergencies.

5. The People's Consultative Assembly (MPR) convenes every five years to approve the broad outlines of state policy and has 695 members, consisting of the 500 members of the House of Representatives (DPR), 130 provincial representatives selected by provincial assemblies, and 65 representatives appointed by social and community groups.

6. The House of Representatives, DPR, is the legislative body proper. It approves all statutes and has the right to submit draft bills for ratification by the president. The DPR is made up of 500 directly elected members. Elections to the DPR are held every five years.

7. There are 30 provinces and 354 regencies in Indonesia. A governor heads a province, while the regency or municipal level of government is headed by a regent or mayor.

### Economy

8. Indonesia has a market-based economy, although the government operates more than 150 state-owned enterprises and administers prices on several basic goods, including fuel, rice, and electricity.

9. The Asian financial crisis of 1997 altered Indonesia's economic landscape and adversely affected Indonesia's annual real GDP growth. In the aftermath of the financial crisis, the government took custody of a significant portion of private sector assets through acquisition of non-performing bank loans and corporate assets via a debt restructuring process.

10. Indonesia is a low income country, with a per capita income for 2007 estimated at US$3,573. Indonesia's gross domestic product (GDP) grew by more than 6% in 2007. At the time of the on-site visit the Indonesian Rupiah (Rp.) was approximately Rp. 9,500 = US$1.

11. Indonesia's financial system is heavily cash-based and large cash transactions are a common phenomenon.

12. Indonesia's economy is characterised by significant flows of remittance from Indonesian workers overseas.

13. A significant feature of Indonesia's economy and financial system is the proportion of Indonesian nationals who hold their capital outside of Indonesia, in particular in Singapore, Australia and other regional financial centres. A recent study by Merrill Lynch and Capgemini indicates that one third of Singapore's high-net-worth investors - those with net financial assets of more than US$1 million - are of Indonesian origin, and that of these 18,000 have total assets of US$87 billion.

## Legal System

14. Indonesia adopts a civil law system which is based on Dutch law.

15. Article 7 of law 10/2004 Concerning Legislations governs the following hierarchy of legislation:

- 1945 Constitution (Undang-Undang Dasar 1945);
- Law (Undang-undang) / Government Regulation Substituting a Law (Peraturan Pemerintah Pengganti Undang-undang);
- Government Regulation (Peraturan Pemerintah) – no issued by the legislature;
- Presidential Decree (Keputusan Presiden);
- Regional Regulation (Peraturan Daerah).

16. Article 7 sets out other legally binding instruments in use including Bank Indonesia Regulations (PBI), BAPEPAM-LK Rule/Regulation, and Circular Letters (Surat Edaran). Certain types of legislation such as Laws and Government Regulations are accompanied by an official explanatory memorandum called the Elucidation (Penjelasan) which is published in the Supplement to the State Gazette and is generally authoritative for purposes of interpretation.

17. Indonesia has an appointed judiciary. The Supreme Court is the highest court in Indonesia and is the final court of appeal. It is made up of 51 members, nominated by the DPR and appointed by the President. Underneath the Supreme Court is the High Court that deals with appeals from the District Court. The District Court hears criminal and civil matters. Following the civil law tradition of The Netherlands, Indonesian courts do not apply the principle of precedent.

18. At the level of the District Court are the Religious Court which hears Islamic Family Matters, the Military Court and the Administrative Court. Appeals from each of these courts are dealt with by separate divisions of the High Court.

19. There are about 250 State Courts throughout Indonesia, each with its own territorial jurisdiction. Appeals from the State Court are heard before the High Court (Pengadilan Tinggi), of which there are around 20 throughout Indonesia. The Supreme Court can hear a cassation appeal (kasasi) which is a final appeal from lower courts. It can also conduct a case review (peninjauan kembali) if, for example, new evidence is found which justifies a re-hearing.

20. In 1998 Indonesia established the Commercial Court (Pengadilan Niaga). Initially, the Commercial Court is tasked to handle bankruptcy and insolvency applications. Its jurisdiction

can be extended to other commercial matters. Appeals from the Commercial Court proceed direct to the Supreme Court.

21. In 2001 constitutional amendments provided for the creation of the Constitutional Court (Mahkamah Konstitusi). Among other matters, the Constitutional Court has the jurisdiction to hear cases involving the constitutionality of particular legislation, results of a general election, as well as actions to dismiss a President from office.

22. The Anti-Corruption Court was established in 2003. The Anti-Corruption Court handles all anti-corruption cases initiated by the Corruption Eradication Commission (KPK).

## Structural Elements for Ensuring Effective Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) System

### *The respect of principles such as transparency and good governance*

23. Over the past decade, Indonesia has been emerging from a period marked by an absence of democratic government and extreme levels of corruption, including grand-corruption. Indonesian authorities recognise that corruption remains a very significant issue for all aspects of Indonesian society. Indonesia's priorities in combating corruption include both detecting and preventing current corrupt practices as well as pursuing and bringing to justice those who have perpetrated acts of corruption in the past. Indonesia recognises that significant proceeds of corrupt activities were taken out of Indonesia and is working with foreign partners to pursue those proceeds of crime.

24. Transparency International (TI) Perception Index ranks Indonesia amongst the most corrupt countries in the world, ranking 130 out of 163 countries. The judiciary is the most corrupt institution in the country according to TI surveys. There have been large cases that have been acquitted in suspicious circumstances. There is little supervision and control from the Judiciary Commission. There is little control exercised over the judges as well as more ineffective internal controls in the Supreme Court and High Court.

25. The Indonesian authorities state that corruption is a very serious problem and poses a major threat to Indonesia. Indonesian authorities indicate that tackling corruption is a national priority. Indonesia ratified the UN Convention Against Corruption (Merida Convention) on 19 September 2006. Corruption cases can be found at all levels of the government, the legislature and the judiciary. One of the aims of Indonesia's AML system is to fight against corruption, although corruption in both the financial and public sector could hinder this. Indonesia openly acknowledges its corruption problem and has taken steps on both the policy and law enforcement level to limit it.

26. In the 10 years since Indonesia has emerged as an open democracy, independent commentators have noted significant improvements in transparency and good governance, although very significant challenges remain. Commentators particularly note the strengthened civil society players who are working to ensure improved conditions of transparency. Indonesia's media, for example, is very active in promoting transparency by highlighting areas of poor governance. Civil society actors such as non-governmental organisations (NGOs) are also active in efforts to improve transparency, good governance and the rule of law.

27. It is clear, however, that there are significant residual challenges for transparency and good governance in a number of areas. A number of recurring issues have been identified with the judiciary and legislature as well as senior government figures.

28. Recent press coverage has highlighted allegations against the immediate former Governor of Bank Indonesia (BI, the central bank) in relation to bribery of members of the legislature to pass BI regulations. Allegations include practices of bribing legislators to pass laws and regulations necessary for the operation of government agencies. The investigation of these matters by the Corruption Eradication Commission (KPK) demonstrates the strength of new institutions, but also the challenges at the highest levels to combat corruption.

29. Parliamentarians, ministers and line agencies emphasise the need to respect human rights and the rule of law while ensuring improved transparency and good governance. This recognises the abuses under the regime in place in Indonesia prior to 1997.

30. It is clear that there is high-level political will to improve transparency and good governance in Indonesia. This is emphasised from the level of the President and through the executive. A recent example has been reforms through the Ministry of Finance, including changing the regimes of remuneration, transparency and accountability in the taxation and customs departments.

31. There have been major reforms in a number of government departments to improve transparency and good governance. In addition to the creation of specialist agencies to support and ensure such governance, including KPK and the financial intelligence unit, PPATK, for example, a number of ministries and agencies have undergone widespread reform to overhaul outdated structures and procedures and implement wide-ranging measures to improve governance.

***A proper culture of AML/CFT compliance***

32. Indonesia has a developing culture of compliance. The Indonesian government emphasises improved transparency and good governance as a priority, but the challenges faced are very large, given capacity constraints and the low starting point.

33. Indonesian agencies recognise that a proper culture of AML/CFT compliance is an integral part of fighting corruption, improving good governance and supporting economic growth.

34. Industry groups have initiated and supported national AML/CFT efforts to improve the culture of compliance. For example industry representatives from various parts of the financial sector and designated non-financial businesses and professions (DNFBPs) have worked with PPATK and KPK to socialise these sectors in relation to know your customer (KYC) and other AML/CFT obligations.

35. The banking sector, for example, has established the Communication Forum of Compliance Directors of Banks (FKDKP), which has a role in supporting a culture of AML/CFT compliance. FKDKP works closely with BI and PPATK to assist banks to develop their AML/CFT compliance.

36. Many financial institutions have taken significant steps in recent years to improve their culture of AML/CFT compliance. The APG's on-site visit identified significant recent improvements in

the culture of compliance, which has been supported by recent improvements in the quality and professionalism of supervision and monitoring for AML/CFT, especially by PPATK and BI.

37. DNFBPs have not yet been integrated into Indonesia's AML/CFT regime, but SROs and industry bodies representing DNFBPs have been closely involved with PPATK and other regulators in the process leading up to their inclusion in Indonesia's AML/CFT regime.

***Measures to prevent and combat corruption***

38. As noted above, a number of recent efforts have been made to eradicate endemic corruption in Indonesia. Indonesia has taken a range of appropriate measures to prevent and combat corruption, but there remain significant challenges of legal tools and capacity to carry on this fight.

39. Indonesia has empowered several corruption fighting bodies. The KPK coordinates Indonesia's anti-corruption efforts and has authority to investigate and prosecute high-level public sector corruption cases. The creation of the PPATK and its close cooperation with KPK is a significant development in the fight against corruption. KPK has grown since being established in 2004, investigating and prosecuting more than 54 cases and making extensive use of information from PPATK. The KPK has a 100% successful prosecution rate since its inception and has successfully prosecuted 54 cases, including 21 successful cases in 2007 (through to 31 August), up from 14 in 2006.

40. As noted above, the PPATK supports the KPK with financial intelligence. In December 2004 the President of Indonesia signed a Presidential Instruction to all agencies to intensify efforts to combat corruption in line with their respective functions and roles. The Instruction also dictates the establishment of a national Plan of Action combating corruption for the years 2004 to 2009. The Plan contains three components: preventive measures, repressive measures, and monitoring and evaluation. Indonesian authorities aim to take a sustainable and transparent approach to combating corruption in an integrated and coordinated fashion.

41. Indonesia, through the KPK and PPATK is active in regional and global anti-corruption initiatives. These include:
    - ADB/OECD anti-corruption initiative for the Asia/Pacific Region;
    - The UN/World Bank STAR Initiative;
    - The FATF/APG Anti-Corruption/AML Issues Project Group.

42. In order to support effective investigation of corruption, Indonesia passed new whistleblower protection legislation in August 2006 and witness protection legislation in 2006.

43. Various ministries are pursuing reform programs to address low level corruption and improve corporate governance through reform of human resource management, financial accountability, tendering and procurement and other initiatives promoting transparency and good governance.

***A reasonably efficient court system to ensures judicial decisions are properly enforced***

44. There remain very significant challenges with the court system in Indonesia. Civil society groups, including the media and NGOs, continue to highlight serious concerns with the integrity of the court system in Indonesia. There have been a number of high-profile cases where prison sentences have been reduced by a number of months. Traditionally, Indonesia will cut jail terms on national holidays for inmates who exhibit good behaviour.

45. Recent studies by the World Bank continue to highlight the very serious problems with corruption in the Indonesian court system.

46. Indonesia is cooperating with various international partners (governments and civil society) to work to improve the court system. The Supreme Court is cooperating with various international partners (bilateral donors and international organisations) to address judicial integrity and capacity issues. Among these are the cooperation between the Supreme Court and the United Nations Office on Drugs and Crimes (UNODC) on judicial integrity and capacity project. This project is currently at its second phase which will now incorporate eight provinces in Indonesia to strengthen judicial integrity and capacity.

***High ethical and professional requirements for police officers, prosecutors, judges, etc.***

47. There continue to be a large number of cases involving high-level corruption in the police, prosecutor's office and judiciary. In addition to these cases, independent reports highlight endemic graft and low-level corruption amongst these agencies. As mentioned above, Indonesia is taking steps to combat corruption in these areas, and the track record of identifying corruption cases in these professions highlights the progress being made. There is still, clearly, a long way to go to ensure high ethical and professional requirements are effectively implemented for police, prosecutors and judges.

48. POLRI has a capacity building program on investigation of ML cases, which addresses issues of secrecy and integrity in investigations. National Police investigators are bound by a POLRI Doctrine and code of conduct (TRI BRATA) and disciplinary rules of POLRI. The Chairman of POLRI and the profession and defence division under POLRI conducts supervision and, if necessary, disciplinary measures for violations against such rules. National Police investigators who violate Doctrine and disciplinary rules are dealt with in administrative law through the code of ethics, and via criminal proceedings for criminal breaches. While measures to improve high ethical standards amongst police are being pursued, doubts remain about the effectiveness of those measures.

49. The chairman of the Attorney General's Office (AGO) provides rules, mentoring, supervision and repressive measures against prosecutors who violate prevailing disciplinary rules based on the ethical code of prosecutors (Tri Krama Adhyaksa). Every year the AGO announces repressive measures it has taken to crack down on corruption in coordination with the Prosecutorial Commission (Komisi Kejaksaan).

50. While measures to improve high ethical standards amongst judges are being pursued, serious doubts remain about the effectiveness of those measures.

***A system for ensuring the ethical and professional behaviour on the part of professionals***

51. In recent years Indonesia has taken a number of steps to improve systems and statutory measures to ensure ethical and professional behaviour on the part of professionals such as accountants and auditors, and lawyers. All such professions are subject to licensing, supervision and sanctions for breaches of codes of conduct and professional rules.

52. Indonesia has recently significantly enhanced its accounting standards and its professional controls over the accounting and auditing professions.

**Indonesia's efforts to combat terrorism**

53. Indonesia has achieved significant success in preventing and combating terrorism. Up until May 2008 Indonesia had made 423 arrests and obtained 367 convictions for terrorism offences, mostly related to terrorist bombings. Authorities indicate that this is the largest number of arrests and convictions in the world to date.

54. Indonesian authorities have taken a number of significant steps to fight terrorism, including TF. In addition to a range of specific enforcement activities by Indonesian law enforcement and intelligence agencies, the Indonesian government indicates that it has pursued a range of "soft power" measures to address the root causes of terrorism in Indonesia. These include de-radicalization and rehabilitation programs, reflecting Indonesia's strong commitment in preventing and suppressing terrorism and its roots causes.

55. Measures taken by Indonesia to prevent recruitment to terrorist groups include:
    - Identifying persons who are potentially to be recruited by terrorist groups;
    - Mapping radical movements;
    - Monitoring the activities of radical groups;
    - Raising public awareness on threats posed by terrorism through dialogues and seminars involving all components of society;
    - Conducting anti-violence campaign in cooperation with leaders of religious and educational communities;
    - Monitoring and supervising study programs and curriculums in educational institutions;
    - Reviewing both printed and non printed materials which may incite hatred and encourage terrorist's acts;
    - Minimizing and preventing the rise of social conflicts;
    - Empowering the moderates; and
    - Strengthening the role of the media in preventing violent radical acts.

56. The Department of Religious Affairs in cooperation with the Council of Indonesian Ulamas (Majelis Ulama Indonesia/MUI) as well as with the two largest Islamic Organizations in Indonesia (the Nahdlatul Ulama and the Muhammadiyah) has established a counter-terrorism team with the aim to spread the true and rightful Islamic culture of peace, non-violence and tolerance. One of the team's main tasks is to explain the right religious context of Jihad and to disassociate Jihad from violent extremism and terrorist related acts.

57. In an effort to prevent the indiscriminate targeting of different religions and cultures, Indonesia has taken the lead, hosted and participated in a number of Interfaith Dialogues with other countries such as:
    - The International Conference of Islamic Scholars (ICIS) with the theme "Upholding Islam as Rahma lil Alamiin", held in Jakarta on 23-24 February 2004;
    - The Dialogue on Interfaith Cooperation with the theme "Community Building and Harmony", in December 2004. This led to the establishment of the "Yogyakarta International Center for Religious and Cultural Cooperation";
    - The ASEM Interfaith Dialogue among Culture and Civilizations, July 2005;
    - The Second International Roundtable Discussion on Islam and Democratization In Southeast Asia, December 2005; and
    - The East Asia Religious Leader Forum, February 2006.

## 1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

58. While the Indonesian government has not done a formal assessment of the risks of ML in Indonesia, it is clear that a range of significant ML and very significant TF risks exist in Indonesia. There is no official estimate of the size of the ML and TF problem in Indonesia.

59. A number of very active terrorist organisations have a significant presence and have been active in raising funds and carrying out terrorist activities in Indonesia and other jurisdictions in South East Asia and beyond over the past 10 years. A number of these groups are linked to Al Qaeda and the Taliban and have been listed by the UN 1267 Committee, with their members listed as designated entities. A number of those entities hold significant terrorist assets in Indonesia.

60. While it is just one of a number of active terrorist groups, Jemaah Islamiyah (JI), a Southeast Asian terrorist network with links to Al Qaeda, is considered the primary terrorist threat in Indonesia. JI is believed to fund its activities primarily through charities and NGOs, using funds either unwittingly or intentionally siphoned off. The network is best known for the bombing attack in Bali that killed over 200 people on 12 October 2002. In August 2003, JI killed 12 people in a car bombing outside the Marriott Hotel in Jakarta, and on 1 October 2005 it killed 20 people in three simultaneous suicide bombings in Bali.

### *Sources of proceeds of crime*

61. Indonesia has a very significant range of predicate crimes that generate proceeds of crime.

62. Assessments and typologies work by Indonesian authorities and international bodies indicate that the following are major sources of proceeds of crime in Indonesia:
    - Proceeds from corruption;
    - Fraud, embezzlement and other financial crimes;
    - Narcotics-related crimes, in particular stimulants;
    - Illegal logging;
    - Banking crimes;
    - Organised theft;
    - Smuggling, especially fuel smuggling;
    - Illegal gambling;
    - Prostitution;
    - Human trafficking;
    - Sea piracy;
    - Software piracy

### *Sources and methods of terrorist funds*

63. Assessments and typologies work by Indonesian authorities and international bodies indicate a range of techniques being used to finance terrorism in and beyond Indonesia. POLRI and other sources indicate the following vulnerabilities for TF in Indonesia:
    - Cash couriers – identified as the primary risk;
    - Wire transfer (cases of Al Qaeda wiring money to JI members);
    - Robbery (cases of a bank, gold shop and a mobile phone shop);
    - NPOs being abused to collect and move funds;

- Charitable giving being misdirected away from intended recipients to fund terrorist groups; and
- Alternative remittance systems.

***Common techniques of laundering***

64. Assessments and typologies work indicate a wide range of ML and TF techniques are present in Indonesia. In addition to domestic laundering of proceeds of crime, Indonesia noted a particular challenge from the movement of funds to certain jurisdictions, in particular regional financial centres by way of funds transfers, cash smuggling or alternative remittance systems.

65. Indonesian authorities also note significant challenges from ML techniques which involve use of false ID; use of third parties; and use of alternative remittance systems.

66. A number of factors that have been identified as increasing the vulnerabilities for ML and TF in Indonesia, including:

- the lack of a comprehensive AML/CFT controls in some sectors, in particular in relation to wire transfers and NPOs;
- the presence of endemic corruption in both the public and private sectors;
- the Indonesian financial system is heavily cash-based, which facilitates ML. Large cash transactions are a common phenomenon;
- Indonesia has a very porous border and weak capacity to patrol and police all entry points; and
- a lack of capacity and AML/CFT experience with key enforcement and prosecution agencies.

### 1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

67. The chart sets out the types of financial institutions that are authorised to carry out the financial activities listed in the Glossary of the FATF 40 Recommendations.

**Table: Types of financial institutions operating in Indonesia**

| **Type of financial activity (see 40 Recs Glossary)** | **Type of financial institutions authorised to perform this activity in Indonesia** |
|---|---|
| Acceptance of deposits and other repayable funds from the public | Commercial Bank, Rural Banks, life insurers |
| Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting)) | Commercial Bank, life insurers |
| Financial leasing | Finance Company |
| The transfer of money or value | Commercial Banks<br>Money Value Transfer agencies |
| Issuing and managing means of payment | Finance Company (credit card issuers) |

| | |
|---|---|
| Financial guarantees and commitments | General Insurance (Surety Bonds) company<br>Commercial Bank |
| Trading in:<br>(a) Money market instruments (cheques, bills, CDs, derivatives etc.);<br>(b) foreign exchange;<br>(c) exchange, interest rate and index instruments;<br>(d) transferable securities;<br>(e) commodity futures trading. | (a) Commercial Bank<br>(b) Foreign Exchange Bank<br>(c) Commercial Bank<br>(d) Securities companies (Underwriters and brokers/dealers); Commercial Bank, S<br>(e) none |
| Participation in securities issues and the provision of financial services related to such issues. | Securities companies (Securities underwriters)<br>Commercial Bank |
| Individual and collective portfolio management (covers mgt. of collective investment schemes such as unit trusts, mutual funds, pension funds) | Securities Companies (investment managers)<br>Financial institution pension fund<br>Commercial Bank |
| Safekeeping and administration of cash or liquid securities on behalf of other persons | Custodian Bank<br>Central Securities Depository<br>Financial institutions pension fund |
| Otherwise investing, administering or managing funds or money on behalf of other persons. | Life insurers<br>Custodian Bank<br>Financial institutions pension fund |
| Underwriting and placement of life insurance and other investment related insurance | Life insurance company |
| Money and currency changing | Commercial Banks<br>Money changers |

68. The Indonesian banking industry is populated with 131 banks, 41 of which are controlled by foreign investors. Eighty percent of the total assets of this industry are controlled by the top ten players while 40% of the assets are dominated by four state-owned banks (Bank Mandiri, BNI, BRI, and BTN). In January 2005 BI announced its plan to strengthen the banking sector by encouraging smaller banks with capital less than Rp 100 billion (around US$ 11 million) to raise more capital or merge with “anchor banks” prior to 2009. Criteria for anchor banks were also announced in 2005. Numbers of banks and their assets are shown in the following table:

**Table: Number and total assets of Banks in Indonesia**

| **Types of Banks** (as of June 2007) | **Number** | **Total Assets (trillion RP)** |
|---|---|---|
| State banks | 4 | 470.6 (approx $US47 billion) |
| Domestic banks (permitted to do foreign exchange) | 35 | 780.3 (approx $US78 billion) |
| Private banks (not permitted to do foreign exchange) | 37 | 28.9 (approx $US3 billion) |
| Regional development banks | 26 | 164.7 (approx $US16 billion) |
| Joint venture banks | 17 | 77.9 (approx $US7 billion) |
| Foreign banks | 11 | 162.1 (approx $US16 billion) |
| Rural Banks | 1822 | 24.7 (approx $US2 billion) |
| Syariah banks* | 133 | 30.2 (approx $US3 billion) |
| **Total assets** | Rp 1,739.4 trillion (approx $US174 billion) | |

*Total for Syariah Banks includes Syariah Units and Syariah rural banks.

***Rural Banks***

69. Act No.7 of 1992 Concerning Banking establishes a legal basis for Rural Banks to conduct business targeting the needs of small-scale businesses and rural communities. Rural Banks provide conventional banking services or Syariah-based banking. Rural Banks are only permitted to mobilize funds from the public to be held in time deposits, savings deposits and/or other equivalent form, extend credit and place funds in Bank Indonesia Certificates (SBIs), time deposits, and certificates of deposit and/or savings deposits at other banks. These banks are not permitted to accept demand deposits, participate in clearing payment services, conduct foreign exchange business or any business other than is expressly permitted and the operating territory of each Rural Bank is restricted to only one province.

***Syariah Banking***

70. The Syariah banking (Islamic banking) system differs from conventional banking primarily for the reason that it is based on Islamic law (Syariah).The underlying themes of Syariah banking are the prohibition on interest (riba) and on investments in businesses that are considered unlawful in Islam (Haraam).

71. Syariah banks are subject to prudential controls of all commercial banks; in addition, banks carrying on Syariah banking are required to have a Syariah Supervisory Board at their head office.

72. Syariah banks are permitted to accept demand or time deposits under Wadiah or Mudharabah principle. “Wadiah” is an agreement for placement of funds made with the obligation for the bank to return the funds at any time while under “Mudharabah” funds are placed with a bank to conduct a specified business on the basis of profit and loss sharing or revenue sharing in a ratio agreed in advance.

73. The deposits can be lent out by these banks by way of entering into a sale-purchase agreement, profit sharing agreement or a lease agreement. The sale-purchase agreement can be in form of Murabahah, Istishna and Salam. Each category of these agreements differs from others only in the form of method of payment. Similarly, profit and/or revenue can be shared in an agreed ratio (Murabahah) or in the ratio of the capital (Musyarakah).

**Table: Finance Companies**

| | |
|---|---|
| Number of companies | 215 |
| Branch offices | 1444 |
| Total Assets | Rp. 127.3 Trillion (approx $US 12.73 billion) |

**Table: Pension Funds**

| | |
|---|---|
| Number of companies | 24 |
| Branch offices | 0 |
| Total Assets | Rp. 9.28 Trillion (approx $US 0.928 billion) |

74. Money changing business can be carried on by licensed commercial banks or by non-bank money changers, which are non-bank corporations established to transact the sale and purchase of banknote and travellers cheques. There are 810 bon-bank money changers licensed in Indonesia.

**Table: Licensed insurers**

| Category of Licence | Number of Licensees* | Total Assets (Rp) |
|---|---|---|
| Life Insurance | 46 | 26,283,982,000,000 (approx $US2.6 billion) |
| General and re-insurance | 93 | 75,498,620,000,000 (approx $US7.5 billion) |

**Table: Capital market licensed intermediaries and licensed representatives**

| Category of License | Number |
|---|---|
| Securities companies | 212 |
| Investment managers | 109 |
| Mutual funds | 420 |
| Custodian banks | 21 |

***Remittance***

75. In September 2007 the World Bank published a study which found that in 2006 Indonesia had total remittance inflows of approximately US$ 5.6 billion, while formal inflows to Indonesia from all countries were only US$ 1.9 billion in 2005. The study showed that approximately 80% of total incoming remittance to Indonesia is through informal channels. The study has noted that the Malaysia-Indonesia remittance corridor might contain the second largest flow of undocumented workers in the world only after the United States - Mexico corridor.

76. Before December 2006 there was no explicit framework for regulation of remittance in Indonesia outside of the banking sector.

**Designated Non-Financial Businesses and Professions (DNFBPs)**

77. Most of the categories of DNFBPs operate in Indonesia, with the exception of casinos and trust and company service providers, as is shown in the following table:

**Table: Numbers of DNFBPs**

| Designated Non-Financial Businesses and Professions | Number |
|---|---|
| Casinos *(including internet casinos)* | 0 |
| Real estate agents | 500 |
| Dealers in precious metals | Unknown |
| Dealers in precious stones | Unknown |
| Lawyers | 14,449 |
| Notaries | 8,336 |
| Accountants | 40,000 |
| Trust & Company service providers | N/A |
| Other independent legal profession : | |
| - Land Deed Registration Official | 11,502 |
| - Appraisal | 134 |

78. DNFBPs are not currently covered under the AML Law in Indonesia. A proposed amendment to the current AML Law has been included in the National Priority Legislative List which will specifically impose full AML/CFT obligations on DNFBPs including lawyers, notaries, land register officials, public accountants and liquidators. It is expected that the revision to the AML Law will be enacted during 2008. Providers of goods and services that are subjected to reporting obligations under the proposed amendment to the AML Law are property agents/company, car dealers, jewellery dealers, artistic/antique shops or auctioneers.

79. Since 2006 a series of consultations and seminars concerning the inclusion of DNFBPs as reporting parties have been conducted by PPATK. The discussions and seminars were held in a number of cities spread throughout Indonesia and were attended by notaries, lawyers, accountants, real estate agents, precious stones traders, and others.

***Casinos***

80. All casinos, including internet casinos, are strictly outlawed in Indonesia.

***Accountants***

81. Law 34/1954 defines an accountant in Indonesia. The accountancy profession is regulated under Ministry of Finance Decree No.423/KMK.06/2002 as amended with Ministry of Finance Regulation No.359/PMK.06/2003. Under the decree accountants are licensed by the Ministry of Finance. The decree controls licensing and supervision of both individual accountants and public accounting firms and provides for comprehensive sanctions, including withdrawal of a license. The Decree provides supervisory powers to the competent authority including the removal of documents etc for assessing accounting standards and professional conduct of licensed accountants.

82. In January 2003 there were approximately 1239 licensed public accountants with 487 public accounting firms.

83. The accounting profession is administered by the Indonesian Institute (Chartered) of Accountants (IAI). In 2003 the IAI had approximately 6000 members out of an estimated 40,000 accountants operating in Indonesia.

84. A 2003 Asian Development Bank study of the accounting profession in Indonesia found that in comparison to other countries, Indonesia has relatively few professionally-qualified accountants, particularly outside the main urban centres. Foreign accounting firms may only operate through correspondent relationships, which negate some mechanisms that support high audit quality.

85. The Ministry of Finance decree requires a five year limit on general audits by an accounting firm (Indonesia is one of only a small handful of countries to require this). Auditors practicing in the capital markets are prohibited from delivering specified non-audit services such as consulting, bookkeeping, and information system design.

***Advocates (lawyers)***

86. The legal profession in Indonesia is governed by Law 18/2003 Concerning Advocates. The law sets out the basis for practising as an advocate, the formation of Advocates Associations as SROs and rules and sanctions applicable to Advocates.

87. Article 28 provides for the creation of Advocates Associations. There are at least eight regional advocates associations, which form a Federation of Advocates Associations which set national rules and the national code of conduct for advocates, PERADI (Indonesia Lawyer Association). The Associations are empowered to admit advocates who are then licensed to work as an advocate. Article 26 of the law sets out the powers of the Associations to establish a code of conduct and provides for powers of supervision over advocates.

88. Article 6 of the law provides for sanctions over advocates for such actions as committing violations against laws and regulation and/or improper acts, and violating the oath/affirmation of an advocate, and/or the profession's code of ethics.

89. Under Article 7, advocates who breach the code of conduct may be warned, suspended or dismissed from the profession by the Honorary Council of Advocates Organization in accordance with code of ethics.

90. Advocates in Indonesia have a role in real estate transactions, including holding power of attorney to conduct real estate transactions. Advocates are not forbidden from holding funds on behalf of clients and may deal in securities.

***Notaries***

91. Notaries are governed under Law 30/ 2004 on Notaries. Notaries are licensed by the Ministry of Law and Human Rights. The law provides for the role and function of notaries and for the establishment of an SRO for notaries, the Indonesian Notaries Association (INI). The Law provides for the Notaries Association to promulgate a Code of Ethics to govern notaries' professional behaviour and provides for sanctions (under Article 85) for breaches of the Code of Ethics.

92. Notaries in Indonesia, while involved at all stages of real estate transactions and other business dealings, do not have a role in financial aspects of such transactions. Notaries do not take on power of attorney in such cases. Notaries do have a role in notarising document in company formation, but cannot be called on to establish companies.

***Registered Real Estate Agents***

93. Estate agents in Indonesia are weakly regulated and are not licensed or supervised. While there are a number of associations, there are no bodies that serve as SROs. Real Estate Indonesia (REI) is the industry association for housing contractors.

94. In Indonesia, real estate salespeople are not required to hold a license in order to conduct a real estate transaction. Real estate salespeople represent either the buyer or the seller, but not both.

***Dealers in Precious Metals and Stones***

95. Indonesia has a very large silver and gold manufacturing sector. In keeping with many countries in the region, investing in gold jewellery is a popular way to hold personal wealth.

96. Statistics are not available on the numbers of businesses operating as dealers in precious metals and stones.

97. There is no integrated system for licensing of dealers in precious metals and stones.

## 1.4. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS

### For Profit Legal Persons

98. There are several types of private legal persons in Indonesia as follows:

99. ***Person (Perseroan – Maatschap)*** – a type of company stipulated in the Civil Code Book (KUH Per) and the Commercial Code Book. Under Article 1618 KUH Per, *Perseroan* is an agreement between two parties or more by investing something in a firm with the purpose to share profits obtained. This simple firm can be established only based on oral agreement containing the deed of establishment. Although there will be one name of firm in *perseroan*, each party shall be responsible personally for such a firm to a third party.

100. ***A Firm Association (Vennortschap Onder Firma)*** is governed under the Commercial Code Book. Members involved in a firm association shall be responsible collectively for the firm association to a third party. The Commercial Code Book does not require a written deed of establishment, only consensual agreement. However, in practice, a firm association is usually established with an official deed made before a notary in order to provide certainty regarding the position of each member in the firm.

101. ***A Dormant Partnership Association (Commanditaire vennootschap-CV)*** is a firm that is managed by one party in which other parties finance or invest ("sleeping partners"). Consequently, the party who manages the firm shall be responsible completely against any silent partners or a third party. However, the silent partners are not responsible to a third party. There is no formal requirement for establishing a CV so that it can be established in writing or consensually. However, it is possible to make a deed of establishment before a notary.

102. ***Limited Liability Companies (Ltd or PT)*** are established with shareholders as the equity owners, but management implemented by Directors. Limited Companies are governed by Chapter II of the Commercial Code Book and Law Number 1 Year 1995 concerning Limited Company as amended by Law 40/ 2007. Limited Companies are recognised when a notarised deed is lodged with the Ministry of Law, Human Rights and Justice.

103. ***Cooperatives*** are established by members with objectives to gain social welfare for all members on the basis of family system and joint business as stipulated in Law 25/1992 concerning Cooperatives. Members of cooperatives shall have a dual identity as the collective owner and also as the user of the firm.

### Non-profit Legal Persons

104. ***Foundations*** are established as statutory bodies consisting of assets constituting a separate legal estate allocated to achieve certain objectives in social, religious and humanitarian fields. Foundations are not membership organizations. Foundations are

governed by Law 16/ 2001 Concerning Foundation as amended by Law 28 /2004. The foundation has the status of a legal entity after the deed of establishment of the Foundation has been approved by the Minister of Law, Human Rights and Justice.

105. ***Mass Social Organizations or Associations*** are membership organizations founded on the basis of common activities as stipulated in Law 8/ 1985 Concerning Social Organization. *Wakaf* is the asset which shall be put aside by a Moslem or an organisation owned by a Moslem according to the provision of the religion and shall be given to the people entitled for these assets as stipulated in Law 38/ 1999 Concerning *Zakat* Management.

**Legal Arrangements**

106. Indonesia has a civil law system and express trusts and other legal arrangements are not recognised in Indonesian law.

## 1.5. OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING

### a. AML/CFT Strategies and Priorities

107. Established in 2002, the Indonesian AML/CFT regime tended initially to be focused on short-term programs for each fiscal year. During the last five years, policy direction for the AML/CFT regime in Indonesia focused on five main pillars as follows:

(i) law and regulation development, law enforcement and implementation of special protection for witnesses and reporting parties;

(ii) compliance of providers of financial services (PFSS) as reporting parties, and analysis and submission of the results of analysis produced from suspicious transaction reports (STRs);

(iii) information and technology system and human resources;

(iv) domestic cooperation and development of international network, and

(v) a public campaign for the establishment of public awareness and understanding.

108. In 2007 Indonesia established a new five year strategy to further build on the five pillars, namely the National Strategy for the Prevention and Eradication of the Crime of Money Laundering in Indonesia, 2007 – 2011. The new National Strategy aims to enhance Indonesia's AML/CFT efforts through:

(i) assigning a single identity number to all Indonesian citizens;

(ii) immediately enacting a more comprehensive and effective AML Law compliant with international standards;

(iii) supporting inter-agency flows of information through database inter-connectivity;

(iv) improving supervision of AML/CFT compliance by providers of financial services;

(v) implementing effective criminal and civil assets tracing and forfeiture to recover assets to the state;

(vi) supporting increased public participation through a public campaign to support AML/CFT implementation and culture in society;

(vii) accelerating ratification of International Conventions to support international cooperation; and

(viii) strengthening regulations on alternative remittance systems (ARS) and wire transfers.

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

### *Policy Co-ordination Bodies*

### The National Co-ordination Committee on AML *(NCC or Komite TPPU)*

109. The National Coordination Committee (NCC) and Inter-agency Committee on International Terrorism (ICIT) are mechanisms for coordinating AML/CFT strategy and policy formulation at the national level and the subcommittee structure ensures specialist attention is focused at on operational level on AML/CFT investigations, training and terrorist-financing issues.

110. The NCC was established under the authority of AML Law and Presidential Decree Number 1 Year 2004. The initial meeting took place on 30 December 2002. The NCC meets annually with membership composition as follows:

Chairperson: Coordinating Minister for Political, Legal and Security Affairs;
Deputy Chairperson: Coordinating Minister for Economy;
Secretary: Head of PPATK;
Members:

- Minister of Foreign Affairs;
- Minister of Law and Human Rights;
- Minister of Finance;
- Attorney General;
- Chief of Indonesian National Police;
- Head of State Intelligence Agency;
- Governor of Bank of Indonesia.

111. The NCC has the following duties:

a. to coordinate measures to prevent and eradicate ML crimes;
b. to provide recommendations to the President regarding the direction of and policies on the prevention and eradication of ML crimes at the national level;
c. to evaluate the implementation of the measures to prevent and eradicate ML crimes;
d. to report progress in the prevention and eradication of ML crimes to the President.

112. The NCC/*Komite TPPU* is assisted by an Working/Operational Team comprising: Chairperson: Head of PPATK; Deputy: Deputy of the Coordinating Minister for Political and Security Affairs for National Security; and Members:

- Deputy of the Coordinating Minister for Economy for International Economic Cooperation;
- Director General of Multilateral Affairs, Ministry of Foreign Affairs;
- Director General of Legal Administrative Affairs, Ministry of Law and Human Rights;
- Director General of Immigration, Ministry of Law and Human Rights;
- Director General of Custom and Excise, Ministry of Finance;
- Director General of Taxation, Ministry of Finance;
- Director General of Financial Institution, Ministry of Finance;
- Chairman of the Capital Market Supervisory Board, Ministry of Finance;
- Head of the Criminal Investigation Board, Indonesia National Police;
- Deputy Attorney General for General Crimes Affairs;
- Deputy Head of State Intelligence Agency for Security Affairs;
- Deputy Governor of Bank of Indonesia for Banking Affairs.

113. The NCC's Working/Operational Team holds meetings at least once every six months and may invite the executive boards of the financial dealers' association, experts, or other parties to participate as necessary. The NCC has a sub-committee on terrorist financing. The Technical Team of the NCC was formed in early 2007 to draft and implement the National Strategy. The Technical Evaluation Team of NCC may meet at any time when necessary.

**The Inter-agency Committee on International Terrorism (ICIT)**

114. ICIT is the mechanism for the coordinating Counter terrorism strategy and CFT operational efforts at the national level. The ICIT is hosted by the Office of the Coordinating Ministry for Political, Legal and Security Affairs. Key agencies involved in CFT are involved in the ICIT. The Mutual Evaluation was unable to meet with the ICIT during the on-site visit.

***Competent Authorities for AML/CFT***

**PPATK**

115. The PPATK (Indonesian Financial Transactions Reporting and Analysis Center) is Indonesia's Financial Intelligence Unit (FIU). PPATK has powers to receive, analyse and disseminate STRs and other reports; to provide advice and assistance relevant authorities concerning disseminated information; to issue guidelines to providers of financial services concerning their AML/CFT obligations; to undertake international cooperation and other matters.

**Department of Foreign Affairs (DFA)**

116. The DFA is responsible for the conclusion and ratification of bilateral and multilateral treaties to be entered into by Indonesia as stipulated in Law 24/ 2000 on Treaties. The DFA Directorate General of Multilateral Affairs plays a leading role in the multilateral process, including negotiations of various conventions related to transnational crime.

117. In relation to anti-money laundering, DFA has a role in submitting inputs to relevant parties and/or to initiate the preparation and compliance processes of international agreements such as mutual legal assistance in ML crimes between the Government of Indonesia and other countries through bilateral, regional and multilateral forums. Requests for mutual legal assistance in criminal matters from foreign states may be conducted through diplomatic channels.

118. The DFA is also responsible for coordinating reports submitted to the UN Counter Terrorism Committee (1373) and the 1267 Committee.

***Regulatory and Supervisory Authorities***

**Bank Indonesia (BI)**

119. Bank Indonesia is the Central Bank of Indonesia. Its objectives and tasks are governed by Law 23/ 1999 concerning Bank Indonesia (Bank Indonesia Act). Under the Bank Indonesia Act, BI has authority to formulate monetary policy, to regulate and safeguard the payment system, and to regulate and supervise banks. BI's functions to regulate and supervise banks are further elaborated on in Law 7/ 1997 concerning Banking as amended by Law 10/ 1998 (Banking Act).

120. As bank supervisor, BI is responsible for the supervision of the implementation of AML policy, which includes implementation of KYC principles in the banking industry. BI is also authorised to supervise non-bank money changers and money remittance businesses.

**Capital Market Supervisory Agency (BAPEPAM) and Directorate General of Financial Institutions (DGFI)**

121. BAPEPAM was formed by the Ministerial Decree of the Minister of Finance Number KMK 606/KMK.01./2005 on 30 December 2005. BAPEPAM is required to develop, govern and supervise the daily activities of the capital market and to formulate and implement policies and technical standardisation for financial institutions based on policies issued by the Minister of Finance, and based on prevailing laws and regulation.

122. BAPEPAM includes the Insurance Bureau, Pension Fund Bureau, and the Financing and Guarantee Bureau.

123. BAPEPAM and the Directorate General of Financial Institution (DGFI) follow an integrated supervision system established to create an integrated supervisory agency for the capital market, banking, pension funds, insurance companies and other financial sectors under their purview.

124. The DGFI is a government agency under the Ministry of Finance, responsible for supervising non-bank financial institutions, including insurance, pension funds, and mutual funds firms.

125. The DGFI was established by Presidential Decree 35 /1992 that divided the Directorate General for Monetary Affairs into the Directorate General of Financial Institutions and the Directorate General of State Owned Enterprises Development.

126. In line with the wide scope of financial institutions for which it is responsible, the DGFI supervises providers of financial services, in particular banking and financial institutions (under the authority of MoF only); the insurance industry including general insurance, life insurance, reinsurance, insurance brokers, actuary consultants, insurance loss adjusters and insurance agents; and pension funds.

**Directorate General of Tax (DGT)**

127. In December 2006 the Minister of Finance launched a new organisational structure for the DGT that reduces the operational role of the DGT headquarters in Jakarta, divides the DGT headquarters into functional Directorates, and establishes formal work units to lead the modernisation of the DGT. The new structure dissolves separate Directorates that formally administered all aspects of Indonesia's income, value-added (VAT), and land and building taxes from taxpayer relations to audits, and replaces them with units that perform a specified function for all tax types. This reform reduces duplication of multiple investigative units for each tax type.

128. DGT has four new directorates of Internal Compliance and Organizational Transformation; Communication and Technology Transformation; and Business Process Transformation. Under the new structure, DGT headquarters functions as a policy-making body that also provides back office support to local tax offices, which will have the main operational tasks.

### *Law Enforcement, Prosecutorial and Judicial Authorities*

#### Indonesian National Police (POLRI)

129. POLRI is Indonesian's main law enforcement body and is responsible for investigating all crimes under the criminal procedure code and is solely responsible for investigating ML and TF crimes. The Economic Crime Division (ECD) of POLRI has responsibility for investigating ML crimes and specialist banking and AML units have been created within the ECD to improve this investigative capacity. An AML Unit consisting of 20 investigators is located at the National Police Headquarters in Jakarta. In addition, 31 regional AML units each consisting of 20-35 investigators are dispersed throughout the country. There are a total of more than 750 POLRI investigators assigned to the various AML units. Terrorist financing cases are investigated by Detachment 88.

130. ***Trans-national Crime Center (TNCC)****:* In 2003, POLRI established a TNCC in Jakarta. This Center provides intelligence and analytical training to members of POLRI and provides a case management and analytical software program. The TNCC currently includes three intelligence teams which are responsible for Counter Terrorism; Narcotics; and People Smuggling. In the future, the TNCC will expand to cover ML.

#### Corruption Eradication Commission (KPK)

131. The KPK was established in 2002 with a mandate to eradicate corruption. The KPK is mainly responsible for the coordination and supervision of competent agencies responsible for eradicating corruption. The KPK is also responsible for conducting pre-investigation, investigation and prosecution of corruption offences. However, the KPK does not have any authority to investigate the ML offence. In addition to enforcement actions, the KPK carries out preventative measures including education and socialization programs. Lastly, the KPK is responsible for monitoring state governance.

#### Attorney General's Office (AGO) and other Prosecution Services

132. The Attorney General's Office (AGO), the High Public Prosecution Office and the District Public Prosecution Office execute powers in the field of prosecution and other authorities based on law. The AGO is led by the Attorney General who is appointed by and responsible to the President. The Attorney General is authorised to prosecute all crimes including ML. While the Public Prosecutor's Office is not authorised to conduct investigations into ML, STRs are utilised by the Public Prosecutor's Office as a basis for conducting investigations into the crime of corruption as a predicate crime of ML. The Public Prosecutor's Office has established a Task Force for Handling of Terrorism and Trans-national Crime Cases, which is responsible for prosecuting ML and TF cases, amongst other crimes. The Task Force has 22 public prosecutors. The Task Force was established by Decree of Attorney General No. PER-001/A/JA/09/2005 September 2005.

#### Customs

133. The Directorate General of Customs and Excise (DGCE) is under the Ministry of Finance and has the authority to enforce government regulations concerning the movement of goods, including currency, into and out of the Indonesian customs territory. In implementing its duties, DGCE relies for its authority on Law 10/ 1995 however DGCE can enforce any valid regulations as requested by the government through the Ministry of Finance. Customs cooperates with POLRI in their investigations of customs-related criminal offences that are

predicate offences for ML. Customs is the lead agency implementing cross-border reporting obligations in Indonesia.

**Department of Law and Human Rights (DOLHR)**

134. DOLHR is responsible for draft laws and regulations in relation to the AML regime and for the ratification of international treaties as well as to propose draft laws to the President for submission to Parliament.

135. DOLHR is the ministry responsible for coordination of mutual legal assistance from and to a foreign state. Responsibility for Mutual Legal Assistance lies with the Directorate of Criminal Law Affairs and Directorate of International Law Affairs, both of which are under the Directorate General of Legal Administrative Affairs.

136. DOLHR is the agency responsible for regulating companies and non-profit foundations.

**Ministry of Home Affairs**

137. The Ministry of Home Affairs is the regulator and supervisor for non-profit associations in Indonesia.

***Self-Regulatory Organisations***

138. **The Jakarta Stock Exchange** (JSX) is a self-regulatory body with powers to discipline its members mostly on prudential matters. While JSX has powers to conduct audits and impose sanctions for violations, it does not currently have a role to supervise AML/CFT obligations. As of June 2005 the number of companies traded on the JSX was 334 with a total market capitalisation of US$76.6 billion, approximately 29 percent of the country's GDP. In addition, the Surabaya Stock Exchange (SSX), which is smaller than the JSX, is primarily designed for smaller firms, fixed income securities, and for trading over the counter. Most of the stocks listed on the SSX are also listed on the JSX. As of June 2005, there were 208 companies listed on the SSX.

139. SROs operate for advocates and notaries. See the section above on DNFBPs for details of those SROs.

140. There are no active SROs in the NPO sector.

### c. Approach concerning risk

141. The Indonesian authorities have adopted an inclusive approach to the scope of the AML/CFT obligations in the financial sector, and have not sought to exclude any of the activities on a risk-based approach.

### *d. Progress since the last mutual evaluation*

142. Indonesia has made very significant progress since its first APG Mutual Evaluation, conducted in 2002, and the end of the FATF's Non-Cooperative Countries and Territories (NCCT) process. It is clear that there is strong political will to fight ML and Indonesia is using AML tools to support the national priority to fight corruption and to take actions to trace and seize the proceeds of corruption. Indonesia has made strong gains in implementing KYC

principles and building the AML/CFT capacities of regulatory agencies. Very importantly, Indonesia has established a strong FIU in the PPATK and has created a new specialist anti-corruption agency in the KPK. Indonesia's FIU is receiving STRs and authorities are beginning to systematically prosecute ML. Indonesia is strongly pursuing international cooperation for AML. Challenges remain in further implementing comprehensive customer due diligence (CDD) measures. Unfortunately, there has been a lack of progress in relation to combating TF in Indonesia.

143. A table summarising the recommended actions from the previous MER and progress by Indonesia with responding to those recommended actions, is included at Annex 1 of this report. There are a number of recommended actions arising from the previous APG Mutual Evaluation that have not yet been implemented. These include:

**Table – Remaining gaps in progress since the last APG Mutual Evaluation**

| **Recommended Actions from the 2002 ME report** | | **Identified remaining gaps** |
|---|---|---|
| **1.** | *Remove the monetary threshold in the definition of proceeds of crime and extend the list of predicate offences.* | Amendments to the AML Law in 2003 removed the previous threshold and extended predicate offences (24 predicate offences and other offences for which the prescribed penalty is 4 years imprisonment or more). However, deficiencies still exist. See Recommendation 1. |
| **2.** | *Permit the freezing and confiscation of all property which is derived from the predicate offences, without a threshold.* | The amended AML Law removed any threshold. However, deficiencies exist. See recommendation 1 and 3 for analysis of the scope of property subject to freezing and confiscation. |
| **6.** | *Clarify that Extradition for money laundering is possible* | Indonesia has not yet included ML in the scope of existing extradition treaties. The Extradition Law does not include ML in its list of extraditable offences. The Extradition Treaty between Indonesia and Singapore includes extradition for money laundering, but has not yet been ratified. |
| **7.** | *Indonesia should ensure that the 8 Special Recommendations of the FATF are encompassed in its new anti-terrorism legislation currently being developed.* | Indonesia's Anti-terrorism law criminalises terrorist financing - see Recommendation II. Implementation of SRIII, SRVI, SRVII and SRVIII are covered elsewhere and are not yet encompassed in Indonesian law. |

# 2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

## ***Laws and Regulations***

### 2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)

2.1.1 DESCRIPTION AND ANALYSIS

**Recommendation 1**

144. Indonesia's Law 15/ 2002 concerning the Crime of Money Laundering (17 April 2002) as amended by Law 25/2003 ("The AML Law") came into force on 4 April 2003. Article 1 provides a definition of money laundering, Article 2 defines assets and predicate offences, and articles 3-7 establish the ML offence.

> **Article 1**
>
> In this Law the following definitions apply:
>
> 1. Money laundering shall be an act of placing, transferring, disbursing, spending, donating, contributing, entrusting, taking out of the country, exchanging or other such acts related to, Assets known or reasonably suspected by a Person to constitute proceeds of crime, for the purpose of concealing or disguising the origins of assets as if such assets shall be legitimate.

145. The AML Law provides a definition of money laundering and creates the ML offence to cover, in broad terms, dealing with the proceeds of any of the serious offences set out in Article 2(1)(a) to (x) (a list of predicate offences); Article(2)(y) (a catch all of other offences with a penalty of four years or more), and also to any foreign serious offence where the offence is considered a crime by Indonesian law; and Article2(2) any assets used directly or indirectly for terrorist activities shall be deemed to be proceeds of crime within Article2. Terrorist activities are not defined in the AML Law nor defined in the Anti Terrorist Law 15/2003 Government regulation in Lieu of Law 1/2002.

***Criminalisation of Money Laundering***

146. Chapter II of the AML law covers the crime of money laundering in Articles 3 – 7. Articles 3 and 6 of the AML law establish the ML offence.

> **Article 3**
>
> (1) Any person who intentionally:
>
> a. places Assets known or reasonably suspected to constitute the proceeds of crime with a Provider of Financial Services, either on their own behalf or on the behalf of another party;
>
> b. transfers Assets known or reasonably suspected to constitute the proceeds of crime from one Provider of Financial Services to another, either on their own behalf or on the behalf of another party;
>
> c. disburses or spends Assets known or reasonably suspected to constitute the proceeds of crime, either on their own behalf or on the behalf of another party;
>
> d. contributes or donates Assets known or reasonably suspected to constitute the proceeds of crime, either on their own behalf or on the behalf of another party;
>
> e. entrusts Assets known or reasonably suspected to constitute the proceeds of crime, either on their own behalf or on the behalf of another party;

f. takes out of the country Assets known or reasonably suspected to constitute the proceeds of crime; or

g. exchanges or otherwise employs Assets known or reasonably suspected to constitute the proceeds of crime for currency or other negotiable instruments;

with the purpose of concealing or disguising the origins of Assets known or reasonably suspected to constitute the proceeds of crime, shall be punished for the crime of money laundering by imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp.100,000,000.00 (one hundred million rupiah) and a maximum fine of Rp.15,000,000,000.00 (fifteen billion rupiah).

(2) Any Person attempting, assisting or conspiring in the commission of the crime of money laundering shall be subject to the same punishment referred to in paragraph (1).

**Article 6**

(1) Any person receiving or controlling the:

a. placement;

b. transfer;

c. payment;

d. donation;

e. contribution;

f. entrustment[1]; or

g. exchange,

of Assets known or reasonably suspected to constitute the proceeds of crime, shall be imprisoned for a minimum of 5 (five) years and for a maximum of 15 (fifteen) years and shall be fined a minimum of **Rp.100,000,000.00 (one hundred million rupiah)** and a maximum of Rp.15,000,000,000.00 (fifteen billion rupiah).

(2) The provisions of paragraph (1) shall be not applicable to Providers of Financial Services who have performed their transaction reporting obligations referred to in Article 13.

147. The offence provisions at Article 3 and 6 do not refer directly to the definition of money laundering at Article 1 (1).

148. There are a number of limitations in the ML offence. Article3(1)(a) & (b) ties the definition of “places” and “transfers” assets to "Providers of Financial Services". Article3(1)(g) limits “exchanges” assets to "currency or other negotiable instruments". While Article 3 (1)(g) covers “otherwise employs assets”, which could include “conversion” of assets, this is limited to conversion to currency or other negotiable instruments.

149. The AML Law does not clearly criminalise acquisition and simple possession of proceeds of crime without some additional step being taken.

[1] The footnotes to the English translation of the AML Law make reference to the term *Entrustment (*“penitipan”) which should be understood to include any situation in which cash or monetary instruments are placed in the custody of a Provider of Financial Services, while “ownership” is retained by the person making the entrustment. It therefore resembles the English concept of bailment, where possession and ownership are separated. However, it should be understood only in a factual sense, not as implying any of the technical legal aspects of either entrustment or bailment in Anglo-American legal usage.

150. Article 2 defines "Proceeds of crime" as assets "derived from" any of the offences as specified in Article 2(1)(a) to(x), or caught by the four year catch all Article 2(1)(y); or any foreign offence which is committed outside the territory of The Republic of Indonesia and where the offence is considered a crime according to Indonesian law. The Elucidation to Article 2 (1) indicates that the law applies the principal of dual criminality. The outline of the concept of dual criminality in the Elucidation is not clear, but the authorities indicate that Indonesian courts would act on the statement in the Elucidation.

151. Concealing or disguising the true nature, location, disposition, movement, rights with respect to, or ownership of property is not explicitly criminalised in the AML Law. Disposition of property is limited to disbursement, spending, payment and donating. Concealing the rights with respect to property is limited to entrustment of property.

152. The AML Law does not criminalise helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action, (accessory after the fact) as required under Article 6(1)(a)(i) of the Palermo Convention.

***Property***

153. In determining whether property is the subject matter of, or has been used in the commission of, a ML offence, the court must apply the standard of proof required in civil proceedings: that is, on the balance of probabilities. This was confirmed by the AGO.

154. 'Property' or 'Assets' under the AML Law are not broadly defined:

**Article 1**

(4) Assets shall be all movable or immovable assets, both tangible and intangible.

**Article 2**

1) Proceeds of crime shall be assets derived from the following criminal acts… (lists predicate offences (1)(a) to (y)).

155. The definition of assets does not appear to cover interest in any such movable or immovable property, and legal documents evidencing title to such property, nor does it address whether those assets were obtained directly or indirectly. The definition of assets does address whether they are situated in Indonesia or outside Indonesia.

156. To prove the ML offence, it must be shown that the proceeds are "derived from" an offence listed in Article 2 of the AML Law. However, it need not be proved that the person charged with ML committed the predicate offence listed in Article 2. Indonesian authorities cited recent prosecutions where persons had been charged with ML offences without having been charged with any predicate offence, either because the persons were not implicated in the commission of the Article 2 AML Law predicate offences, or there was insufficient evidence to charge them in relation to those offences.

157. The AML Law permits conviction of a person for a ML offence, irrespective of whether there is a conviction in respect of a predicate offence listed in Article 2 or a foreign offence in Article 2, or whether a prosecution has been initiated for such offences.

### *Predicate offences*

158. Indonesia has adopted a combination of a list-based approach and a threshold approach in applying the crime of ML to a range of predicate offences.

**Article 2**

(1) The proceeds of crime shall be Assets derived from the following criminal acts:
a. corruption;
b. bribery;
c. smuggling of goods;
d. smuggling of workers;
e. smuggling of immigrants;
f. in the banking field;
g. in the capital market field;
h. in the insurance field;
i. narcotics;
j. psychotropic substances;
k. trade in people;
l. illegal trade in arms;
m. kidnapping;
n. terrorism;
o. theft;
p. embezzlement;
q. fraud;
r. currency counterfeiting;
s. gambling;
t. prostitution;
u. in the tax field;
v. in the forestry field;
w. in the environmental field;
x. in the maritime field; or
y. other offences for which the prescribed penalty is 4 years imprisonment or more; committed in the territory of The Republic of Indonesia or outside the territory of The Republic of Indonesia and where the offence is considered a crime according to Indonesian law.

159. The list of predicate offences, (a) – (x) is combined with the provision at 2(1)(y) for all offences with a sentence of four years or more (see Annex for analysis of categories of offences covered).

160. Two of the categories of designated categories of offences in the FATF Glossary are not wholly covered by offences listed in Article 2 (1)(a) to (x) of the AML Law. Private sector corruption is not criminalised as a stand alone offence in Indonesian law at present, and so foreign private sector corruption would not be an offence in Indonesia caught by the AML Law foreign offence extension at Article 2(1). While some coverage of private sector corruption activities would be covered by fraud and embezzlement offences, stand alone offences to cover secret commissions and the like are not covered.

161. The predicate offence of terrorism at Article 2(1) (n) captures the criminal acts of terrorism listed in Chapter III (Articles 6 – 19) of the Anti-Terrorism Law, including the TF provisions at Articles 11-13 of that Law (see analysis at Special Recommendation II).

162. Participation in an organised criminal group and racketeering is not covered as a separate offence, but the category of offences is partially covered by conspiracy provisions in the Penal Code. Penal Code Article 169 covers participation in an association to commit crimes, with a penalty of six years, for available predicate offences. An offence of conspiracy to defraud is not available. In addition, there are no conspiracy provisions in the Penal Code for the following:

- Public sector corruption less that Rp.100M (US$100,000);
- Private sector corruption;
- Gambling offences (Penal Code Article303);
- Vice establishment "Crimes Against Decency", Penal Code Articles 281-297;

163. No statistics were available to demonstrate implementation to of Penal Code Article 169.

164. The terminology “considered a crime according to Indonesian law” would not appear to allow criminalisation of any offence before the enactment of the AML Law in April 2003. This is confirmed in the Indonesian Penal Code, First Book, Article1 " (1) No act shall be punished unless by virtue of a prior statutory penal code. (2) In case of alteration in the legislation after the date of the commission of the act the most favourable provisions for the accuse(d) shall apply." However it should be noted that predicate crimes occurring before April 2003 which then leads to money laundering after April 2003 can be charged with the ML offence.

165. The AML Law permits application of the offence of ML to “any person” who commits the predicate offence.

166. The AML Law does not include all serious offences or all offences which are punishable by a maximum penalty of more than one year imprisonment.

167. There is no prohibition on the prosecution of a person for a predicate offence and for the prosecution of the same person for a related ML offence. Indonesia presented a case prosecuted using the Cumulative Indictment for self-laundering. The case involved a person who stole foreign currency from a bank and then used the bank facility to exchange the stolen foreign currency for local currency.

168. The offence of ML includes appropriate ancillary offences. Article 3(2) of the AML Law extends the offence of ML to the acts of persons who attempt, assist or conspire in the commission of the crime of ML. The definition of ‘principals’ under Articles 55 & 56 of the Penal Code includes the conduct of a person who perpetrate, cause others to perpetrate, or a direct part in the execution of the act, with one or more other persons in any conspiracy for the doing of a thing. Article 88 of the Penal Code provides a definition of ‘conspiracy’ (existing) as soon as two or more agree to commit a crime.

169. Article 7 applies expands the available ancillary offences.

> **Article 7**
>
> Any Indonesian citizen and/or Indonesian corporation outside the territory of the Republic of Indonesia providing assistance, opportunities, instrumentalities or information for the carrying out of the crime of money laundering shall be subject to the same penalty imposed on the perpetrators of crimes of money laundering referred to in Article 3.

**Recommendation 2**

***Mental Element***

170. Article 3 of the AML Law applies with respect to assets "*known or reasonably suspected*" to be proceeds of crime, "*with the purpose of concealing or disguising the origin".* Article 6 of the AML Law criminalises "receipt or control" of placement (and other enumerated acts) of proceeds "*known or reasonably suspected*" to be proceeds of crime. Given the definition of 'ML', a person's knowledge that assets are the proceeds of unlawful activity may be inferred from objective factual circumstance. Further, according to some decided cases the mental element for the offence may be met where a natural person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity. However, the additional intent element of Article 3 "with the purpose of concealing or disguising" would appear to create an additional burden on the prosecutor to prove the knowledge element and is not in keeping with the FATF standard.

***Liability***

171. The offence of ML in the AML Law applies to natural persons.

172. Article 4 of the AML Law applies the ML offence to legal persons. However there appears to be a conflict with Indonesia's Penal Code provisions which does not recognise criminal liability for legal persons, and which may result in problems with prosecuting legal persons for ML. Indonesia's Penal Code (Law 2/1945) does not recognise criminal liability for legal persons. However, the AML Law at 4(1) establishes that when the crime is committed by the manager and/or manager's agents on behalf, the manager or manager's agent as well as the corporation shall be criminally liable. Article 4(3) states that a corporation cannot be held liable for any act outside the scope of the articles of incorporation, that is its scope of business.

173. Indonesian authorities stress that pursuant to Article 103 of Penal Code, Book I of the Penal Code (general provisions) shall be applicable for other laws, except where it is determined otherwise by a specific Law (the concept of *lex specialis derogate lex generalis*, specific laws surpass general laws). However, discussions with officials during the on-site visit highlighted that an apparent conflict between the Penal Code and recent laws which establish corporate criminal liability which may create a problem for Indonesian prosecutors. Indonesian has submitted that this is not an obstacle. No prosecution of a corporation had been attempted under the AML Law as of the time of the on-site visit. No statistics were produced to show that corporate criminal liability had been pursued under other recent statutes.

***Sanctions***

174. The AML Law does not preclude the possibility of parallel criminal, civil or administrative proceedings.

175. Sanctions for the offence of ML are included in Articles 3, 6 of the AML Law. The maximum fine amount available is a substantial Rp.15 Billion (approx USD 1.6 Million); the five to 15 years available terms of imprisonment also appears to be proportionate and dissuasive.

176. Article 5 of the AML Law sets out penalties on corporations, which include both criminal fines and administrative sanctions.

> **Article 5**
>
> (1) The principal penalty that can be imposed on corporations shall be a penalty in the form of a fine which shall be the maximum fine plus 1/3 (one-third).
>
> (2) In addition to the fine referred to in paragraph (1) above, additional penalties can be imposed on corporations in the form of the revocation of their business licenses and/or the dissolution of the corporation concerned followed by liquidation.

177. The maximum term of imprisonment available is fifteen years, which is similar to the maximum terms available for comparable economic crimes under Indonesian law. The following are examples:

- Fraud/Cheating (section 420 *Penal Code*): four years imprisonment and liable to fine;
- Forgery (section 267 *Penal Code*): 2 years 8 months to 10 years imprisonment and liable to fine;
- (Public sector) Corruption (Articles 5, 6, 7, 8, 9, 10, 11, 12, 12A, B & C, of the *Anti-Corruption Law 20/2001 amending Law 31/1999*), Article 12, imprisonment not less than 4 years and not more than 20 years with fine; of Rp.200 M to Rp.1,000 M and others vary from one to five years, two to seven years, and three to 15 years.
- Fraud, Market manipulation and Insider Trading, (including Fraudulently inducing persons to invest money (Chapter XI, Articles 90 to 99, *Capital Markets Law* 7/1992 amended by 10/1998, Articles 46 to 53 & 90 to 99): Article 104, 10 years imprisonment and/or a maximum fine of Rp.15,000 M. Lesser by Article105-110, from three to 10 years and up to Rp.5,000M to Rp.15,000 M fine.

178. The maximum term for ML under AML Law is lower than the maximum terms for laundering the proceeds of narcotics and corruption offences under the relevant laws:

- Article 12 *Anti-Corruption Law*: four to 20 years and a fine min. Rp.200M not exceeding Rp.1,000 M; and
- Article 81(3) & 82(3) Narcotics Law: imprisonment not less than five years and not more than 20 years and fined no less than Rp.500 M to Rp.3,000 M.

179. The 15 years maximum term in the AML law is comparable to the maximum terms available for ML offences in many other jurisdictions as included below:

- Australia: 5-25 years and a fine;
- Hong Kong, China: 14 years or fine HK$5 million;
- Malaysia: Death, to life, to 20 to 30 years;
- Philippines: 7-14 years and/or fine;
- United Kingdom: 14 years and/or fine; and
- United States: 20 years and/or fine;

**Recommendation 32 (money laundering investigation/prosecution data)**

180. In Indonesia to date there have been only eleven convictions for ML under AML Law. Some examples of the sentences imposed on the offenders are as follows:

- Eight years imprisonment for the AML Law offence and Rp.1,000 M fine (approx USD100,000);
- Eight years imprisonment & Rp.1,000 M fine (approx USD100,000), and subsidiary penalty 6 months;
- Seven years imprisonment & a fine of Rp.300 M (approx USD30,000)for the AML Law offences, with a subsidiary 5 months;
- Seven years & Rp.100 M fine (approx USD10,000); and
- Seven years & Rp.100 M fine (approx USD10,000), with subsidiary penalty 5 months.

181. The following table summarises information on the number of investigations and prosecutions for ML for the period 2002 to 2007:

**Table: ML investigation, prosecution and conviction under the AML Law**

| | **2004** | **2005** | **2006** | **2007** | **Total** |
|---|---|---|---|---|---|
| **Number of investigations** | 59 | 66 | 54 | 58 | 237 |
| **Number of cases prosecuted** | | 8 | 4 | 6 | 18 |
| **Number of charges** | - | - | 4 | | 4 |
| **Amount involved (Rp. million)** | Rp 31.2 billion ($US13 million) | | Rp 110 billion ($US11 million) | Rp 128 billion ($US13 million) | Rp 279 billion |
| **Number of convictions** | 2 | 4 | 3 | 2 | 11 |
| ***Case numbers*** | *1-2* | *3-6* | *7-9* | *10-11* | |

**Table: Sanctions levied for the ML offence**

| **Year** | **Case No.** | **Value of offence** | **Sentence** | **Notes** |
|---|---|---|---|---|
| **2005** | 1 | Rp 31 billion ($3.1 million) | 8 years jail; and Rp 1 billion ($100,000) fine with subsidiary punishment of 6 months in jail | |
| **2005** | 2 | Rp. 21,824,850 | Imprisonment of 3 years ; and a fine of Rp. 5 million with a subsidiary of 1 month in jail; | |
| **2005** | 3 | Rp. 31 bill | 8 yr imprisonment; and a fine of Rp. 1 bill with a subsidiary of 6 months in jail | |
| **2006** | 4 | | 5 yr imprisonment; and a fine of Rp. 200 mill with a subsidiary of 2 months in jail. | |
| **2006** | 5 | | 7yr imprisonment ; and a fine of 100 million Rp with a subsidiary of 4 months in jail | |
| **2006** | 6 | | 7; yr imprisonment; and a fine of 100 million with a subsidiary of 4 months in jail | |

| | | | | |
|---|---|---|---|---|
| **2005** | 7 | 50 billion | That he is fined with Rp 500,000,000 subsidiary punishment of 6 (six) months of light imprisonment. | Charge was for violating reporting obligation to PPATK |
| **2005** | 8 | 50 billion | Fined with Rp 500,000,000 subsidiary punishment of 6 (six) months of light imprisonment. | Charge was for committing an act violating reporting obligation to PPATK |
| **2006** | 9 | 10 billion | Punished with 5 years imprisonment. | |
| **2007** | 10 | 28 billion | Punished with 11 years of imprisonment. | |
| **2007** | 11 | 100 billion | 5 years imprisonment and fined of Rp 500 million and subject to subsidiary punishment of 3 months of light imprisonment. | |

**Effectiveness**

182. Statistics in relation to the AML Law indicate a gradually increasing commitment to the investigation and prosecution of ML offences. ML investigations conducted cover proceeds of crime from a narrow range of predicate offences.

183. Indonesia is still yet to effectively utilise the ML offence to pursue the proceeds of crime. This is due, in part, to the narrow scope of the offence as well as issues of investigation and prosecution capacity. Of the 179 ML investigations since the AML Law came into force, only 32 cases have been completed. Of those investigations that have been referred to the AGO for consideration of prosecution, 20 prosecutions have been commenced and are being expedited through the District courts. Of the remainder of cases:

- Prosecution dossiers have been closed due to insufficient evidence; or
- Prosecution dossiers have not yet been completed for a final prosecution decision. In some cases this is because AGO has advised that further evidence is required to be obtained.

184. Indonesia has not undertaken a prosecution against a corporation for the ML offence or for any other offence under Indonesian law. Concerns were raised with the evaluation team that due to the apparent conflict between the Criminal Code and subsequent specialist laws that corporate criminal liability may not be possible to prove at this point.

185. The approach taken by most Indonesian investigation authorities is primarily directed to proof of predicate offences. This has meant that the investigation of any related ML offence has rarely been undertaken at the time of the investigation of the predicate offence. The Evaluation Team found little evidence of cases where the predicate offences were successfully prosecuted and a possible ML prosecution was then undertaken. In some high-profile cases, ML investigations were commenced after the failure of a prosecution for a predicate offence (e.g. Adelin LIN criminal charges dismissed on 5 November 2007).

186. Technical Guidelines Letter No. B-689/E/EJP/12/2004 issued by the Attorney General to the PPATK requires simultaneous investigation and cumulative indictments for ML offences. This instruction should preclude Judges choosing to hear only the predicate offence and not proceed with the ML offence. Despite the December 2004 instruction Guideline by the AG, non-cumulative indictments are still being used and ML and predicate offences are not being simultaneously investigated. In some cases the non -cumulative indictment may not be possible, however the Evaluation Team remains concerned that alternative indictments are continuing in cases involving ML charges.

187. Indonesian authorities are currently pursuing a test case for applying parallel criminal, civil or administrative proceedings for a ML case.

### 2.1.2 RECOMMENDATIONS AND COMMENTS

188. The Indonesian statutory scheme addressing ML has a number of significant shortcomings. Indonesia is taking steps to revise the AML Law in 2008 and it is hoped that this will address key weaknesses with coverage of predicate offences, the scope of the ML offence, the scope of property covered by the offence and issues of corporate criminal liability.

189. The effectiveness of the AML Law is hampered by the limitation of the scope and coverage of the offence and its broader implementation.

190. It is recommended that Indonesia:

- Act quickly to amend the AML Law to address the minor deficiencies with the scope of coverage of predicate offences; the scope of coverage of "assets" and "proceeds" in the offence;
- Improve capacities for implementing the ML offence in parallel with predicate offences; and
- Make implementation of the ML offence a priority to combat profit driven crime.

191. Indonesia should clarify the apparent conflict in relation to corporate criminal liability either by amending the Penal Code (Law 2/1945) and Criminal Procedures Code to recognise corporate criminal liability, or by some other means.

192. Indonesia should consider increasing the available maximum custodial sentences for offences under the AML Law to compare with maximum terms available for other serious economic crimes and serious narcotics crimes under Indonesian law, i.e. 15 years to 20 years.

193. Indonesia should consistently implement Technical Guidelines Letter No. B-689/E/EJP/12/2004 to ensure simultaneous investigation of ML offences and predicate crimes and cumulative indictments for ML offences.

### 2.1.3 COMPLIANCE WITH RECOMMENDATIONS 1 & 2

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.1** | **PC** | • There are minor gaps with coverage of predicate offences<br>• The scope of coverage of "assets" and "proceeds" is not in keeping with the Vienna Convention.<br>• The ML offence has not yet been used to pursue the proceeds of a wide range of predicate offences.<br>• The ML offence is not effectively implemented due to the narrow scope of the offence, continuing use of alternative indictments and capacity issues. |

| | | |
|---|---|---|
| **R.2** | **PC** | • Apparent conflict between Indonesian laws establishing criminal liability for legal persons may hinder implementation.<br>• Statistics do not demonstrate that the offence is effectively implemented at this point. |
| **R.32** | **PC** | • Clear statistics were not maintained and shared between agencies on the numbers of investigations, prosecutions and convictions for the ML offence. |

## 2.2 CRIMINALISATION OF TERRORIST FINANCING (SRII)

### 2.2.1 DESCRIPTION AND ANALYSIS

194. Terrorist financing is addressed in Law Number 15 Year 2003 Concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 Concerning Combating Criminal Acts of Terrorism. Government Regulation in Lieu of Legislation Number 1 Year 2002 concerning Combating Criminal Acts of Terrorism came into force on 18 October 2002. The Regulation was superseded by Law Number 15 Year 2003, which had the effect of enacting the contents of the above mentioned regulation as law and which came into effect on 4 April 2003. This law shall be referred to as the Anti-Terrorism Law in this report.

195. Chapter III of the Anti-Terrorism Law sets out the offences of Criminal Acts of terrorism. Articles 6 – 10 set out the offences of Acts of terrorism and Articles 11, - 13 subsequently outline the offences of TF.

**Article 11 (Funding terrorism)**

Any person who intentionally provides or collects funds with the objective that they be used or there is a reasonable likelihood will be used partly or wholly for criminal acts of terrorism as stipulated in Articles 6, 7, 8, 9 and 10.

**Article 12 (Assets for terrorism)**

Any person who intentionally provides or collects assets with the objective that they be used or there is a reasonable likelihood will be used partly or wholly for:

a. committing any unlawful act of receiving, possessing, using, delivering, modifying or discarding nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components that causes death or serious injuries or causes damage to assets;
b. stealing or seizing nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components;
c. embezzling or acquiring illegally nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components;
d. requesting nuclear materials, chemical weapons, biological weapons, radiology, micro-organism, radioactivity or its components;
e. threatening to:
1) use such nuclear materials chemical, biological weapons, radiology, micro-organism, radioactivity or its components to cause death or injuries or damage to properties; or
2) commit criminal acts as stipulated in b with the intention to force another person, an international organization, or another country to take or not to take an action;
f. attempting to commit any criminal act as stipulated in a, b or c; and
g. participating in committing any criminal act as stipulated in a to f.

**Article 13 (Assisting and facilitating terrorism)**
Any person who intentionally provides assistance to any perpetrator of criminal acts of terrorism by:
a. providing or lending money or goods or other assets to any perpetrator of criminal acts of terrorism;
b. harbouring any perpetrator of any criminal act of terrorism; or
c. hiding any information on any criminal act of terrorism.
Sentence: Minimum 3 (three) years imprisonment and maximum 15 (fifteen) years imprisonment.

***Scope of the offences***

196. The criminalisation of funding terrorist acts is addressed at Article 11 and 12 of the Anti-Terrorism Law. Article 11 addresses the collection and provision of 'funds' for terrorist acts. It does not cover indirect provision or collection. Article 11 is limited to funds (which is limited to money and other negotiable instruments ) and does not cover assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form (see also paragraph 195 below).

197. Article 12 of the Anti-Terrorism Law provides for the collection and provision of the more widely defined 'assets', to support terrorist acts related to nuclear materials, chemical and biological weapons etc.

198. Article 13 of the Anti-Terrorism Law covers "persons who provide assistance to perpetrators" of criminal acts of terrorism. This covers providing funds and other assets. The term perpetrator is not defined. This appears to tie the offence to the perpetrator of a specific criminal act of terrorism, rather than an individual terrorist "who may not have committed any such act".

199. Indonesia does not create an offence of providing funds to an individual or entity listed by the UN 1267 Committee as a terrorist.

200. Article 13 of the Anti-Terrorism Law applies to "any person who intentionally provides assistance" to any perpetrator of criminal acts of terrorism". Article13 only partially criminalises the provision of assets to terrorist organisations as defined in the FATF standards. Article 13 appears to cover any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; and (ii) participates as an accomplice in terrorist acts. The Article would not appear to cover a person who (i) organises or directs others to commit terrorist acts; or (ii) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

201. The Anti-Terrorism Law variously uses the terms "funds" and "assets" when defining the scope of the TF offence. The term funds is not defined in law the Anti-Terrorism Law and is interpreted in its common meaning as limited to money and other negotiable instruments. Assets are defined in the law as any movable or immovable, tangible or intangible objects. This definition does not meet the requirement in the UN TF Convention to include coverage of legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets.

202. The TF offence appears to require that funds were actually used to carry out or attempt carry out a criminal act of terrorism. Article11 of the Anti-Terrorism Law requires that the funds were provided or collected with the objective that they be used or that there is a reasonable likelihood that they will be used partly or wholly for a criminal act of terrorism.

203. Offences of attempting to commit the present TF offences are available. Article 53 of the Penal Code sets out general provisions relating to attempt. Article 53(1) indicates that:

> 53 (1) Attempt to commit a crime is punishable if the intention of the offender has revealed itself by a commencement of the performance and the performance is not completed only because of circumstances independent of his will.

204. Offences of aiding and abetting the commission of TF offences are available in the Penal Code. 'Participation in Punishable Acts" (Aiding & Abetting) as defined in Articles 55 & 56 of the *Penal Code* cover all the types of conduct set out in Article 2(5) of the UN Terrorist Financing Convention, that is participating as an accomplice in a TF offence, organising or directing others to commit such an offence, and acting in common purpose with others to further the commission of such an offence.

205. The Anti-terrorism Law also includes provisions for attempt and aiding and abetting in Articles 14-16.

> **Article 14 [Inciting others to terrorism]**
>
> Any person who plans and/or incites another person to commit any criminal act of terrorism as defined in Articles 6, 7, 8, 9, 10, 11 and 12. Sentence: Death penalty or life imprisonment.
>
> **Article 15 [Planning and attempting terrorism]**
>
> Any person who conducts any plot, attempt, or assistance to commit any criminal act of terrorism as stipulated in Articles 6, 7, 8, 9, 10, 11 and 12. Sentence: The same penalty as the perpetrator of said criminal act of terrorism.
>
> **Article 16 [Facilitating terrorism outside Indonesia]**
>
> Any person outside the territory of the Republic of Indonesia who provides any assistance, facilitation, means or information for the committing of any criminal act of terrorism. Sentence: The same penalty as the perpetrator of said criminal act of terrorism as stipulated in Articles 6, 7, 8, 9, 10, 11 and 12.

206. The above provisions in the Anti-Terrorism Law do not support application of those offences for Article 13 TF offences. Prosecutors would be required to rely on the general provisions for ancillary offences in the Criminal Code.

207. Chapter III of the Anti Terrorism Law outlines a range of Criminal Acts of Terrorism at , Articles 6-19. Article 6 of the Anti-Terrorism Law provides a basic definition of a criminal act of terrorism as:

> "Any person who intentionally uses violence or the threat of violence to create a widespread atmosphere of terror or fear in the general population or to create mass casualties, by forcibly taking the freedom, life or property of others or causes damage or destruction to vital strategic installations or the environment or public facilities or international facilities."

208. The offences in Chapter III of the Anti-Terrorism Law do not comprehensively include the classes of acts prescribed by Article 2.1(a) where the purpose of such act, by its nature or

context, is to compel a government or an international organization to do or to abstain from doing any act.

209. Article 8 of the Anti-Terrorism Law further defines “criminal acts of terrorism” related to aviation security. The provision in article 8 appear to be in keeping with the obligations to cover offences in the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (1988).

210. Article 9 extends a criminal act of terrorism to offences related to explosives, firearms and ammunition. Articles 10 and 12 extend a criminal act of terrorism to biological weapons, radiology, micro-organisms radioactivity and nuclear weapons. These provisions are in keeping with the obligations to cover offences in the UN International Convention for the Suppression of Terrorist Bombings (1997) and the Convention on the Physical Protection of Nuclear Material (1980).

211. The extended definitions of the offence of “criminal act of terrorism” available in the Anti-Terrorism Law do not appear to cover financing of activities which are offences set out in the UN Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), the UN Convention against the Taking of Hostages (1979) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988).

212. The TF offences are capable of application where the act of financing takes place in a different country to the one in which the terrorist group is located or the terrorist act did/will occur.

***Mental elements***

213. Article 11 of the Anti-Terrorism Law creates an offence with knowledge, intention or reasonable grounds to believe that it will be used to commit a terrorist act or fund a perpetrator of a terrorist offence. Article 13 limits the knowledge element to “intentionally”, but does not include “reasonable grounds to believe” or other elements that would support it being proven by objective factual circumstances.

***Liability***

214. The Anti-Terrorism Law establishes criminal liability for legal persons in relation to terrorism and TF offences in the law. The definitions in the law for “person” include corporate liability. A “person” is defined in the law as any individual or group of persons, either civilian, military or police, who is responsible individually or as a corporation. A corporation is defined in the law as an organised group of persons and/or properties, whether or not in the form of a legal entity.

215. The TF offences apply to both natural and legal persons and do not preclude parallel criminal, civil or administrative proceedings. Article 17 of the Anti-Terrorism Law provides for criminal liability of corporations for criminal acts of terrorism including the TF offences. A criminal act of terrorism shall be deemed to have been committed by a corporation if the criminal act is committed by persons who, based on their work relationship or other relationships, act in the environment of such corporation either individually or jointly. In the

event the criminal act is committed by or on behalf of a corporation, the prosecution and sentencing thereof shall be carried out against such a corporation or the management thereof.

216. As indicated in the section of this report dealing with FATF Recommendation 2, Indonesia's Penal Code (Law 2/1945) does not recognise criminal liability for legal persons of any description or type, whether a body of persons, corporate and unincorporated. There is a concern that the apparent conflict between the Penal Code and the corporate criminal liability established in Law 15/2003 creates a problem and may be impossible to prove or proceed against in a prosecution.

### *Mental elements*

217. In the case of natural persons, sanctions available in the Anti-Terrorism Law for TF are limited to imprisonment, but the available terms appear to be dissuasive with a maximum of 15 years and a minimum of three years. The high minimum term of imprisonment hinders the application of proportionate sanctions.

218. Article 18 of the Anti-Terrorism Law provides for sanctions against legal persons. Fines are available up to an amount of Rp.1,000,000,000,000 (US$100 million). A problem arises with effectiveness as administrative penalties only arise once a corporation is convicted of a criminal act of terrorism. A corporation involved in any criminal act of terrorism may be dissolved, its license to operate revoked and declared a banned corporation.

### Recent Developments

219. Since the onsite visit a number of defendants have been charged with terrorist financing offences and a number of convictions have been recorded. While each of the three convictions achieved in early 2008 were against natural persons, in the matter of **AINUL BAHRI** (adjudicated on 16 April 2008) the court found him guilty of a number of terrorism offences, but the courts findings raised a number of issues regarding the operation of corporate criminal liability under the Anti-Terrorism Law.

220. The case against AINUL BAHRI demonstrated his liability for various terrorist acts, including terrorist financing. The court established that he was an office holder of Al Jamaah Al Islamiyah (JI). As part of its adjudication in the case, the court made findings against both AINUL BAHRI and the corporate entity, JI. In should be noted that JI was not charged with any terrorist offence, but the judgement appears to apportion criminal liability to JI and applies sanctions against legal person JI.

**JUDGMENT**

**CRIMINAL NUMBER: 2189/Pid.B/2007/PN.Jkt.Sel.**

**South Jakarta District Court, 16 April 2008**

Considering articles of laws mentioned:

**TO ADJUDICATE**

I. To announce that a defendant of **AINUL BAHRI als. YUSRON MAHMUDI als. etc** concerned is proved guilty legally and assures that a defendant has been guilty to commit a crime:

1. illegally in controlling, maintaining, hiding firearms, ammunition, explosive materials mentioned to commit a crime;

2. intentionally to provide assistance and facilities to terrorists in term of financing;

3. intentionally to provide assistance and facilities against terrorists by hiding terrorists concerned and information on the criminal act of terrorism.

II. To announce that Al Jamaah Al Islamiyah as a corporation whose one of managers is a defendant is proved guilty legally and assures that it has been guilty to commit a criminal act of terrorism;

III. To punish a defendant with 15 (fifteen) years of imprisonment;

IV. To determine period of arrest that has been served by a defendant minus whole sentencing imposed;

V. To determine that a defendant shall remain in custody;

VI. To punish Al Jamaah Al Islamiyah as a corporation whose one of managers is a defendant with a fine of Rp. 10,000,000 (ten million rupiah);

VII. To determine Al Jamaah Al Islamiyah as a corporation whose one of managers is a defendant is prohibited corporation;

**Recommendation 32 (terrorist financing investigation/prosecution data)**

221. The following table summarises information on the number of investigations and prosecutions for AML for the 2003 – 2007 period:

222. Indonesian authorities were unable to provide accurate statistics on the number of TF investigations undertaken, the number of TF charges laid, the number of TF prosecutions or the amounts of funds involved.

**Effectiveness**

223. In recent years, Indonesia has taken effective actions to arrest over 400 persons and secured over 300 convictions for terrorist acts. Despite these serious terrorism and TF threats in Indonesia, there has been very limited use of the TF offence to go after the funding of such widespread terrorism threats. As of the date of the onsite visit, only one conviction had been secured for TF.

224. There have been a number of cases investigated and charges laid, but as of the date of the onsite visit, only one conviction of the TF offence, in 2004, has been carried forward by the courts. This case involved the financing of the bombing of the Jakarta Marriott Hotel in August 2003. The defendant received a four year prison sentence. In general, the TF offence has not been used to investigate and prosecute TF related to known and identified terrorist groups with a presence in Indonesia.

225. In a number of cases police had captured those responsible for funding terrorist acts, but the individuals were also directly involved in carrying out terrorist acts. In those cases, the indictment stage the prosecutors' office charged the TF offence, however the judge decided to only indict the defendant on the more serious charge of terrorist acts, which carries a higher sentence than the TF offence.

226. Given the lack of use of the offence, it is clear that implementation of these provisions has not been effective.

## 2.2.2 RECOMMENDATIONS AND COMMENTS

227. Indonesia should revise the TF offences to ensure that they are in keeping with the UN TF Convention and the FATF standards. In particular the offence should clearly cover:

- all required terrorist acts as outlined in the TF convention;
- the widest range of assets;
- direct and indirect collection and provision of assets;
- funding to individual terrorists;
- provision of assets to terrorist organisations; and
- the ability for the knowledge element to be able to be proven by objective factual circumstances.

- The Anti-Terrorism Law should be amended to include effective, proportionate and dissuasive sanctions, including monetary sanctions for natural persons and effective administrative sanctions for corporations.

- The Anti-Terrorism Law should be amended to remove the obligation that funds for the TF offence must be linked to a specific terrorist act.

- Indonesia should ensure that the possible conflict regarding corporate criminal liability is resolved. This may involve amending the Penal Code (Law 2/1945) and Criminal Procedure Code or by some other means.

- The TF offence should be vigorously pursued, with authorities considering adopting an approach where all indictments of TF offences should be Cumulative Indictments which require a verdict on the TF offence.

- Authorities should implement the TF offences within the Anti-Terrorism Law to prosecute and sanction TF of identified terrorist groups and individuals with a presence in Indonesia.

## 2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.II** | **PC** | • The scope of property that is covered by the TF offence is not consistent with requirements in the TF Convention.<br>• Indirect collection and provision of funds is not covered<br>• Collecting for or providing funds to a terrorist organisation is not comprehensively covered.<br>• Corporate criminal liability may be impeded in practice by a conflict with the Penal Code and Criminal Procedure Code.<br>• The knowledge element is not, in all cases, able to be proven by objective factual circumstances.<br>• There offence has not been effectively pursued and statistics do not demonstrate effective implementation of the offence. |

| | | |
|---|---|---|
| **R.32** | **PC** | • Statistics are poorly kept for TF investigations, prosecutions, convictions and sanctions.<br>• NB this is a composite rating and does not derive solely from the factors listed here. |

## 2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)

2.3.1 DESCRIPTION AND ANALYSIS

228. Limited forfeiture, freezing and seizing of criminal proceeds and instruments, is possible pursuant to measures within the Criminal Procedure Code, laws creating specific predicate offences and the AML Law.

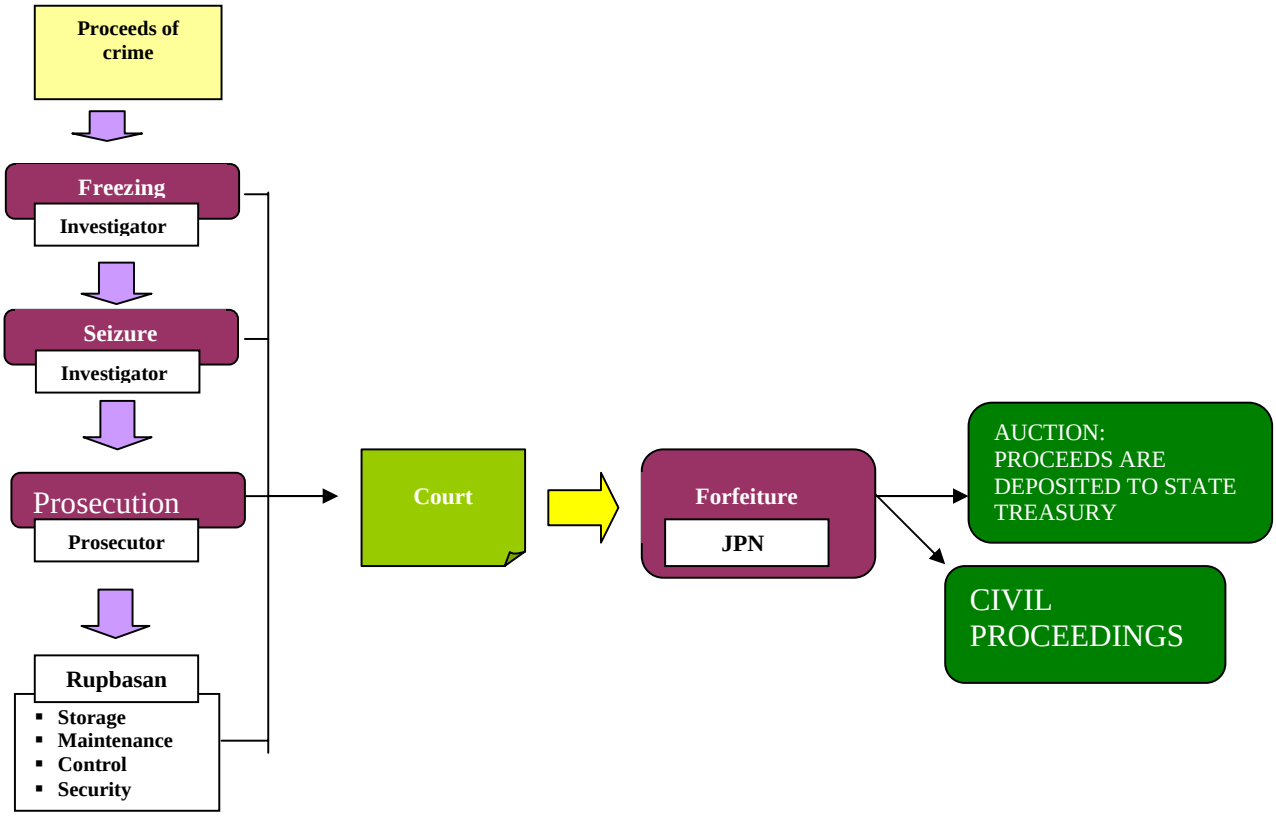
229. Laws exist for the seizure and confiscation of property in relation to offences of ML, narcotics trafficking, customs offences, tax offences and corruption:

- there is provision for seizing and/or confiscation proceeds of crime under various specific Acts, such as the AML Law, Article 32, *Customs Law Article 62,* the Narcotics Law Articles 69 & 77, the *Corruption Laws*, Article 38B, and the tax Collection Law 19/ 1997 Articles 12 to 28; and
- Articles 38 to 49 and 128 to 130 of the *Criminal Procedure Code* permit a district court to make orders for confiscation of any property which has been used for the commission of <u>any offence</u>, or in relation to which any offence appears to have been committed.

230. Indonesia does not have a comprehensive ‘Proceeds of Crime’ Law or an 'Assets Forfeiture Law', however a Draft Assets Forfeiture Bill is being prepared.

231. In the absence of a comprehensive proceeds of crime law, Indonesia has conducted asset forfeiture based on Article 44-46 of the Criminal Procedures Code. Seized or forfeited property is managed by State Storehouse for Seized Goods/Marshall Services (Rupbasan – Depkumham), under the Ministry of Law and Human Rights and is governed in Article 30 of the Criminal Procedure Code (KUHAP) and other regulations related to Rupbasan.

**Scheme of Asset Forfeiture based on the Criminal Procedure Code**




***Confiscation***

232. The AML Law does not provide for the confiscation of property, other than in limited circumstances (as outlined below).

233. Only the Criminal Procedure Code provisions Articles 38-49 and 128-130 are available to freeze, seize and confiscate the property which is the proceeds, or the instrument of a ML offence, as defined in AML Law Article 2. In addition, as an attempt to engage in ML is also an offence under Article 3(2), seizure and confiscation extends to property which was intended to be used in the commission of a ML offence.

234. Under Article 32 of the AML Law, seizure and forfeiture extends to assets intended to be used in the commission of an AML offence. 'Property' or 'Assets' are not comprehensively defined in Article 2 of the AML Law, and does not include property indirectly derived from unlawful activity.

235. It is not clear that property is liable to forfeiture regardless of whether it is held by a third party.

236. As noted previously, the Indonesian AML Law does not criminalise all forms of proceeds of crime (see Recommendation 1) and the AML Law does not allow for confiscation of all property derived directly or indirectly from proceeds of crime. As such, income, interest and profits from proceeds of crime are not specifically caught by the AML Law, and "assets" which

are clearly within the definition of assets in the AML Law Article 2 definition of "assets" would not appear to be available for confiscation. The limitations in the AML Law in relation to property and assets "derived" from predicate offences, with intent to conceal or disguise the origin of assets, severely limit the effective operation of the AML Law to a very narrow range of possible assets. The AML Law and Criminal Code do not allow seizure of legitimate property to be confiscated up to the equivalent value of the proceeds.

237. Under the AML Law the standard of proof to be applied by courts to determine whether property is the subject matter of a ML or TF offence is the civil standard of 'on the balance of probabilities'. However, Article 35 of the AML Law provides that a defendant has the onus of proof in a ML offence court proceeding (including trial) to establish that the assets are not proceeds of crime. It appears for all other predicate offences the standard of proof to determine confiscation is the criminal standard of 'beyond reasonable doubt', and the onus of proof is on the prosecution.

238. The is no provision in the AML Law to allow confiscation of all property, except for property "derived" from a ML offence and which property continues to be held by a person convicted of an offence. There is at present no Indonesian law allowing direct seizure and confiscation from a third party not convicted of an offence.

***Provisional measures***

239. There are provisional measures in the AML Law specifically available to the PPATK investigations to restrain proceeds of crime, in Articles 31, 32, 33 which allow investigators, public prosecutors and judges to restrain "assets". Article 32 of the AML Law stipulates that an investigator, public prosecutor or judge is authorised to order a Provider of Financial Services (PFS) to freeze the assets of any person reported by the PPATK to the investigator, any suspect or defendant, which are known or reasonably suspected to be the proceeds of crime. The PFS is obliged to freeze the assets immediately on receipt of the order for freezing, and to submit a statement concerning the freezing of assets to the investigator, public prosecutor or judge no later than one business day from the date of the carrying out of the freezing. Article 34 gives judges the power to confiscate assets reasonably suspected to be the proceeds of crime based the examination of the defendant in court, if they have not yet been confiscated by the investigator or prosecutor.

240. Criminal Procedure Code Articles 38 to 49 and 128 to 130 are available to seize the property which is the proceeds, or the instrument, of a ML offence, as defined in AML Law Article 2. In addition, as an attempt to engage in ML is also an offence under Article 3(2), seizure and forfeiture extends to property which was intended to be used in the commission of a ML offence.

241. 'Property' or 'Assets' are not comprehensively defined in Article 2 of the AML Law, and does not include all property indirectly derived from unlawful activity. Article 2 of the AML Law stipulates that proceeds of crime includes assets derived from terrorism, and that assets "employed directly or indirectly for terrorist activities shall be regarded as the proceeds of crime." However, it does not specify that assets intended or allocated for use in terrorism are considered proceeds of crime.

***Restraint of property***

242. Ex Parte procedures are allowed to restrain "assets" by use of the Criminal Code provisions Articles 38 to 47 and Articles 128 to 130.

***Powers to identify and trace property***

243. Powers of the National Police, Customs, KPK and other law enforcement bodies are limited regarding investigation of property that is the proceeds of crime and very limited in relation to property which may become the subject of confiscation, as these are not specifically provided for in the AML Law or elsewhere.

***Rights of bona fide third parties***

244. There is no Indonesian law at present specifically directed to the protection of the rights of bona fide third parties in freezing actions consistent with the standards provided in the Palermo Convention. At present third parties are required to bring a civil action in order to make a claim in relation to seized property. There is a similar right in the Anti Corruption Law 20/ 2001 Articles 18 & 19 which allows a third party to bring a civil action within two months or lose any right to bring an action or to make a claim.

***Power to void actions***

245. There is no specific Indonesian Law governing the avoidance of void or voidable transactions, in relation to transactions done with the knowledge that they are dealing with proceeds of crime to prevent the proceeds from becoming unavailable or to prevent flight of the proceeds.

***Summary***

246. While Indonesia does not have a comprehensive 'Proceeds of Crime' Law, confiscation is possible pursuant to those measures that are available within the Criminal Procedure Code, laws creating specific predicate offences, and the AML Law.

247. Laws exist for the seizing and confiscation of property in relation to evidence collection in relation to offences of narcotics trafficking and corruption and, ML offences. Provision for seizing and/or confiscation include the Customs Law (Law 11/1995) Article 62, the Narcotics Law Articles 77, the Corruption Laws, Article 38B, and the Tax Collection Law 19/1997 Articles 12 to 28. Provisions under the Narcotics laws are generally in relation to evidence collection.

248. The Anti-Corruption Law 31/1999, Articles 18-19 permits forfeiture of any property which is the subject-matter of a corruption offence, or has been used in the commission of such an offence. 'Property' under the Corruption Law is not defined but Article18 (1)(a) allows confiscation of mobile goods and immobile goods or immobile goods used for or obtained from the criminal act of corruption. It is unlikely that immobile goods would extend to real estate or strata title type home units or the like because of the use of the term "goods". There is no definition of assets or goods to include real or personal property of every description, including money, whether situated in Indonesia or elsewhere, whether tangible or intangible, and includes an interest in such property and the documents of title to such property. Property is not specifically defined to extend to property that is the indirect proceeds of an offence under the Corruption Law. The law does however allow for a compensation order, not "forfeiture", of a sum of money corresponding to two times the value to the wealth obtained, not property derived.

249. In addition Law 20/2001 makes further provisions in relation to corruption case seizure, and Article 38B specifies that a defendant accused of a corruption offence shall have the onus

to prove his wealth for which he has not been indicted is not from corruption. Article 38B(2) stipulates that if a defendant has not established his wealth is not from corruption then the judge can confiscate it partially or wholly. Article 38C is a catch-all to allow further state civil action to forfeit any other wealth not yet confiscated under Article 38B.

250. The Customs Law permits forfeiture of goods if the Court is satisfied that they were the subject matter of or were used in the commission of an offence against the Customs Law. Forfeiture of such goods is possible without prosecution.

***Proposed Amendments***

251. Indonesia has drafted an Asset Forfeiture Bill, which, if enacted, would give a wide range of powers to investigating officials to identify and trace property.

**Recommendation 32 (confiscation/freezing data)**

**Table: Property frozen, seized and forfeited under the AML Law**

| | **2003** | **2004** | **2005** | **2006** | **2007** |
|---|---|---|---|---|---|
| **Number of freezing order issued under Article 32 of the AML Law** | NIL | NIL | *) | *) | 566 *) |
| **Value of property frozen (Rp. Billion)** | 2 | - | 4.601 | 1.0079 | 3 |
| **Number of seizures - Article 34 AML Law** | 0 | 0 | 0 | 0 | 0 |
| **Value of property seized** | - | - | - | - | - |
| **Value of property forfeited** | - | | | | |
| **Value of property returned** | - | - | | | |

*) Indonesia's statistics do not include yearly figures, only the total number of freezing orders issued between 2005 and early 2008.

**Table: Property seized and forfeited under the Anti Corruption Law**

| **Year** | **Number of prosecution cases** | **Value of property seized** | **Value of property forfeited** | **Value of property received by State*** |
|---|---|---|---|---|
| **2002** | | | | |
| **2003** | | | | |
| **2004** | 2 | | NIL | NIL |
| **2005** | 20 | | Rp. 11.381 billion | 6.959 billion |
| **2006** | 23 | | Rp. 30.292 billion | 12.991 billion |
| **2007** | 12 | Rp 6 billion | Rp. 117.357 billion | 15.294 billion |
| | | | | |
| **Totals** | 57 | Rp 6 billion | Rp 159 billion | Rp 35 billion |
| **Total (US$ approx)** | | **US$ 600,000** | **US$15.9 million** | **US$3.52 million** |

In addition Rp. 103,715 million remains unpaid compensation ordered to be paid & Rp.8,033 million of goods are scheduled to be auctioned.

***Property seized and forfeited under the Customs Law***

252. Indonesia has not recorded statistics of any property seized or forfeited under the Customs law.

**Effectiveness**

253. Articles 38 to 49 of the Criminal Procedure Code have been used to obtain forfeiture in a small number of cases of economic crime. Statistics provided by Indonesia for the period 2004 to 2007 inclusive demonstrated that during this period, Articles 38-49 had been used in a number of cases of corruption, fraud, criminal breach of trust, cheating, and illegal logging. In each of these years Articles 38- 49 had been used in those cases to obtain forfeiture in these six offence categories.

254. In practice the evidence relied upon to establish that property is the subject matter of a ML offence may be essentially the same as the evidence required to establish that it is the proceeds or instrument of a predicate offence. It is perhaps for this reason that Indonesian prosecutors in general use Articles 38-49 of the Criminal Procedure Code for confiscation.

255. Based on the statistics provided there is, overall, very weak implementation of the provisions to freeze, seize and confiscate the proceeds of crime.

256. Statistics indicate that measures for freezing and confiscation of property in ML and corruption matters are rarely used and that ML investigations have not been conducted as a matter of course, and confiscation orders do not appear to have sought in all appropriate cases. Amounts forfeited are low, which can be attributed to the first cases only being pursued in 2005 and the slow rate of progress of criminal matters through the courts.

257. A positive step is the introduction in the AML Law Article 35 of the reverse onus of proof to be applied by courts in determining whether property is the subject of an ML offence. Indonesia also applies this reverse onus to property in prosecutions under the Anti-Corruption Law 31/1999 Article 37A. However, the meaning of the reverse onus of proof is unclear and there is no procedural law in Indonesia governing this reverse onus provision, making the implementation difficult to achieve.

## 2.3.2 RECOMMENDATIONS AND COMMENTS

258. Indonesia lacks comprehensive provisions for confiscation, freezing, seizing and tracing property which is the proceeds or instruments of predicate offences

259. With regard to freezing and seizing provisions, and provisions for identification and tracing of property, all such measures under the AML Law are predicated on the reasonable suspicion that property is the subject matter of a ML offence, or is evidence in relation to it, or that such an offence has been or is about to be committed.

260. Indonesia should ensure that:

- comprehensive measures are available to identify, freeze and confiscate proceeds and instruments of all serious offences;
- the available reverse onus of proof provisions are able to be implemented and are supported by appropriate procedural instructions for police, prosecutors and the courts.
- Indonesia should consider:
  - the enactment of a single and comprehensive ‘Proceeds of Crimes Law’ to deal with the identification, freezing and confiscation of proceeds and instruments of all serious

offences and including the seizing and confiscation of legitimate assets of equivalent value to the proceeds.
- making the standard of proof for confiscation the reverse onus civil standard in all confiscation matters.
- Specifically providing for confiscation of indirect proceeds.

2.3.3 COMPLIANCE WITH RECOMMENDATIONS

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.3** | **PC** | • Comprehensive measures to trace, freeze and seize the widest range of property that represents proceeds of crime are not yet in place.<br>• Statistics do not show effective implementation of the existing provisions for provisional measures and confiscation. |
| **R.32** | **PC** | • Consolidated statistics were not available in relation to implementation of measures to freeze, seize and confiscate the proceeds of crime.<br>• NB this is a composite rating and does not derive solely from the factors listed here. |

## 2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

2.4.1 DESCRIPTION AND ANALYSIS

261. The UN Al-Qaida and Taliban Sanctions Committee formed pursuant to United Nations Security Council Resolution 1267 (1999) (UNSCR 1267) lists a number of Indonesians, including a number of residents of Indonesia. Sixteen Indonesians and two Indonesian-based non-profit entities are listed on the UNSCR 1267 Consolidated List.

262. Indonesia lacks an effective system or legal powers to give effect to its obligations to freeze assets held in Indonesia of persons and other entities included on the 1267 Committee Consolidated List. In addition, no extraordinary procedure in line with the Special Recommendation III requirements have been elaborated in Indonesia to deal with national lists based on United Nations Security Council Resolution 1373 (2001) (UNSCR 1373).

263. Indonesia has no law or effective procedures to freeze terrorist assets without delay and without prior notice. Indonesia relies on the investigative process and upon existing measures under the Criminal Procedures Code to freeze funds of entities listed on the UNSCR 1267 Consolidated List and to freeze assets of persons in accordance with UNSCR 1373. Indonesia does take steps to distribute the UNSCR 1267 Consolidated list. The inter-agency process to issue freeze orders based on suspicion of a criminal offence, includes the Foreign Ministry, Attorney General, and BI and takes several weeks from UN designation to bank notification.

***S/RES/1267(1999)***

264. Indonesia has not established the necessary authority to freeze without delay the funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with UNSCR 1267.

265. Indonesia adopts a judicial process for freezing terrorist assets, which is not able to freeze UNSCR 1267-list assets without delay as required under the FATF standards. Indonesia's process requires POLRI or the AGO to establish sufficient evidence of a specific criminal offence of terrorism or TF offence under Indonesian law before they are able to freeze terrorist assets. The phrase "without delay", for the purposes of UNSCR 1267, means, ideally, within a matter of hours of a designation by the Al-Qaida and Taliban Sanctions Committee.

266. The only measures available in Indonesia to implement SRIII are related to powers to seize "evidence" of a specific terrorist act. It is not a crime to be a listed terrorist in Indonesia. The limited available measures are:

- the general power of seizure conferred by sections 39-49 of the Criminal Procedure Code, whereby police may seize property found in circumstances which create suspicion that an offence has been committed;
- AML Law, Article 32, which authorises the freezing of property; and
- Article 29 (i) of the of the Anti-Terrorism Law , that is law 15/2003 Government Regulation in Lieu of Legislation Number 1 Year 2002 Concerning Combating Criminal Acts Of Terrorism

267. None of these laws is able to operate effectively as a mechanism for freezing without delay and forfeiture of funds associated with designated terrorist entities. The context of Articles 38-49 of the Criminal Procedure Code indicates that it is restricted to goods which are suspected of having been stolen, or the proceeds of sale of such goods. It is unlikely to be capable of applying to the property of persons who may have committed terrorist acts. In addition Articles 38-49 do not confer power to seize property in the absence of a suspicion that an offence has been committed. This means that they cannot authorise the seizure of property on the basis only that it is property of a terrorist entity, outside the context of specific terrorist acts. Similar restrictions apply to the AML Law Article 32 provision.

268. Article 29 (i) of the of the Anti-Terrorism Law holds that

> Investigators, public prosecutors or judges shall be authorised to order banks and other financial institutions to freeze the assets of any individual whose assets are known or reasonably suspected to be the proceeds of any criminal act connected to terrorism.

269. Article 29 of the Anti-Terrorism Law is under Chapter V of the Regulation, which is headed "CHAPTER V - INVESTIGATION, PROSECUTION AND INQUIRY DURING THE COURT TRIAL". Article 29 only applies to steps that can be taken during criminal investigations or court proceedings. This provision is only available to freeze assets in the context of specific terrorist acts. This does not provide for effective freezing of terrorist assets without delay as understood under UNSCR 1267 or UNSCR 1373.

***UNSCR 1373 and freezing mechanisms of other jurisdictions***

270. There is no national mechanism to designate persons in the context of UNSCR 1373, nor a comprehensive mechanism in place to examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions.

***Jointly held property and derivative property***

271. No system of laws is available to seize assets wholly or jointly owned and controlled by UNSCR 1267 or UNSCR 1373 designated persons. There is no law to seize from designated persons funds or other assets derived or generated from designated persons, terrorists or those who finance terrorism.

***Communication with and guidance for the financial sector***

272. While the UNSCR 1267 Consolidated List is regularly published on the PPATK web site, Indonesian authorities have not provided clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. BI and AGO circulate the UNSCR 1267 Consolidated List to all banks operating in Indonesia, however this inter-agency process is too complex and inefficient to send out asset-freezing instructions in a timely manner. In addition, no clear instructions are provided to financial institutions as to what will happen when assets are discovered. Banks also note that without very specific information, the preponderance of similar names and vague addresses, along with lack of a unique identifier in Indonesia, make identifying the accounts very difficult.

***De-listing, unfreezing, access to frozen funds and challenges to freezing orders***

273. Indonesia does not have any provisions relating to considering de-listing, unfreezing funds of de-listed persons or of persons inadvertently affected by a freezing mechanism upon verification that the entity is not a designated person.

***Freezing, Seizing and Confiscation in other circumstances***

274. As mentioned above, Indonesia does have powers to freeze and confiscate terrorist related assets in the context of a criminal investigation of terrorist acts or TF.

275. As outlined above, Article 29 (i) of the of the Anti-Terrorism Law provides for investigators, public prosecutors or judges to freeze assets known or reasonably suspected to be the proceeds of any criminal act connected to terrorism.

276. Chapter III of the Anti-Terrorism Law sets out “Criminal Acts of Terrorism” which includes Articles 11, 12 and 13, the TF offences. Article 29 only applies to steps that can be taken during criminal investigations or court proceedings. This provision is only available to freeze assets in the context of specific terrorist acts.

277. The requirement for proof to the standard of "known or reasonably suspected" at Article 29 of the Anti-Terrorism Law is too high in the circumstances of obtaining information on these TF cases before a freezing order can be issued.

278. Provisions of the Criminal Code have application to seize property pursuant to TF offences committed under Articles 11, 12 and 13 of the Anti-Terrorism Law. The Criminal procedure Code Articles 38 to 46 can apply to a case of a TF asset on which information has been received.

279. Up until 2004 Indonesia took action to freeze accounts of 17 individuals and one corporate entity in relation to terrorism, although no forfeiture or confiscation has been undertaken. Indonesia did not have clear records of which of these 17 terrorism-related accounts were

frozen using Criminal Code, Anti-Terrorism Law or AML Law provisions. While statistics provided show no funds were frozen in relation to these 17 entities, Indonesian authorities indicated that most of the frozen accounts had no money in them at the time of freezing, or if they did the amount was low at around Rp. 200,000,000 (approx US$2000).

280. In December 2007 a number of defendants were charged with terrorist financing offences. Those matters were heard by the courts in early 2008 and in April 2008 three persons were convicted for terrorist TF offences. In the case of TAUFIK MASDUKI, the court ordered that in the light of the conviction, evidence of cash in the amount of Rp. 7,000,000 (approx US$700) shall be forfeited to the state. This took place well after the onsite visit and has not been considered when determining the rating for Special Recommendation III.

***Protection of bona fide third parties***

281. Indonesia has no current law to protect the right of third parties in relation to TF matters. As such, third parties are left to their "right" to bring a civil action in relation to any seized property.

***Monitoring compliance***

282. Indonesia does not have laws and other measures to implement and monitor UNSCR 1267 and UNSCR 1373.

283. The Evaluation Team was told of no case in which any seizure of assets had been made in a case of TF offences Articles 11, 12 and 13 of the Anti-Terrorism Law. The Evaluation Team was advised of only one TF case having been prosecuted in Indonesia, but in that case there was no seizure of any "asset" associated with the TF offence. The view of the Evaluation Team is that there are insufficient mechanisms in place to allow seizing and freezing TF funds and other assets under current Indonesian law. This is demonstrated by the lack of cases where terrorist funds or any other terrorist assets were frozen or seized in a TF case in Indonesia.

**Recommendation 32 (terrorist financing assets frozen and confiscated)**

284. Statistics are not well kept or available on the number amount and timing of terrorist-related assets frozen, confiscated or released. Up until 2004 POLRI had ordered the freezing of accounts owned by 17 individuals and one company suspected of connection with acts of terrorism. Clear statistics were not available to indicate which powers were exercised (Criminal Code, Anti-Terrorism Law or AML Law provisions) to freeze these 17 accounts.

285. Statistics provided show that while the accounts were frozen, no funds were frozen in relation to these 17 entities. Indonesian authorities did, however, indicate that most some of the frozen accounts may have had a small amount of funds in them at the time of freezing, at approximately Rp. 200,000,000 (approx US$2000). It is not clear that these amounts remain frozen.

286. Two of the persons whose accounts were frozen are designated by the UNSC 1267 Taliban Al Qaeda Sanctions Committee. Both accounts remain frozen. POLRI indicates that there are two frozen accounts related to 1267 entities Parlindungan Siregar and Abdul Aziz (a.k.a Imam Samudra).

287. One TF prosecution was carried forward by the courts in 2004, which involved the financing of the bombing of the Jakarta Marriott Hotel in August 2003. The defendant received a six year prison sentence, but no assets were frozen or confiscated in relation to this case.

**Table: Details of the 18 entities subject to account freezing relating to terrorism**

| Name of Accounts frozen | 1267 list | Amount frozen | TF offence | Conviction for Terrorism offences | Confiscation | Unfrozen |
|---|---|---|---|---|---|---|
| Ali Gufron alias Muklas | No | NIL | No | Death sentence for 2002 Bali bombing | | |
| Parlindungan Siregar | Yes | NIL | No | No | | |
| Hernianto | | NIL | N | 5 years-imprisonment for harbouring perpetrator of 2002 Bali bombing | | |
| Siliwangi alias Sardona | No | NIL | N | 6 years prison – support of 2003 JW Marriot Bombing | | |
| Abdul Aziz alias Imam Samudra | Yes | NIL | N | Death sentence for 2002 Bali bombing | | |
| Nasarudin bin Adbul Jalil | No | NIL | N | N | | |
| Ramiah Nasution | No | NIL | N | N | | |
| Susmiati | No | NIL | N | N | | |
| Tursiak | No | NIL | N | N | | |
| Syarifah | No | NIL | N | N | | |
| Zarniyah | No | NIL | N | N | | |
| Sujiati | No | NIL | N | N | | |
| Fahjri | No | NIL | N | N | | |
| Edi Indra alias M. Rais | No | NIL | Yes | 6 years imprisonment - supporting 2003 JW Marriot bombing | | |
| Utomo Pamungkas or Mubarok | No | NIL | | Life – 2002 Bali bombing | | |
| Muthmainah | No | NIL | N | N | | |
| Husseian | No | NIL | N | N | | |
| Faiz bin Abu Bakar Bafana | No | NIL | N | N | | |
| PT. Yasa Edukatama | No | NIL | N | N | | |

288. While Indonesia has successfully prosecuted 367 terrorists in recent years, no statistics are available to show that any property was frozen or confiscated arising from any of the 367 successful terrorism prosecutions.

**Effectiveness**

289. Indonesia has not implemented UNSCR 1267 and UNSCR 1373 in a manner that meets the specific requirements of FATF Special Recommendation III. Specifically, Indonesia has no clear legal mechanism to trace and freeze assets of individuals or entities on the UNSCR 1267 list. In addition, there is no clear administrative or judicial process to implement both UNSCR 1267 and UNSCR 1373. While BI circulates the consolidated list to all banks operating in Indonesia, as noted above, in practice this inter-agency process is too complex and inefficient to send out asset-freezing instructions in a timely manner. In addition, no clear instructions are provided to financial institutions as to what will happen when assets are discovered. Banks also note that without very specific information, the preponderance of similar names and vague addresses, along with lack of a unique identifier in Indonesia, make identifying the accounts very difficult. Attempts to use a criminal process are confusing and ad hoc at best, and rely on lengthy investigation processes before consideration can be given to freeze assets.

## 2.4.2 RECOMMENDATIONS AND COMMENTS

290. Indonesia should establish clear legal mechanisms and administrative or judicial processes to trace and freeze without delay assets of entities included on the UNSCR 1267 Consolidated List.

291. Indonesia should establish clear legal mechanisms and administrative or judicial processes to implement its obligations under UNSCR 1373.

292. Indonesia should revisit its current communication and dissemination process related to UNSCR 1267 and implement effective laws and procedures to:

- give clear instructions and guidance to all relevant sectors, including the DNFBPs, on their obligations in this respect, defining in particular what assets the freezing orders target and their relation to the individuals and entities involved;
- ensure that there are efficient communication lines between law enforcement, supervisors, financial institutions and affected sectors in relation to SR III;
- ensure that there are sufficiently broad authorities to identify, designate and sanction elements covered under paragraphs 1(c) and 1(d) of UNSCR 1373;
- implement a screening procedure and authority responsible for evaluating foreign list-based requests;
- implement effective compliance monitoring by supervisory bodies for SR III within an adequate sanctioning framework;
- establish appropriate and publicly known procedures for de-listing, unfreezing or in any other way challenging the listing and freezing measure before a court or other designated authority; and
- enact regulations on (restricted) access to the frozen assets and protecting the rights of *bona fide* third parties.

293. Indonesia should establish effective mechanism to trace, freeze, seize and confiscate property terrorist assets and other property associated with TF offences in Indonesia.

2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.III** | **NC** | • No effective system to implement UNSCR 1267, despite very serious terrorist threats and entities listed on the 1267 Committee consolidated list living openly in Indonesia and organisations listed on the consolidated list having a presence in Indonesia.<br>• No effective system to implement UNSCR 1373<br>• No effective mechanism to confiscate property associated with TF offences in Indonesia.<br>• Statistics do not support effective implementation of SRIII |
| **R. 32** | **PC** | • Statistics on actions to freeze, seize or confiscate terrorist assets are not well kept.<br>• NB this is a composite rating and does not derive solely from the factors listed here. |

## 2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)

2.5.1 DESCRIPTION AND ANALYSIS

294. The PPATK (Pusat Pelaporan Dan Analisis Transaksi Keuangan), also known by its English terminology as the Indonesian Financial Transactions Reporting and Analysis Center (INTRAC), was established on 17 April 2002 under the AML Law (Article 18) with the authority to execute the Government policy on preventing and eradicating the crime of ML. PPATK, which is considered the pivotal agency in Indonesia's AML regime, became fully operational on 20 October 2003. Currently, PPATK maintains a single office located in Jakarta, but may establish additional regional offices if necessary.

295. The PPATK is led by a Head appointed under the authority of the AML Law. The Head is assisted by four Deputy Heads comprising the following divisions: (1) Research, Analysis and Inter-agency Cooperation, (2) Legal and Compliance, (3) Technology and Information, and (4) Administration. The responsibilities of the Head and Deputy Heads have been set out at a high level in Presidential Decree Number 81 Year 2003 concerning the Organizational Structure and Working Procedure of the PPATK.

296. The PPATK's primary function is to provide financial intelligence to law enforcement and provide inter-agency cooperation for preventing and eradicating ML and TF, as well as supporting a sound domestic financial system as part of Indonesia's AML regime. In carrying out this mission PPATK receives and analyses suspicious transaction reports (STRs), cash transaction reports (CTRs) and other information, as well as distributing the analysed reports to law enforcement agencies. The PPATK also encourages cooperation with domestic and international agencies with regards to preventing and eradicating ML and TF. In addition PPATK prepares and make recommendations to the government to provide direction for national policy in the area of prevention and eradication of ML, and other serious crimes.

297. PPATK is an independent body that reports directly to the President. As such, no party whatsoever may intervene in any form whatsoever in the implementation of the PPATK's functions and authority.

298. The core FIU functions of PPATK are set out in Article 26 of the AML Law, that is receipt and analysis of STRs and other information and dissemination of financial intelligence to law enforcement agencies.

***Receiving STRs and CTRs***

299. A principal function of the PPATK is to collect and analyse STRs and CTRs made by Providers of Financial Services (PFSs) and to report to the Police and Public Prosecutors the results of such analyses which indicate ML. The PPATK also facilitates receipts of off-line and manual reports. As of January 2005, all large- and medium-scale commercial banks have already used the on-line reporting channel to send STRs and CTRs. At the time of the on-site visit, roughly half of the reports have been received electronically through an on-line database. The remainder of the reports which are received come to the PPATK via fax and take about three days to be entered into the PPATK database.

***Analysis of STRs and CTRs***

300. In implementing duties as mandated in Article 26 of the AML Law, the Research and Analysis Division of PPATK is responsible for conducting the analysis on the STRs that are submitted by the PFSs. Implementation of analysis by PPATK is performed by obtaining information from PFS, domestic law enforcement agencies as well as assistance from foreign FIUs. This analysis may be used as supporting documents by law enforcement agencies when conducting preliminary or full investigations of ML and other predicate crimes.

301. The PPATK has developed an information management system and methods to analyse financial transaction reports. The IT Division of PPATK has successfully completed development of a reporting application named TRACeS which has been in use since January 2004. It has the capability to facilitate PFSs to execute on-line STRs and CTRs and for PPATK management to receive, view, analyse, and disseminate STRs and CTRs according to their urgency. Currently, relatively few STRs have been analysed compared with the high volume of STRs and CTRs that are being received (also see section on effectiveness). However, PPATK's approach is to focus on analysing the reports that indicate the best targets for law enforcement thus focusing on quality verses quantity.

302. PPATK analysts utilise the STR Priority Matrix to determine the relative priority for analysis of particular STRs (Low, Medium, High and Urgent priority). Factors considered in determining the priority include the timing of suspicious action, amount of transaction, risk of customer, clarity of ML indicators, related to international accounts/entities and relation to existing STRs/STRs on the PPATK database. PPATK will take immediate action and supply information to the prosecutors when they request such information in the course of an initial or ongoing criminal investigation. Plans are in hand to further enhance the quantity and quality of the computerised analysis of STRs, CTRs and other data.

303. Typical analytical reports produced by PPATK for dissemination include a profile of the party who is subject of the STR, narrative on result of analysis and conclusions regarding possible underlying offences. The analysis will evaluate transactions, pattern of transactions, relations with other parties and provide indications of elements of particular crimes.

***Dissemination of STRs and CTRs***

304. Article 26(g) of the AML Law authorises the PPATK to disseminate to POLRI and AGO the results of analysis of STRs and other information which indicated money laundering. a competent authority that has duty to conduct investigation on ML cases (i.e. POLRI). In practice, this dissemination power is also used to provide information to POLRI to assist their investigation of predicate offences.

305. In practice, PPATK disseminates the results of its analysis to POLRI and to a wide range of enforcement agencies that are involved with investigating predicate offences. PPATK utilises Article 27(1) of the AML Law which provides that:

> Article 27(1)
>
> (1) In executing its duties, the PPATK shall have the following powers:
>
> a. to request and receive reports from Providers of Financial Services;
>
> b. to request information concerning the progress of investigations or prosecutions of money laundering that have been reported to investigators or public prosecutors;
>
> c. to audit Providers of Services for compliance with the provisions of this Law and guidelines for reporting financial transactions;
>
> d. to grant exemptions from the reporting obligation for Cash Financial Transactions referred to in Article 13 paragraph (1) sub-paragraph b.
>
> (2) Prior to carrying out audits referred to in paragraph (1) sub-paragraph c, the PPATK shall coordinate with other agencies supervising Providers of Financial Services.
>
> (3) In the exercise of the powers referred to in paragraph (1), the provisions of other laws related to bank secrecy and the secrecy of other financial transactions shall not apply to the PPATK.
>
> (4) The procedures for implementing the powers referred to in paragraph (1) and paragraph (2) shall be further stipulated by Presidential Decree.

306. Indonesia issued Presidential Decree 82/ 2003 on Procedures for Implementing Powers of PPATK. Article 15(3) of Presidential Decree 82/ 2003 provides that the Head of PPATK shall stipulate procedures for providing information, including the type of information and parties that may obtain information. In January 2006 the Head of PPATK issued Regulation 5/1/PER.PPATK/2006/INTERN regarding the Procedure on exchange of information. Article 3 of the Regulation governs that PPATK can disseminate information to:

> a. law enforcement authorities
>
> b. institutions which have power to supervise providers of financial services
>
> c. other government authorities which are related to the prevention and eradication of money laundering and other types of crime [predicate offense].
>
> d. other country's FIU

307. The above provisions provide a legal basis for dissemination of financial intelligence, the power to disseminate STRs and other financial intelligence for the purpose of TF investigations. However there may be a need to clarify the legal basis for dissemination of financial intelligence for the purpose of TF investigations to ensure that it is explicit and cannot be challenged in a TF prosecution.

308. The AML Law provides PPATK with the authority to request information regarding the progress of any ML investigation.

309. Domestic information exchange with law enforcement may be conducted spontaneously or based on a request. Information exchange between PPATK and POLRI has operated dynamically and is generally working well. Data is provided to law enforcement spontaneously by providing the results of analysis of an STR. Data is also disseminated to law enforcement based on an inquiry and then conducting research into databases of PPATK. If such information is not maintained in PPATK databases, it can be requested from providers of financial services.

310. Until the end September 2007, POLRI made over 200 requests for information to the PPATK and most had been complied with. Within that time period, the AGO had made more than 60 similar requests and KPK had made over 180 requests. Most of those inquires had been responded to. POLRI has provided feedback in regard with results of analysis sent by PPATK, in particular regarding following up action against such results of analysis. In principle, result of analysis of PPATK has met the needs of POLRI investigators and public prosecutors.

***Guidance***

311. In implementing one of its duties, the PPATK has issued guidelines on the procedure for reporting STRs subject to providers of financial services. Since PPATK was established, it has issued six Guidelines for Financial Service Providers:

- General Guidelines for Financial Service Providers on Prevention and Eradication of Money Laundering;
- Guidelines on Identification of Suspicious Financial Transactions for Financial Dealers;
- Guidelines on Identification of Suspicious Financial Transactions for Foreign Currency Traders and Money Transfer Service Business;
- Guidelines of the Procedure for Suspicious Financial Transactions for Financial Dealers;
- Guidelines on the Procedure for Suspicious Financial Transactions for Foreign Currency Traders and Money Transfer Service Business;
- Guidelines on Procedures of Reporting Cash Transaction Reports for Financial Dealers.

312. PPATK has indicated that it will continuously review and improve on these guidelines in accordance with international best practices and industry need.

***Access to information***

313. According to Article 27 of the AML Law, the PPATK has the powers to request and receive reports from Providers of Financial Services as well as the power to request information concerning the progress of investigations or prosecutions of ML that have been reported to investigators or public prosecutors. In practice, when PPATK receives inquiries (which relate to PFS data) from other relevant domestic agencies or other FIUs, the PPATK would then request the PFS to obtain the requested financial information.

314. All such requests from the PPATK concerning the required data or information are made in writing, by telephone or other means. Following the request, PFS would respond to PPATK by sending information through a STR submission mechanism.

315. Based on MOUs signed by relevant parties, PPATK may obtain information/data in relation with title ownership of vehicles, wealth reports of senior state officials, corporate ownership, passport, and information on persons who are coming in/out of territory of Indonesia as well as criminal records. In the absence of an MOU PPATK can request land titles information

from the State Land Agency. PPATK is negotiating with State Land Agency and Directorate General of Post and Telecommunication to allow PPATK to have information on property records and telephone subscribers.

316. As of August 2007, inquiries submitted by domestic agencies to the PPATK to request additional information available under Article 27 of the AML Law are as follows:
   a) 241 inquiries from Police;
   b) 40 inquiries from AGO;
   c) 174 inquiries from KPK;
   d) Others: 14 inquiries.

317. Based on a Memorandum of Understanding (MOU) and joint commitments between the Chief of National Police and the Head of PPATK, PPATK currently only has direct access to database of NCB-Interpol I 24/7. In the meantime, the PPATK cannot directly access the databases of various law enforcement agencies. The PPATK currently gains access to other law enforcement data through various MOU signed by relevant parties. Domestic information exchange is done on a cooperative basis and is determined through terms contained within the respective MOUs. In practice, domestic information exchange has operated through an appointed liaison officer who is seconded to PPATK. The FIU's access to law enforcement information is therefore limited in scope.

318. To enhance financial information exchange, the PPATK has entered into 18 domestic MOUs with the following entities: BI, BAPEPAM, Directorate General of Financial Institutions, DG Tax, DG Customs and Excise, Centre for International Forestry Research, KPK, POLRI and AGO, DG Immigration, DG Legal Administration, National Narcotics Board, Supreme Audit Board, Inspectorate General of Finance, Judicial Commission, Department of Forestry, Board of State Financial Supervision and Governor of Aceh. Regular meetings take place and cooperation is reportedly running smoothly. In addition, the PPATK works closely with the Communication Forum of Compliance Directors of Banks (FKDKP).

319. With regard to more recent efforts to eradicate endemic corruption in Indonesia, the PPATK now significantly supports the KPK (the newly established Corruption Eradication Committee) with financial intelligence information. In December 2004 the newly elected President of Indonesia signed a Presidential Instruction to all agencies to intensify efforts in combating corruption in line with their respective functions and roles. The Instruction also dictates the establishment of a national Plan of Action combating corruption for the years 2004 through to 2009. The Plan contains three components; namely preventive measures, repressive measures, and monitoring and evaluation, and is seen by the Indonesian authorities as a sustainable and transparent approach to combating corruption in an integrated and coordinated fashion.

320. The PPATK has very good physical security procedures, especially with respect to the computer hardware which houses the STR data. In addition, access to STR data via computer terminal is limited and can only be viewed by authorised persons. The AML Law has clear provisions to ensure that investigators, public prosecutors and judges must keep all information from obtained PPATK secret and if they violate this provision then they are subject to criminal sanction.

321. The PPATK produces in-depth annual reports which are published on its website. These reports (in English and Bahasa Indonesia), plus the PPATK website include statistics, typologies and trends as well as information regarding its activities.

**International Cooperation with other FIUs**

322. The PPATK was accepted as a member of the Egmont Group in June 2004. The PPATK has conducted and fully implemented the Egmont Group Statement of Purpose and its Principles Information Exchange Between Financial Intelligence Units for Money Laundering Cases, through intensively exchanging financial intelligence with other FIUs around the world.

323. At the time of the onsite visit the PPATK had concluded MOUs for the sharing of financial intelligence with 22 FIUs:

| | |
|---|---|
| Australia | Mexico |
| Belgium | Myanmar |
| Bermuda | New Zealand |
| Canada | Peru |
| People's Republic of China | Philippines |
| Cayman Islands | Poland |
| Italy | Romania |
| Japan | South Africa |
| Korea | Spain |
| Malaysia | Thailand |
| Mauritius | Turkey |

324. PPATK is currently at various stages of negotiation with other FIUs. See Recommendation 40 for further details.

**Recommendation 30 – Resources of the FIU**

325. Under Presidential Decree No. 3 Year 2004, the PPATK should consist of permanent staff (civil servants), seconded staff and contracted staff. To implement this Decree, the PPATK intends appointing permanent staff, and the Head of PPATK will have the power to set up the salary system, including bonuses, allowances and other remuneration for PPATK employees. However, for the moment the recruitment of permanent staff cannot be performed because the remuneration system is still being processed by the Ministry of Finance following the approval given by the Director General of Budget. In addition, the Head of PPATK has not yet been assigned as a government official entitled to recruit and employ permanent staff, as regulated by Government Regulation No.9 Year 2003 regarding the employment system of civil servants. The PPATK is aware of the need to give the necessary approvals to recruit permanent staff and the necessary measures would be undertaken. The Evaluation Team sees the recruitment of permanent staff to PPATK as a key component to ensure sustainability of the AML programme. At the moment, the various seconded personnel are employed on differing terms and conditions by their respective agencies, and this creates an uneven work environment for dedicated employees.

326. To improve human resources required in implementing its duties effectively, since January 2005 PPATK has recruited 19 employees of whom 15 are new staff - five personnel from Police, four personnel from the Ministry of Finance and two from the AGO - and four of whom are temporary employees. However, PPATK is expecting to amend Government Number 9 Year 2003 concerning Authority to Appoint, Rotate and Terminate Civil Servants immediately so that PPATK has that authority to recruit permanent employees as mandated in the law.

327. In addition, in order to improve the capacity of its employees, PPATK has encouraged its personnel to participate in Masters Degree programs both domestically and internationally, workshops, discussion forums, comparison studies, on the job training program.

328. The Board of Chairman of PPATK has determined that officials and employees of PPATK shall be appointed and shall take an oath, in an inauguration ceremony, to be official employees of PPATK prior implementing their duties. The oath for employees of PPATK contains obligations to obey disciplinary rules of employees and to keep information secret. The Board of Chairman of PPATK has also issued disciplinary rules of employees that are binding for all employees of PPATK.

329. The PPATK also regularly organises religious activities through discussion and dialogue in which all employees participate. Annual meetings and working meetings are usually supported with outbound activities with the intent of maintaining solidarity, harmony and integrity of all employees.

330. The PPATK provides training programs for all employees both organised by PPATK itself and other parties, domestically and internationally. This training program aim to ensure that employees of PPATK have knowledge and expertise to support the implementation of their duties.

**Recommendation 32**

**Number of STRs Submitted by Year**

| Period | | Received by | Number of STRs | Average per Month |
|---|---|---|---|---|
| Year 2001 | | BI | 14 | |
| Year 2002 | | BI | 124 | 10 |
| Year 2003 | Jan 1 ~ Oct 17 | BI | 153 | |
| | Oct 18 ~ Dec 21 | PPATK | 127 | |
| Year 2004 | | PPATK | 838 | 69 |
| Year 2005 | | PPATK | 2,055 | 171 |
| Year 2006 | | PPATK | 3,482 | 290 |
| Year 2007 | | PPATK | 4,554 | 506 |
| **Total STRs received as of Sep 30, 2007** | | | **11,347** | |

**Table: Breakdown of STRs disseminated to POLRI / AGO**

| Year | No. of Disseminations | No. of STRs | No of prosecutions |
|---|---|---|---|
| 2003 | 24 | 31 | |
| 2004 | 212 | 314 | 20 |
| 2005 | 111 | 144 | 16 |
| 2006 | 86 | 144 | 9 |
| 2007 | 85 (as of October) | 233 | 3 |
| **Total** | 518 | 866 | 48 |

**Information reports disseminated by PPATK to law enforcement or related agencies**

| Information | | Year | |
|---|---|---|---|
| | | 2006 | 2007 |
| **KPK** | Infor. | 16 | 27 |
| | STR | 25 | 41 |
| **The Coordinating Team for the Eradication of the Criminal Acts of Corruption[2]** | Infor. | 1 | 0 |
| | STR | 1 | 0 |
| **BAPEPAM** | Infor. | 2 | 4 |
| | STR | 2 | 11 |
| **Bank Indonesia** | Infor. | 4 | 2 |
| | STR | 3 | 10 |
| **Tax Office** | Infor. | 2 | 6 |
| | STR | 6 | 13 |
| **MoFA** | Infor. | 1 | 0 |
| | STR | 2 | 0 |
| **Forestry Dept** | Infor. | 1 | 0 |
| | STR | 1 | 0 |
| **Audit Board of the Republic of Indonesia (BPK)** | Infor. | 0 | 1 |
| | STR | 0 | 1 |

## Effectiveness

331. The effectiveness of the FIU will be further enhanced when PPATK is able to have more timely access to a wider range of information to support its analysis of STRs, CTRs and other financial intelligence.

*STRs received*

332. Total STRs obtained by PPATK from providers of financial services and total reporting parties have increased from year to year. As of October 2007, the PPATK has received approximately 11,740 STRs from 192 institutions. The volume of STRs has increased from an average of 10 per month in 2002, to 485 per month in 2007. PPATK also reported that it had received over 4 million cash transaction reports (CTRs).

*STRs disseminated*

333. As of October 2007, there were 518 cases referred by PPATK to POLRI and the AGO. Thus far, 48 cases/defendants have been successfully prosecuted, with seven of them charged with a ML offence. The Evaluation Team considers that the figure is a positive signal to produce timely outcomes of prosecutions for ML offences: one case involving terrorism; 24

[2] The Coordinating Team for the Eradication of the Criminal Acts of Corruption (Tim Tas TIPIKOR) is composed of 48 prosecutors, police, and state-owned enterprise staff and headed by the Assistant Attorney General in charge of special crime. Its goal is to uncover corruption of state-owned enterprises and government departments.

cases involving bank fraud and/or corruption in connection with ML; and 11 final judgments for ML offences.

### 2.5.2 RECOMMENDATIONS AND COMMENTS

334. Overall, the Evaluation Team was impressed with the operation of the FIU. It has improved its capacity to detect and process STRs. All large and medium scale commercial banks have already used the on-line reporting. The number of STRs has increased each year and PPATK is working hard at socialisation efforts to encourage more reporting. The staff members still remain seconded or on contract, but despite this their dedication is evident.

335. The Indonesian Government is strongly encouraged to take the necessary measures to appoint permanent PPATK positions on civil service terms at the earliest stage. The Evaluation Team sees the recruitment of permanent staff to PPATK as a key component to ensure sustainability of the AML programme. At the moment, the various seconded personnel are employed on differing terms and conditions by their respective agencies, and this creates an uneven work environment for dedicated employees.

336. Access to law enforcement data could be dramatically improved with computerized systems which would allow PPATK's analysts direct and timely access to case information from the relevant competent authorities.

337. Indonesia may consider clarifying the legal basis for dissemination of financial intelligence for the purpose of TF investigations to ensure that it is explicit and cannot be challenged in a TF prosecution.

### 2.5.3 COMPLIANCE WITH RECOMMENDATION

- Authorities should ensure that PPATK is able to have access, directly or indirectly to required financial, administrative and law enforcement information on a timely basis.

| | Rating | Summary of factors relevant to s.2.5 underlying overall rating |
|---|---|---|
| **R.26** | **LC** | • There are concerns with PPATK's ability to have access, directly or indirectly, on a timely basis to required financial, administrative and law enforcement information. |
| **R. 30** | **PC** | • Need for PPATK to have permanent staff<br>• NB this is a composite rating and does not derive solely from the factors listed here. |

## 2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28)

### 2.6.1 DESCRIPTION AND ANALYSIS

***Designated law enforcement authorities for ML and TF investigations***

338. The AML Law provides authorities to some law enforcement institutions in handling ML cases such as Indonesian National Police (POLRI), the Financial Intelligence Unit (PPATK), Attorney General's Office and the Court (the Supreme Court). Many provisions related to freezing, seizure, and confiscation under the authority of investigators, prosecutors and judges, are provided in AML Law.

339. Under the Indonesian legal framework, the ML offence is classified as a conventional criminal act subject to the Penal Code and the Criminal Procedure Code and investigation, prosecution and examination before the court on ML cases are referred to these laws. While there are many other criminal investigators throughout Indonesia, the POLRI is the sole law enforcement agency which has the authority to investigate cases of ML and TF. References to 'investigators' throughout this section refer only to POLRI investigators. The AML Law prevents other law enforcement investigators besides those in POLRI pursuing or participating in ML investigations.

340. The Economic Crime Division (ECD) within Directorate II/Special Economic Section of POLRI has responsibility for investigation of ML crimes and a specialist AML unit has been created within the ECD to improve this investigative capacity. Having a relatively new AML/CFT regime, Indonesian law enforcement lacks investigators who are adequately trained to proactively pursue the ML and TF offences. POLRI lacks basic capacity to effectively investigate and prosecute complex financial crimes.

341. Currently, investigators tend to pursue the predicate offence, without parallel investigation on ML offences, proceeds of crime or terrorist financing. There is an over-reliance by the investigators on data provided by the PPATK to commence ML and TF investigations.

342. Special Detachment 88 within the POLRI is responsible for investigating cases of terrorism including TF. When investigators require information on the flow of funds related with terrorist attacks, POLRI investigators always coordinate with PPATK.

343. The POLRI's Trans-National Crime Center (TNCC) intelligence team has the duty to counter terrorism and to conduct analysis including on TF issues. This includes gathering information and intelligence related to terrorism and financing of terrorists, analyzing, reviewing and evaluating that information and distributing it to the Chairman of POLRI. Products generated by TNCC are data on intelligence analysis that will be submitted to field investigators for preliminary investigative purposes. If a case is developed this material would then be delivered to a separate Task Force within the Deputy Attorney General for General Crimes.

344. The intelligence team within the TNCC, while relatively new, is a much welcomed step in that regard. Products generated by TNCC are based on data derived from intelligence analysis that are then submitted to investigators in the field for leads. TNCC therefore focuses more on analysis rather than pure investigative functions. In addition, there is no direct or

special relationship between TNCC at POLRI and Task Force within the Deputy Attorney General for General Crimes.

345. Cooperation across directorates within the POLRI is not common or formalized which may impede effective ML or TF investigations.

***Postponing or waiving arrest or seizure for the purpose of evidence gathering***

346. Article 32 of the AML Law allows investigators to collect all necessary evidence to prove every element of the ML offence. Under the AML Law, investigators may request information concerning the suspect's wealth from Providers of Financial Services (PFS). In requesting such information, the law on bank secrecy and other financial transactions secrecy provisions are not applicable. A delay in detaining and seizing assets controlled by investigators may be conducted in the interests of investigation. Investigators may therefore postpone an investigation and have the authority to order the PFS to freeze assets of the suspect known or reasonably suspected to be the proceeds of crime. This is accomplished when the investigator sends a letter to the concerned PFS. The letter would request that the assets be frozen and would provide details of the accounts or assets to be frozen. After being frozen, the assets may not be moved and are to remain in the PFS thus allowing for identification and the opportunity to gather further evidence.

347. The AML Law does not currently provide for similar provisions in relation to property or assets held outside of the control of PFSs, for example real property.

348. Police investigators conduct investigations of ML and TF cases using a variety of investigative techniques. These include listening devices, telecommunication interception of private communications and use of undercover operations, etc. These investigative techniques may be used within the limits set by Article 34 section (2) of the Criminal Procedure Code. Relevant powers are included in:

- Article 41 or Article 34 section (2) Law Number 8 Year 1981 concerning Criminal Procedure Code
- Article 30 Law Number 31 Year 1999 as amended by Law Number 20 Year 2001 concerning Anti-Corruption Law
- Article 42 section (2) Law Number 36 Year 1999 concerning Telecommunication
- Article 31 section (1) Law Number 15 Year 2003 concerning Anti-Terrorism Law
- Article 55 Law Number 5 Year 1997 concerning Psychotropic
- Article 66 Law Number 22 Year 1997 concerning Narcotic
- Article 5 section (1) Law Number 11 Year 2008 concerning Information and Electronic Transaction

349. POLRI provides the Field Guidance on Preliminary Investigation, which is an Annex to the Decree of the Chief of Indonesian National Police Number Skep/1205/IX/2000 as revised by revised with the Decree of the Head of CID (Criminal Investigation Department) No. Pol:Skep/82/XII/2006/Bareskrim 2006. The Field Guide contains a list of investigative techniques which can be applied for investigators in investigating all types of crimes such as observation, interview, surveillance and undercover operations. Indonesia may cooperate with other jurisdictions in investigating ML cases, including conducting special investigative techniques. Furthermore, ML typologies, techniques, and methods for police investigators are discussed on an inter-agency basis and are incorporated into various training seminars.

350. The Witness and Victim Protection Law (No.13/2006) affords protection to witnesses and victims of crime during investigation and prosecution. This Law also established the Witness and Victims Protection Agency (LPSK). The LPSK is mandated to provide protection not only to witnesses and victims, but also to their relatives as required. The law extends to cases of TF and ML.

351. POLRI does not currently establish investigative task forces across directorates to work both terrorism and TF aspects of investigations simultaneously. Nor does it establish task forces with other law enforcement or regulatory agencies to investigate ML cases.

***Prosecution of money laundering and terrorist finance cases***

352. According to principles in Indonesia's legal system, prosecutors do not work jointly with investigators from the beginning of an investigation. Where an investigator has concluded an investigation, they shall be obligated to promptly deliver the dossier of the case to the public prosecutor. Having received the results of an investigation, the public prosecutor will promptly study and research them and within seven days inform the investigator whether the results of the investigation are complete or incomplete. Where the results of the investigation are evidently incomplete, the public prosecutor shall return the case dossier to the investigator accompanied by an instruction on what must be done to make it complete. Within 14 days of the return of the dossier, the investigator must return the dossier to the public prosecutor. After the public prosecutor has received or accepted the return of a complete investigation from the investigator, he shall promptly determine whether or not the dossier of the case has met the requirements to be brought to the court.

353. In principal, there is constructive cooperation between the investigators and prosecutors in handling ML and TF cases. This cooperation is conducted based on the understanding among agencies of the importance of an "integrated criminal justice system". Investigators are considered the "evidence collector" while prosecutors are considered the "evidence presenter" whose role is proving charges before the court. Cooperation between investigators and prosecutors in handling ML cases is first conducted when a case is being handled by POLRI investigators. Thus, POLRI investigators usually contact a prosecutor to provide directions both formally and informally on a case.

**Recommendation 28**

354. In the course of conducting an investigation into a ML case, the investigator (i.e., POLRI) has the authority to conduct investigations in accordance with the Criminal Procedure Code and the investigators authority stipulated in the AML Law. Under the AML Law and the Criminal Procedure Code, investigators have the authority to search houses, seize evidence, issue a subpoena, block bank accounts, request hard copies of transaction documentation from bank accounts, and to arrest and detain persons. In collecting bank records, the provisions on bank secrecy shall not be applicable.

355. With respect to requesting documents or information held or maintained by providers of financial services or other businesses or persons, Article 33 of the AML Law stipulates that requests can be made via letters issued by the Chief of National or Regional Police, the Attorney General, the Head of Prosecutor's Office or the Head of a Panel of Judges. In requesting information on accounts, customers' data and other information from providers of financial services, additional evidence is not required to demonstrate a suspicion of ML. A

request letter submitted to financial services providers shall contain data regarding name and identity of persons, suspicion on a crime committed, name and identity of investigator/prosecutor/judges handling a case. Indonesian authorities indicate that Article 33 powers to obtain documents and information were regularly used in a number of successful ML investigations. Statistics show that numerous requests were made in conducting 19 separate ML investigations. These powers were also demonstrated effectively during the pre-investigative stage. -AGO and the courts do not retain statistics on their use of Article 33 powers.

356. In cases of investigating TF offences, with respect to requesting documents or information held or maintained by banks or financial institutions, Article 30 of Anti Terrorism Act stipulates that police, prosecutors or the courts can make requests to produce such records and documents. Such powers override any bank secrecy obligations. Article 30 can be used for the purpose of investigation on any criminal act of terrorism, regarding the assets of any person who is known or strongly suspected of having committed a criminal act of terrorism. Statistics were provided to demonstrate effective use of Article 30 powers.

357. In general practice, investigators request financial providers to produce the required information on customers as soon as possible. Usually financial service providers provide requested information within a maximum of two weeks, but sooner in many cases. This longer time period usually relates to data that is not available within its database and requires manual retrieval.

358. Legal means of proof in ML cases are based on Article 38 of the AML Law. Besides legal means of proof as stipulated in Article 184 of the Criminal Procedure Code, it shall also include other information delivered, obtained or maintained electronically, using optical devices or alike; and documents or notes of bank, both in writing and electronic in the context of existing legal means of proof stipulated in Article 184 paragraph (1).

***Powers to take witnesses' statements***

359. According to the Penal Code, investigators can obtain witness testimonies by examining witnesses both under oath and by regular testimony (deposition). ML investigators usually request information from witnesses who directly know, see or hear a case being investigated. This request is conducted by summoning witnesses concerned, asking questions required and preparing bills of a case against witnesses. Testimony is usually obtained under oath and transcribed. This is done using formal procedures in anticipation of witnesses being unavailable to attend to court later. Separate statistics were also available demonstrating the use of witness statements in terrorism cases.

**Recommendation 30 – Law enforcement agencies**

360. POLRI ML investigators are integrated into each of the relevant investigation directorates within POLRI. There is lack of dedicated organizational structure to investigate ML and TF cases. From a legal perspective, investigators are independent and no party may interfere with their duties whatsoever.

361. POLRI, as sole investigator under the AML Law, has limited human resources throughout Indonesia to conduct ML investigations. Directorate II/Special Economic Serves as a special unit within Headquarters to handle ML and banking crime. This AML Unit consisting of 20 investigators is located at the National Police Headquarters in Jakarta. In addition, 31

regional AML units each consisting of 20-35 investigators are dispersed throughout the country. There are a total of more than 750 POLRI investigators assigned to the various AML units.

362. TF cases are investigated by Detachment 88. In principal, any investigator may have function as ML investigators. If a case is occurs under the jurisdiction of the Regional Police Department, investigators from HQ of Police and Regional Offices may assist.

363. Some POLRI graduates from the Police Academy/University (PTIK) have been appointed as special officers to handle ML cases after obtaining adequate training in AML. They are then placed in regional offices throughout Indonesia. POLRI ECU has a capacity building program for ML investigations.

364. A total of 408 POLRI staff have received AML investigations capacity building. The POLRI Training Center includes investigative techniques on ML and TF, financial investigation and forensic accounting as part. POLRI Training Center routinely organises capacity building programs for officers regarding banking and ML crimes and 35 officers have participated from throughout Indonesia. Similar capacity building programs are also provided by Bintara POLRI. Courses provided by various police staff and senior officers colleges (PTIK, Sespim or Sespati) on ML have included discussion on typologies of ML, modus operandi, investigative techniques and some legal aspects such as freezing, seizing and forfeiting and requesting for information on customers' information from financial sectors. POLRI investigators also attend training on financial investigation, ML and forensic accounting in courses organised by various law enforcement agencies from across the globe.

365. In addition, PPATK also provides regional training to POLRI officers on ML and forensic accounting. PPATK engages in ongoing discussion with regional law enforcers.

366. The Criminal Procedure Code gives authority to public prosecutors to handle ML cases includes preparing charges, conducting prosecutions and proving ML in court. There are no definite statistics on the number of prosecutors responsible for handling ML and TF cases. Prosecutors are generalists in Indonesia and are expected to be able to prosecute any serious crime. All prosecutors receive instruction on ML and TF issues In the AGO Education and Training Centre. About 500 prosecutors have obtained special training on ML and TF issues.

367. Investigators of POLRI ECU are required to maintain secrecy and high integrity under the POLRI Doctrine, code of conduct and disciplinary rules. The Chairman of POLRI and profession and defence division under POLRI conduct supervision measures and sanction violations of such rules. POLRI investigators who violate doctrine and such rules shall be processed based on administrative law through the code of ethics and criminal proceedings.

368. The chairman of the AGO provides rules, mentoring; supervision and sanctions in cases where prosecutors violate disciplinary rules based on the ethical code of prosecutors (a.k.a. Tri Krama Adhyaksa). Every year the AGO announces its repressive measures conducted coordinated with the Prosecutorial Commission (Komisi Kejaksaan).

**Recommendation 32**

**Table: Money laundering investigations and details of related predicate offences**

| Investigations of ML (as of Oct 2007) | Investigations completed | Predicate Offences |
|---|---|---|
| 257 - POLRI | 32 | • Banking<br>• Fraud |

**Effectiveness**

369. Having a relatively new AML/CFT regime, Indonesian law enforcement suffers from having too few investigators who are adequately trained and who do not proactively pursue the ML and TF offences.

370. Investigators tend to pursue predicate offence, rather than tracking the proceeds of crime or investigating terrorist financing matters.

371. POLRI works closely with PPATK on ML and TF investigations, but there is an over-reliance on the data provided by the PPATK to work ML and TF cases.

372. The legal framework for AML prevents other law enforcement investigators besides POLRI actively participating in ML investigations. Investigators in the KPK, DG Tax and DG Customs and Excise all expressed the desire to be granted authority to actively work ML or TF investigations. Revisions to the AML Law should assist to address this.

373. Cooperation and communication between directorates within the POLRI is hampered by inadequate IT systems and a lack of a central repository to coordinate and disseminate case and intelligence information. This situation hinders smooth cooperation between the ECU and Detachment 88 on terrorism finance cases. Both units have complementary assets that if coordinated properly would enhance the POLRI's ability to track down terrorists. The ECU has the financial sector contacts and is building expertise in financial investigations, while the Detachment 88 has experience in tracking the movement and activities of terrorists. The ECU would greatly benefit from a case management system, a networked system and basic computer hardware.

2.6.2 RECOMMENDATIONS AND COMMENTS

374. POLRI lacks basic capacity to effectively investigate complex financial crimes. This has been recognised and great efforts have been made to build capacity, however, the training resources available and established capacity of POLRI to investigate ML cases needs to be strengthened. As the sole agency responsible for ML and TF investigations, POLRI should develop expertise to investigate complex financial crimes, including developing a pool of expert financial investigators, and have accounting and other expertise available on an as needs basis to support effective investigations.

375. Additional capacity building is required for prosecutors in the Attorney General's Office to successfully prosecute ML and TF cases. Additional training and specialised training should continue, and efforts should be placed on prosecuting persons for ML alone (particularly those persons not involved in the predicate offence but in the subsequent dealing of the proceeds of crime) and in parallel with predicate offences.

376. POLRI should establish a train-the-trainer program within the department to allow POLRI to regularly conduct basic and advance training as officers rotate in an out of the directorate.

377. POLRI should consider requiring officers to remain assigned to the AML or CFT unit for a period of two or three years. This will ensure that the POLRI will benefit from the expertise the officer has developed.

378. POLRI should encourage the creation of investigative task forces across directorates to work both terrorism and TF aspects of investigations simultaneously. The intelligence team within the TNCC, while relatively new, is a much welcomed step in that regard. Products generated by TNCC are based on data derived from intelligence analysis that are then submitted to investigators in the field for leads. TNCC therefore focuses more on analysis rather than pure investigative functions. In addition, there is no direct or special relationship between TNCC at POLRI and Task Force within the Deputy Attorney General for General Crimes.

379. POLRI should conduct an information technology assessment for ECD to adequately budget and equip POLRI with needed computers, software and databases. POLRI should develop and install an IT system for case management systems and link analysis and train investigators to use such systems.

- Indonesia should ensure that sufficient resources are available to ensure that ML and TF offences are effectively investigated and prosecuted.
- POLRI should proactively target ML and TF cases, rather than relying on PPATK referrals.
- Indonesia should consider allowing other enforcement agencies to investigate ML offences in addition to the lead role played by POLRI.
- Authorities should proactively pursue proceeds of crime investigations to trace criminal assets.
- Authorities should support enhanced cooperation across relevant directorates within POLRI to ensure that ML and TF cases are systematically pursued.
- Indonesia should continue to take steps to further develop a pool of expert financial investigators to be responsible for ML and TF investigations
- Indonesia should continue to take steps to further develop the capacity of the AGO to pursue complex ML and TF prosecutions.
- All investigative agencies are encouraged to maintain comprehensive statistics in relation to predicate offence investigations, ML and TF investigations, proceeds of crime investigations, referrals to the AGO, indictments, prosecutions and convictions.
- Investigation agencies are encouraged to maintain statistics on their use of powers to produce documents and other information in the course of ML and TF investigations.

2.6.3 COMPLIANCE WITH RECOMMENDATIONS 27 & 28

| | Rating | Summary of factors relevant to s.2.6 underlying overall rating |
|---|---|---|
| **R.27** | **PC** | • Inadequate resources applied to ensure that the offences are properly investigated, in particular parallel investigation of ML offence and underlying predicate offences.<br>• No demonstration that the offences, in particular TF offences, are being pursued proactively and systematically<br>• Over-reliance on receiving case leads from STRs<br>• Lack of capacity to undertake investigations (detailed financial inv skills) |
| **R.28** | **C** | • The recommendation is fully observed. |
| **R.30** | **PC** | • Inadequate resources applied to ensure that the offences are properly investigated<br>• Need to provide other LEAs the authority to investigate the ML/TF offences.<br>• Need for POLRI to have adequate technical resources and training<br>• NB this is a composite rating and does not derive solely from the factors listed here. |
| **R.32** | **PC** | • Statistics in relation to predicate offence investigations, ML and TF investigations, proceeds of crime investigations, use of investigation powers, referrals to the AGO, indictments, prosecutions and convictions are not well kept.<br>• NB this is a composite rating and does not derive solely from the factors listed here. |

## 2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX)

2.7.1 DESCRIPTION AND ANALYSIS

380. Indonesia has established a system for the cross border management and declaration of cash. This system pre-dates Special Recommendation IX, but has been updated with the enactment of the AML Law. Various Customs acts and the AML Law attribute the necessary administrative powers to Customs to perform their duties. In respect with cross border cash declaration or disclosure, there are a numerous convoluted laws, decrees and regulations. The cash declaration requirements do not cover bearer negotiable instruments. Other goods such as travellers' checks are not requested to be declared in a Customs Declaration. Reporting of Cross Border Cash Carrying has is being implemented by Directorate General of Customs and Excise (DGCE).

***The declaration system***

381. Article 16 of the AML Law contains a reporting requirement for any person taking cash into or out of Indonesia in the amount of 100 million Rupiah (approx US$10,000) or more, or the equivalent in foreign currency, which must be reported to the Director General of Customs and Excise (DGCE).

382. With respect to domestic currency, BI regulation No. 4/8/PBI/2002 stipulates the requirements and procedures for carrying of rupiah out of or into Indonesia. The purpose of this regulation is to monitor the circulation of domestic currency in order to safeguard and maintain the stability of the rupiah. This regulation stipulates that any person carrying 100 million Rupiah or more into or out of Indonesia must obtain prior authorization from BI. This permit (approval letter) is required to be delivered to a Customs and Excise officer when departing Indonesia. Upon entry, every person is required to verify the authenticity of the rupiah to a Customs and Excise officer at the port of arrival.

383. Ministry of Finance Regulation No.624/PMK.04/2004 takes into account the above mentioned requirements and amends the passenger declaration form (BC 2.2) to include a specific question asking passengers if they are carrying bank notes in Rupiah or other currency equal to 100 million Rupiah or more. This regulation also creates a separate form for declaring currency (BC 3.2). These forms are implemented through a separate Decree issued by the DGCE. Decree No. 01/BC/2005 covers the procedures for the cross border movement of cash (both domestic and foreign). Articles 2 and 3 of this Decree stipulates that anyone who takes out or brings in currency of an amount of 100 million Rupiah or more, or the same value in foreign currency (e.g., USD 10,500), must declare it to Customs using document BC 3.2. A separate Good Export Form (BC 3.0) must be used when exporting cash through cargo. Separate forms must also be used if the cash is brought in directly using cargo (BC 2.0) or courier service (BC 2.1). In the case of cash in the form of Rupiah, the bearer has an obligation to verify its authenticity to Customs.

384. Bearer negotiable instruments are not covered in the above-mentioned system.

***False declarations***

385. Decree No. 01/BC/2005 allows customs officials to examine the declaration from (BC 3.2) and/or the permit issued by BI to determine if the amount declared is truthful. Examination procedures apply to cash coming into and exiting out of a customs area. However, detailed examination procedures within this Decree only address domestic currency and deal with determining the authenticity of the Rupiah. Cash can only be restrained in cases where there is doubt of the originality of the Rupiah or in cases when it is known that the Rupiah is counterfeit. In such cases, the currency will be sent to the Police or DGCE Investigators. The POLRI could then launch an investigation. In cases where the examination determines that the rupiah is genuine after inspection, the rupiah must immediately be returned to the reporting party.

386. The legal basis for stopping and seizing physical cash at the border suspected to be related to ML and TF is contained within Excise Law Number 17 Year 2006 (which amends Customs Law Number 10 of 1995), Customs Law Number 39 Year 2007 (which amendments Customs Law Number 11 Year 1995) and its implementing regulations. The Excise Law provides general authority to officers of Customs and Excise to conduct examinations, ask questions, search, and hold goods and persons suspected to violate provisions that same law. This authority applies at the border and through covers goods that are mailed. This general

authority is supported by provisions in the AML Law, particularly with respect to the cross border cash reporting obligation which must be made to the DGCE. The Excise Law and various regulations provide the legal authority to conduct examinations on both imported and exported goods. Chapter 49 of the Indonesian Import Duty Tariff Book Fiscal Year 2007 defines the term 'goods' to include both domestic and international currencies. Part Three (Article 64 A) of the Excise Law mentions that goods related with terrorism and/or transnational crimes are subject to repressive measures by customs and excise officials.

387. These examination procedures are implemented through Finance Minister Decree Number 30/PMK.01/1997 and Government Regulation 21 Year 2006 which both address repressive measures in customs. Officials may therefore stop, examine, investigate and restrain goods, to include currency. This is conducted on a selective basis and includes typical customs authorities to search persons at the border. These decrees/regulations allow restrained currency to be transferred to investigators as evidence in the investigation process. The information can be used for both preliminary investigative purposes as well as evidence in a full investigation.

388. The cross-border cash declaration requirements contained in Article 16 of the AML Law contains provisions for the DGCE to report those declarations to PPATK. The customs declaration form (BC 2.2) contains fields for the passenger's name and passport number. The cash declaration form (BC3.2) also asks passengers to describe the type of currency and amount. It contains separate fields with respect to Rupiah asking if approval letters from BI have been obtained and if so, for this letter to be attached. In addition, Article 16 specifically requires these reports to include the details of the identity of the passenger. Lastly, Article 16 allows PPATK to request additional information from the DGCE on these reports.

389. In addition, under the procedure for examining goods being carried by passengers, generally officers of Customs may request any information and supporting documents or evidence such as a passport.

390. As noted above Article 16 of the AML Law requires the DGCE to report cash declarations to PPATK within five days. DGCE is also required to report any violations of the cash declaration requirements to PPATK no later than five days after it becomes aware of the violations. These reports are submitted to PPATK using a paper-based mechanism. PPATK has indicated that it has plans to computerise this reporting mechanism.

391. Section 11 of DGCE Decree 01/BC/2005 contains identical provisions providing that Customs and Excise Officers are obliged to submit reports about information on cross-border cash movement of 100 hundred million rupiah or more, or the equivalent in foreign currency to PPATK within five days. Customs and Excise Office is also obliged to submit reports of violations and reports of administrative sanctions to PPATK within five days. Decree 01/BC/2005 contains four separate reporting forms as annexes. These various reporting forms contain detailed fields concerning the detailed identity of the owner/carrier, date and place of the departure/arrival, amount of money carried, amount of administrative sanction as well as a description of how the money was carried. One form includes any follow-up action taken by the authorities (e.g., evidence has been sent to the police with a memorandum of transfers).

***National and international co-ordination***

392. At the domestic level, Indonesia has in-place a number of border coordination mechanisms such as Airport Interdiction Task Force (AITF) which consists of Customs, Immigration, Quarantine, Airport Administration, and Indonesia National Police. The main role of the AITF is to fight the trade in illicit narcotics. Authorities believe there is an opportunity for the agencies participating in the AITF to work collectively to combat cash couriers. One of the coordination issues currently being addressed related to the implementation of Special Recommendation IX, narcotics and high value good smuggling.

393. Indonesia also has in place Memorandum of Understanding (MOU) with Quarantine, BPOM (observation of medicines and food division), Public Attorney, and Air Transportation. There is also Memorandum of Understanding between DGCE and PPATK which focuses on cooperation in execution of the AML Law (e.g., Articles 9 and 16). These MOUs address information exchanges between relevant agencies, creating a DGCE liaison office and their role in conducting analysis with PPATK, assistance provided by PPATK to DGCE, as well as education, training, and transfer of staff.

394. Indonesian Customs and other customs administrations among ASEAN countries have in place a communication forum to combat various kind of smuggling activities including new ML activities. These regional mechanisms deal with a number of specific issues regarding the smuggling of animals, plants and timber. In addition to those numerous regional arrangements, Indonesia Customs has also maintained Customs Mutual Administrative Assistance with the Australia Customs Service. However, at the time of the on-site visit there were no efforts to work bilaterally or multilaterally with other countries to identify or target illicit cash couriers.

***Sanctions***

395. Article 7 of DGCE Decree No. 01/BC/2005 allows for administrative fines to be issued for failure to complete a declaration form or permit, if the amount of cash carried exceeds the amount declared, or for failure to verify the authenticity of the currency. Persons who violate these provisions can be penalized with an administrative fine of 10% of the amount of cash being carried. However, the maximum amount of these fines cannot exceed 300 million Rupiah (USD 30,000). In such cases, the money collected as part of the administrative fine and the individual is delivered to the police with a Memorandum of Transfer according Section 6 of the DGCE Decree 01/BC/2005 and a report is sent to PPATK. As cash is usually returned to the passenger after discovery, these penalties cannot be considered dissuasive for those persons who routinely violate these provisions or in cases where a large amount of currency is being smuggled.

396. Article 9 of the AML Law contains criminal fines ranging from 100 million Rupiah to 300 million Rupiah for any person failing to report cash amounts 100 million rupiah or more, or the equivalent in another currency, brought into or taken out of Indonesia. This provision has never been utilised.

397. Article 103 of the Excise Law also provides for criminal penalties ranging from two to eight years imprisonment and fines ranging from 100 million Rupiah to five billion Rupiah. These penalties can be imposed on persons who send false customs documents or provides improper information both orally and in writing. These penalties also apply to collecting, maintaining, possessing, purchasing, selling, changing, obtaining or providing imported goods

derived from a crime as referred to in Article 102. Certain goods that are derived from a crime may be forfeited to the state.

398. Customs and Excise authority conducts supervision over cash and goods cross border movement (coming in or going out of Indonesia). Supervision is conducted also by inspecting persons suspected carrying out significant amounts of cash. At present, up to September 2007, PPATK has obtained more than 2000 reports on supervision over persons or legal entities listed in the UN terrorist watch list conducted by officers of Customs by considering lists announced in entrance/exit points at Customs areas within Indonesia.

***Gold and silver***

399. When Indonesia Customs discovers an unusual cross-border movement of gold, precious metals or precious stones, it will normally communicate with other Customs Services through the Regional Intelligence Liaison Office Asia Pacific. Where Indonesia Customs has a Customs Mutual Administrative Assistance (CMAA) arrangement in place, Indonesia Customs will normally forward the information to the destination country.

***Additional elements***

400. Civil servant investigators of the DGCE have received training and technical capacity building. In addition, Standard Operating Procedures for conducting inspections on passengers, vehicles or cargo must be followed by officers in the field. These general procedures relate not only to cash but also to drugs and other dangerous goods. Techniques applied include profiling and risk-based targeting on a similar basis as is applied generally by customs services around the world. In addition, Customs and Excise officer also depend on tools such as X-ray.

**Recommendation 32 – cross border reporting**

**Table: Statistics of actions taken to implement SR IX**

| | **Number as of 31 July 2007** |
|---|---|
| Cross-Border Cash Carrying Reports (CBCC) | Total is unknown |
| CBCC Reports provided to PPATK | 1855 |
| POLRI investigations of CBCC Reports | 20 |
| Detection of failure to report a CBCC | |
| Sanctions (administrative) for failure to report CBCC | 3 |
| Sanction amounts (fines) | unknown |
| Dissemination of Customs inspection findings to PPATK | 0 |

**Effectiveness**

401. Indonesia is a large, unique and diverse territory which makes efforts to detect and enforce cash courier requirements extremely difficult. Indonesia is the world's largest archipelago consisting of over 13,000 islands, including five major islands and 30 other smaller groups. That said, it has a manageable number of international ports where the provisions to combat cash couriers could be enforced. It has a total of 27 international airports, and a number of land border crossings with Malaysia, Papua New Guinea and Timor Leste. In addition, there are a number of international ferry terminals which serve as sea border crossings with Malaysia and the Philippines.

402. The DGCE does not maintain any meaningful statistics on the number of cash declarations made. This is primarily due to the fact that there is no electronic means to collect or submit reports on cash declarations. As of 30 June 2007, a total of 1,855 Forms BC 3.2 have been filed with Customs and submitted to PPATK. The reports were derived from two airports, namely Jakarta Cengkareng and Denpasar, two seaports, namely Batam and Tanjung Balai Karimun, and one post office in Bandung. Up to 31 July 2007 PPATK obtained 1,887 reports from DGCE derived from five jurisdictions of Customs: Jakarta, Tanjung Balai Karimun, Bandung, Batam and Denpasar. However, no results of customs examinations have been provided to PPATK as stipulated in the MOU. The have been no penalties (administrative or criminal) or seizures imposed for passengers who submit a false declaration. There have only been a total of three violations reported for failure to make a declaration at the border. Administrative fines have been issued in these three cases, but the amounts have not been provided. Customs and Excise officers do not have any powers to investigate suspected cases of ML and TF. There have been no efforts to conduct joint operations between the Customs and Excise officers and the police. As of 31 July 2007, POLRI had conducted investigation of 20 cases derived from reporting of Cross-Border Cash Carrying Report.

### 2.7.2 RECOMMENDATIONS AND COMMENTS

403. Indonesia has a complicated legal framework and operational structure which attempts to ensure that money launderers and terrorist financers do not move their funds through cross-border transportation. The main difficulty with the system is that it was not designed to meet this objective. Indonesia's declaration system was designed to control the amount of domestic currency (by setting strict limits) that enters or exits the country. That said, the system should be modified to make it effective.

- The cash declaration should be updated to cover bearer negotiable instruments and to comprehensively implement SR IX.
- Customs should have a clear authority to restrain cash or bearer negotiable instruments when a false declaration is made or a person fails to declare.
- Indonesia should more effectively implement restraint and seizure provisions with respect to cash suspected to be associated with criminal activity.
- DGCE's should take greater efforts to identify and target illicit cash couriers with the goal of depriving them of illegitimate money. These efforts should include enhanced cooperation between Customs, POLRI and PPATK to target cash couriers associated with terrorist financing and money laundering.
- Effective, proportionate and dissuasive sanctions should be available to ensure effective compliance with obligations under SR IX.
- Comprehensive statistics should be maintained for the operation of the system to implement SR IX.

### 2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATION IX

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.IX** | **PC** | • Bearer negotiable instruments are not covered<br>• Detection capacity is weak and limits effectiveness<br>• No clear authority restrain money when a false or no declaration is made<br>• Proportionate and dissuasive administrative penalties are not available and criminal penalties are limited and are not being applied.<br>• Statistics do not demonstrate effective implementation of SRIX |
| **R.30** | **PC** | • Lack of human resources trained to detect and target illicit movements of cash at the airports and other key border points.<br>• Detection Capacity is very weak. |
| **R.32** | **PC** | • Customs does not maintain meaningful statistics on the number of cross-border cash declarations made, nor the sanctions imposed in cases of failure to declare. |

# 3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

**Law, regulations and "other enforceable means"**

404. The Indonesian authorities have issued comprehensive laws, regulations, and other enforceable instruments regarding preventive measures to be undertaken by financial institutions. The Law of the Republic of Indonesia Number 15 Year 2002 Concerning the Crime of Money Laundering as Amended by Law Number 25 Year 2003(the "AML Law" hereinafter), which is the backbone of the Indonesian AML/CFT regime, applies to all providers of financial services. The AML Law sets out STR, CTR and general customer identification/verification requirements.

405. Financial regulatory authorities have also issued various regulations, decrees and rules for their respective sectors. They set out specific procedures for implementation of 'Know Your Customer (KYC)' principles and STR obligations.

406. Bank Indonesia (BI) issued regulations governing implementation of KYC principles by banks. Article 17 of the AML Law, which provides for customer identification/verification obligations for all regulated parties, delegates the authority to establish specific procedure for banks to BI. The Article states "for providers of financial services that are banks, identity and supporting documents from users of financial services shall be in accordance with prevailing laws and regulations."

407. BI Regulation Number 3/10/PBI/2001 sets out clearly stated requirements using mandatory language. BI is the competent authority and the power to issue the regulation is derived from the banking law. This BI Regulation sets out detailed procedures regarding i) customer acceptance and identification, ii) monitoring of customer accounts and transactions, iii) risk management, and iv) reporting. Article 18 of BI Regulation Number 5/21/2003, which amends BI Regulation 3/10/PBI/2001, explicitly states that BI can impose sanctions on any bank in violation of provisions in the KYC principles Regulation. The Regulation refers to BI's power to apply administrative sanctions in Article 52 Paragraph (2) item a, b, c, e, f, or g of Act No. 7 of 1992 concerning Banking. BI has sanctioned banks for non-compliance with these Regulations on numerous occasions.

408. Administrative sanctions referred to in Paragraph (2) Article 52 Act Number 7 1992 Concerning Banking:

a. Imposition of a fine;
b. Dispatch of written warnings;
c. Degradation of Bank's soundness rating;
d. Prohibition from taking part in clearing activities;
e. Freezing of certain business activities of Bank, both for certain Branch Offices and for a Bank as a whole;
f. Dismissing the Bank management and then appointing a temporary substitute of the management until the General Meeting of Shareholders or the Meeting of Cooperative Members appoints the permanent substitute with the approval of Bank Indonesia;
g. Inclusion of members of management, Bank employee, shareholders in a list of disreputable (disgraceful) persons in Banking sector.

409. During the period 2005-2007, BI imposed administrative sanctions in relation to KYC Principles set out in the BI Regulation on 2,181 banks including both commercial banks and rural banks. BI issued supervisory letters to 2,803 banks and imposed money penalty on five banks during the same period. While some of these

410. There is a separate BI Regulation that sets out KYC principles that should be implemented by money changers, including both bank money changers and non-bank money changers. BI Regulation Number 9/11/PBI/2007 provides for money changers' obligation to apply KYC principles including policies on: i) customer admission; ii) customer identification; iii) monitoring of customer transactions; and iv) risk management. According to Paragraph (4) Article 50 of the Regulation, BI can impose sanctions for breach of provisions in the Regulation by non-bank money changers. Such sanctions include: a) first warning; b) second warning; c) summons of the management and/or shareholders; and d) revocation of trade license. BI can apply item c) summons of the management and/or shareholders for a non-bank money changer's failure to apply KYC principles or failure to submit photocopies of the policy and procedure in the application of KYC principles within the specified time frame. According to Paragraph (5) of the same Article, BI can revoke trade license in case a non-bank money changer disregards and/or not follows up the sanction referred to in Paragraph (4) in six months. Article 57 of the Regulation states "provisions on the enforcement of the Regulation shall be regulated in the Circular Letter of Bank Indonesia." Bank Indonesia Circular Letter No.9/23/DPM sets out detailed procedures regarding application of Know Your Customer Principle by non-bank money changers.

411. Indonesia Capital Market Supervisory Agency("BAPEPAM" hereinafter)'s Rule V.D.10 Regarding "Know Your Client Principles" applies to securities companies, mutual fund managers, and custodian banks. BAPEPAM is the government agency responsible for providing guidance, regulation, and day-to-day supervision of the capital market (Article 3 Law Number 8 1995 Concerning Capital Market). BAPEPAM Rule V.D.10 sets forth detailed procedure regarding: a) establishment of a working unit or a director-level officer responsible for the implementation of KYC Principles; b) establishment of policies concerning customer acceptance, customer identification/verification, customer account/transaction monitoring, and risk management; and c) submission of obliged parties' internal guidelines to BAPEPAM. Article 14 of the same Rule states that "BAPEPAM may impose sanctions against any violation of the Rule as well as against any person who causes such violation to occur." In December 2007, as an example, BAPEPAM-LK applied a range of administrative sanctions (13 fines ranging from $US10,000 - $50,000 and written admonitions) for failure to comply with KYC/CDD requirements under V.D.10.

412. The Ministerial Decree of the Minister of Finance Number 74/PMK.012/2006 Concerning Application of Know Your Customer Principle for Non-bank Financial Institutions applies to insurance companies, pension funds, and financial institutions. According to Article 18 of the Decree, violation of provisions in the decree is subject to administrative sanction in the form of written admonition or other sanctions in accordance with governing laws. The same Article states that Decree of Head of Capital Market Supervision and Financial Institution shall set forth the procedure and terms of such administrative sanctions. The Insurance Bureau of issued a range of sanctions for non-compliance with this instrument. Sanctions for non-compliance with KYC requirements have been limited to written admonition.

413. These regulations, decrees, and rules are enforceable and can be seen as "other enforceable means (OEM)". These OEMs are further supported by guidelines issued in the

form of circular letters. The table below sets out the various laws/regulations and OEM that provide for preventive measures to be undertaken by financial institutions:

| Name of Law/Regulation | | Subject Sectors | Hierarchy |
|---|---|---|---|
| Law Number 15 Year 2002 Concerning the Crime of Money Laundering as Amended by Law Number 25 Year 2003 | | All providers of financial services | Law (Undang-undang) |
| **Name of 'OEM'** | | | |
| Bank Indonesia Regulations | Number 5/21/2003 on KYC<br>Number 3/23/2001 on KYC<br>Number 3/10/2001 on KYC | Commercial banks | Government Regulation (Peraturan Pemerintah) |
| | Number 5/23/2003 on KYC for Rural Banks | Rural banks | |
| | Number 9/11/PBI 2007 | All money changers | |
| Bank Indonesia Circular Letters | Number 5/32/2003 | Commercial banks | Circular Letters (Surat Edaran |
| | Number 9/23/2007 | Non-bank money changers | |
| Minister of Finance Decree Number 74 Year 2006 | | Insurance companies, pension funds, financing companies(NBFIs) | Ministerial Decrees (Keputusan Menteri) |
| BAPEPAM Rule V.D.10 | | Securities companies, investment managers, and custodian bank | |

414. This report will review preventive measures undertaken by the financial sector as divided into four different categories: i) banking, ii) securities, iii) other non-banking financial sector, which includes insurance, pension funds, and financing institutions, and iv) non-bank money changers.

***Scope of the AML/CFT Regime***

415. The definition of "providers of financial services" under the AML Law includes the following institutions:

- Banks
- Non-bank financial institutions
- Securities companies
- Mutual fund managers
- Custodians
- Trust agents
- Depository and settlement agencies
- Foreign exchange traders
- Pension funds
- Insurance companies
- Post Office

416. The definition does not include non-bank money remitters. The government of Indonesia has begun the process of bringing the non-bank money remitters into the scope of AML/CFT regime. BI issued a regulation concerning money remittance service on December 5, 2006 (8/28/PBI/2006). The Regulation requires any person who will engage in money remittance services to get business license as a Provider of Money Remittance Services from BI. The Regulation also provides for AML/CFT obligations of Providers of Money Remittance Services including customer identification, filing of STRs, and record keeping. The Regulation, however, provides for a three-year transition period which runs until December 31, 2008. During the transition period, persons/entities engaged in money remittances services are required only to register their business with BI. There are currently five registered non-bank money remitters, four of which are limited liability companies and one of which is a dormant partnership.

417. Provisions in the Regulation regarding the business licensing and AML/CFT obligations will take effect on January 1, 2009. BI issued a Circular Letter regarding registration of money transfer business activities (8/32/DASP) on December 20, 2006. According to the Circular Letter, providers of money remittance services are required to submit documentation of their own KYC procedures. BI has provided guidelines on the issues to be addressed in the KYC procedures as an attachment to the Circular Letter. The guidelines include investigation of customer's identity, record keeping, and examples of suspicious financial transactions. BI, however, neither conducts supervision of the registered non-bank money remitters' AML/CFT operations, nor does it have means to enforce the guidelines. Non-bank money remitters are, therefore, not covered by the Indonesian AML/CFT regime and they will not be officially brought into the scope of the regime until the end of 2008.

418. This factor was considered in determining ratings, but this discussion will not be repeated under each Recommendation.

## CUSTOMER DUE DILIGENCE & RECORD KEEPING

### 3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING

419. Indonesia has not sought to exclude any of the 13 financial activities on a risk-based approach. The non-inclusion of remittance and very recent inclusion of money changers was not based on a risk-based approach.

### 3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)

3.2.1 DESCRIPTION AND ANALYSIS

***General Description of the Legal Framework***

420. The customer due diligence (CDD) requirements that apply to various sectors are generally similar although the regulatory authority of each sector has issued its own regulations, decrees, or other enforceable means.

421. The AML Law, which applies to all providers of financial services, sets out general obligation regarding customer identification and verification including identification/verification of the beneficial owner.

422. Regulations, decrees, and rules issued by financial regulatory authorities set out obligations for their respective sectors to implement 'Know Your Customer (KYC)' principles. And in implementing such KYC principles, providers of financial service are required under their regulations/decrees/rules to establish and implement policies regarding:

a. customer acceptance;
b. procedure for customers identification;
c. monitoring customer's account and transaction;
d. risk management associated with the implementation of KYC Principles.

***Anonymous Accounts***

423. There are CDD provisions in the AML Law and sector specific regulations, which oblige providers of financial services to identify the customer and to verify their identity, which effectively prohibits opening of anonymous accounts for new account holders.

424. Under Article 17 of the AML Law, any person engaging in a business relationship with a provider of financial services must give their complete and accurate identity and submit required supporting documents. According to the Elucidation to the Law, "complete and accurate identity" as referred to in Article 17 'must include among others, name, address, gender, age, religion, and occupation.'

425. When BI Regulation 3/10/2001 on KYC, which is OEM, was first introduced, Article 19 provided banks with six months to update CDD information that was lacking on existing customers. For non-bank financial institutions, there is no specific provision as to the timeframe of conducting CDD on existing customers. Securities sector institutions and NBFIs met by the assessment team did not have specific records regarding progress on implementation of CDD on existing customers.

***When CDD is required***

<u>Banking Sector</u>

426. Under BI Regulation Number 3/10/PBI/2001, a bank is required to get information on the identity of the prospective customer, the purpose and objective of the dealings, and the identity of the beneficial owner before entering into dealings with a customer (Article 4).

427. The same requirements apply to transactions with walk-in customers if the transaction value exceeds Rp 100,000,000 (approx $US10,000) - Article 17 BI Regulation Number 5/21/PBI/2003.

428. While there are no specific wire transfer-related obligations (see SR VII), BI Regulation Number 5/21/PBI/2003 would cover the situation of wire transfers carried out for an occasional customer in keeping with the FATF standards.

429. There is no specific requirement for banks to perform CDD regardless of any exemptions or threshold when there is suspicion of ML or TF, although they are required to file an STR and there is no threshold for STRs.

430. Nor is there any explicit requirement for banks to perform CDD when there is doubt about the adequacy or veracity of the previously obtained CDD information. Banks are required to confirm the integrity of the identification documents submitted by the customer and to take steps to verify the information in the course of performing customer due diligence. Banks are, however, not explicitly required to perform CDD when there is doubt about the veracity of the CDD information previously obtained.

Securities Sector

431. According to Article 4 a of BAPEPAM Rule V.D.10, securities companies, investment managers, and custodian banks must require from the customer information regarding i) background and identity of the potential investor, ii) intention and objective for opening the account, iii) other information that enables them to know the profile of the prospective customer; and iv) identity of any other party in case the prospective customer is acting on behalf of another party before customer invests in the capital market, with or without opening securities account.

432. There is no explicit requirement for the obliged parties to perform CDD when there is suspicion of ML or TF regardless of any exemption or threshold when there is suspicion of ML or TF, although they are required to file an STR and there is no threshold for STRs. There is also no specific requirement to perform customer due diligence when there is doubt about the adequacy or veracity of previously obtained CDD information.

Financing Institutions, Insurance Companies, and Pension Funds (NBFIs)

433. Article 6 of the Minister of Finance Decree Number 74/PMK 012/2006 requires NBFIs to ask information regarding i) identity of the prospective customer, ii) objective of transaction, iii) financial profile of the customer, iv) the business engagement owned with such NBFI, and v) identity of other parties provided that the prospective customer is to act for and on behalf of other parties.

434. There is no specific requirement to perform CDD when conducting occasional transactions, although NBFIs are required to file report for cash transactions exceeding Rp 500,000,000 (approx $US50,000) according to Article 13 of the AML Law.

435. There is also no provision that specifically requires NBFIs to perform CDD when there is suspicion of ML or TF regardless of any exemption or threshold although they are required to file an STR and there is no threshold for STRs.

436. Nor is there any specific requirement for NBFIs to perform CDD when there is doubt about the adequacy or veracity of previously obtained CDD information.

Non-bank Money Changers

437. BI Regulation Number 9/11/PBI/2007 requires money changers including non-bank money changers to apply KYC principles pursuant to applicable legislation (Article 40). In applying such principles, money changers must at least apply policy on admission and identification of customers. According to Circular Letter to All Non-bank Money Changers issued BI pursuant to the above-mentioned Regulation (9/11/PBI/2007), non-bank money changers must investigate the identity of the customer when the sum of transactions conducted by a customer in a single day reaches Rp 100,000,000.

438. There is no specific requirement to perform CDD for transactions below Rp 100,000,000 when there is suspicion of ML although they are required to file STR regardless of the amount of transactions.

***Required CDD Measures***

439. Under Article 17 of the AML Law, any person engaging in a business relationship with a provider of financial services must give their complete and accurate identity by filling in the forms specifically provided by the provider of financial service concerned and attaching supporting documents in accordance with prevailing laws and regulations. The details of what is considered 'complete identity' are outlined in the Elucidation to the AML Law and in BI Regulation 3/10/PBI/2001. According to the BI Regulation, the 'complete identity' is interpreted as including among other things name, address, date and place of birth, occupation.

440. According to the Elucidation to the Law, "complete and accurate identity" as referred to in Article 17 'must include among others, name, address, gender, age, religion, and occupation.' The term 'business relationship' is interpreted as including 'opening of accounts, transferring funds, disbursements of cheques, purchase of travellers cheques, buying and selling of foreign currency, deposits, and other financial services.'

441. The Elucidation to the AML Law also states that this provision is intended to 'make it easier for law enforcement agencies to trace customers if there are future allegations of ML and to comply with international recommendations that every country should have in place provisions prohibiting the opening of accounts without the identity of the customer concerned being clear'.

442. The effectiveness of these measures, however, is undermined by the lack of a unified citizens' registration system in Indonesia. Indonesian citizens can have multiple identity numbers issued by different local government authorities. Providers of financial services are required under the regulations, rules, or decrees issued by their respective regulators to obtain identity information from their customers, which should be proven by legal supporting documents. Furthermore, they are also required to check the integrity of the supporting documents. Their efforts to check the validity of the documents, however, focus mainly on ensuring that such documents were issued by government agencies with proper authority. They do not consider whether a customer has account under a different name or identification number.

443. Under the same Article, a provider of financial services is required to confirm whether a user of financial services acts for himself/herself or for another person. In the event that the user of financial services acts for another party, the provider of financial services must request information on the identity and supporting documents from such other party.

444. Such general provisions are further enhanced by regulations or rules issued by the regulatory authorities of each sector.

<u>Banking Sector</u>

445. According to Article 4 of BI Regulation Number 3/10/PBI/2001, banks must obtain information about i) identity of the customer; ii) purposes and objectives of the business relationship; iii) other information related to the customer's profile; and iv) beneficial owner, in case the customer acts on behalf of another party. The same Article provides that the

customer's identification must be proven by legal supporting documents and that banks must verify the authenticity of such supporting documents.

446. Article 5 of the BI Regulation sets out the types of information that the supporting documents must include at a minimum for each category of customer:

| Type of Customer | | Information to be included in the supporting documents |
|---|---|---|
| Individual | | • name;<br>• permanent residential address;<br>• date and place of birth;<br>• nationality;<br>• occupation;<br>• specimen of signature;<br>• source of fund and purpose of fund |
| Corporate | Small Companies | • articles of association/articles of incorporation of the company as stipulated in the prevailing regulations;<br>• business license or other licenses from authorised institution;<br>• name; specimen of signature; and power of attorney of the person having authority to act on behalf of the company;<br>• source and purpose of fund |
| | Bigger Companies | • articles of association/articles of incorporation of the company as stipulated in the prevailing regulations;<br>• business license or other licenses from authorised institutions;<br>• tax I.D. number or NPWP;<br>• financial statement or description of the company's business activity;<br>• structure of the company management;<br>• identification documents of the management authorised to act on behalf of the company<br>• name, specimen of signature and power of attorney of any person authorised to act on behalf of the company;<br>• source and purpose of fund |
| Government institutions, international institutions, and representatives of foreign countries | | • the name, specimen of signature, appointment letter of authorised person to conduct business relationship with the Bank |
| Banks | | • articles of association/articles of incorporation<br>• business license from authorised institution;<br>• name, specimen of signature and power of attorney of any person authorised to act on behalf of the company |

447. There are limited requirements for banks to verify that any person purporting to act on behalf of the customer is so authorised. However, as is set out in the table above, the 'supporting documents' that a bank must obtain include power of attorney and the name and signature specimen of the person acting on behalf of a legal person. There is also no explicit requirement for banks to verify the legal status of the legal person. Banks are, however, required to obtain business license and articles of incorporation of the legal person as part of the 'supporting documents'.

448. Article 6 of the BI Regulation sets out procedures to identify beneficial owner and to verify such identity depending on the category of customer as the following:

| Customer acting on behalf of another party | Procedure to verify the identity of beneficial owner |
|---|---|
| Another domestic bank | If the prospective customer is another domestic bank, the bank can rely on such other bank to verify the identity of the beneficial owner |
| Foreign bank | If the prospective customer is another bank in a country that applies Know Your Customer Principles to at least equivalent extent as in the BI Regulation, then it is sufficient for the bank to receive a written statement that the identity of the beneficial owner has been obtained and is administered by the bank in the other country |
| Others | The bank must obtain satisfactory evidence of the identity of the beneficial owner, the source and objective of fund, and other relevant information. Such evidence should at least include:<br>• For individual beneficial owner<br>- identification documents as referred to in Article 5(a) of the Regulation;<br>- evidence of authority of the prospective customer to act on behalf of the beneficial owner;<br>- statement of the prospective customer that the accuracy of beneficial owner identity and source of fund have been verified<br>• For corporate beneficial owner<br>- documents as referred to in Article 5 item (b) or (d);<br>- identification documents of the management authorised to act on behalf of the company;<br>- identification documents of the principal shareholders;<br>- complete mandate to the customer including authority to open account;<br>- statement of the customer that the accuracy of beneficial owner identity and source of fund have been verified |

449. There is no specific requirement for banks to take reasonable measures to determine who is the natural person that ultimately owns or controls the customer. Banks are required to obtain identification documents of the "principal shareholders" as is indicated in the table above. In practice, it is not clear that banks in Indonesia have clear internal policy regarding how they should determine who the principal shareholders are. Banks are required to obtain articles of association from corporate customers, but information on articles of association does not necessarily include information on ownership structure (Article 15 Law No. 40 of 2007 on Limited Corporation).

450. BI Regulation requires banks to maintain customer profiles encompassing at least information concerning occupation or line of business, size of income, other accounts held, normal transaction activity, and purpose for opening an account (Article 10 BI Regulation Number 3/10/PBI/2001). Article 9.1 of BI Regulation Number 5/21/PBI/2003 requires banks to

have an information system effectively capable of identifying, analysing, monitoring, and providing reports on the characteristics of transactions conducted by bank customer. Banks are also required to update data when there is any change in the documents related to fundamental data of customer (Article 8.2 BI Regulation Number 3/10/PBI/2001).

Securities Sector

451. BAPEPAM Rule Number V.D.10 requires securities companies, investment managers, and custodian banks to apply Know Your Client Principles, which include written policy and procedure concerning a) client acceptance; b) client identification; c) monitoring client's account and transactions; and d) risk management pertaining to the application of the KYC Principles (Point 3).

452. As part of the client acceptance and identification principles, the regulated entities are required to obtain information regarding the following (Point 4 a):
- background and identity of the potential investor;
- intention and objective for opening account by prospective customer;
- other information concerning the profile of the prospective customer; and
- identity of any other party in case of the prospective customer acting on behalf of other party before accepting the client to engage in investment activities.

453. The BAPEPAM Rule also provides that the Know Your Client information must be proven with supporting documents. The provisions in the BAPEPAM Rule regarding the supporting documents are similar to the provisions in the BI Regulation regarding the same matter (BI Regulation Number 3/10/PBI/2001). The BAPEPAM Rule specifies the minimum set of information that should be included in the supporting documents although it does not specify what specific documents should be regarded as reliable source of information.

| **Type of Client** | **Information to be included in the supporting documents** |
|---|---|
| Individual | • name;<br>• address or residence;<br>• place and date of birth;<br>• nationality;<br>• occupation;<br>• signature specimen; and<br>• information regarding fund resources and the purpose of using such funds |

| | |
|---|---|
| Companies, partnerships, legal entities, associations, or organised groups | • deed of establishment or articles of association;<br>• business license or other licenses issued by competent agencies;<br>• taxpayer's Identification Number (NPWP) for required client in accordance with the existing provisions;<br>• financial statement or description of business activities;<br>• management structure;<br>• identities of management authorised for representing the entity;<br>• name and signature specimen of the authorised person, and power-of-attorney letter from person who gives authority to the authorised person to act on behalf of the entity; and<br>• information regarding fund resources and the purpose of using such funds |
| Government institutions, international institutions, and representatives of foreign countries | • the name, specimen of signature, appointment letter of authorised person to conduct business relationship with the Bank |
| Banks | • article of association/article of incorporation<br>• business license from authorised institution;<br>• name, specimen of signature and power of attorney of any person authorised to act on behalf of the company |

454. The obligations above are only set out in other enforceable means, not laws or regulations as required under the FATF standards.

455. With respect to legal persons, there is no specific requirement under the BAPEPAM Rule to verify that any person purporting to act on behalf of the customer is so authorised. However, as is set out in the table above, the 'supporting documents' that obliged parties must obtain include power of attorney and the name and signature specimen of the person acting on behalf of a legal person. There is also no explicit requirement for the obliged parties to verify the legal status of the legal person. The obliged parties are, however, required to obtain business license and articles of incorporation of the legal person as part of the 'supporting documents'.

456. If the client opens an account on behalf of another person, obliged parties must obtain the same sets of supporting documents as are set out in the table above for the beneficial owner as well as proof of the client's legal relation, engagement, and authority to act on behalf of the beneficial owner. If the client is another domestic securities sector institution or a foreign securities sector institution that applies Know Your Client principles similar to those set out in the BAPEPAM Rules, then it would suffice to receive a written statement that the client has obtained the supporting documents and has performed verification with respect to the documents (Point 4 e ~ g).

457. With respect to identification/verification of beneficial owner for corporate customers, there is no explicit requirement for the obliged parties to take reasonable measures to establish an understanding of the customer's ownership structure or to determine who the natural person exercising ultimate control over the customer. The obliged parties are required to obtain "deed of establishment or articles of association" as part of supporting documents for corporate customers. Articles of association, however, do not necessarily include information on ownership structure of the corporation (Article 15 Law NO 40 of 2007 on Limited Corporation).

458. Obliged parties are required to update any changes in the client information and to have an information system that is able to effectively identify, analyse, monitor, and provide reports concerning clients' transaction characteristics.

Financing Institutions, Insurance Companies, and Pension Funds (NBFIs)

459. Minister of Finance Decree Number 74/PMK 012/2006 sets out specific procedures for non-bank financial institutions (NBFIs) to implement KYC principles. Article 6 requires NBFIs to get the following information from the prospective customer before entering into agreement with the customer:

- identity of the customer;
- the aiming and objective of transaction and business engagement;
- financial profile;
- the business engagement owned with such NBFI; and
- identity of other parties provided that Prospective Customer is to act for and on behalf of other parties

460. Such information must be proven with supporting documents. There is no specific provision regarding the specific documents to be used as reliable sources, but the Decree specifies the minimum set of information that should be included in the documents for each category of customer as follows:

| Type of Customer | Information to be included on the supporting documents |
|---|---|
| Individual | • name;<br>• address of permanent resident;<br>• place and date of birth;<br>• citizenship;<br>• occupation;<br>• specimen of signature; and<br>• information on fund resource (insurance, pension fund) or objective of using such funds (financial institution) |
| Company | • company documents:<br>- establishment deed or articles of association;<br>- business or license or other license from authorised institution;<br>- Tax Payer Registration Number (NPWP) for customer who should own NPWP according to governing laws;<br>• name, specimen of signature and power of attorney to parties who are appointed to act for and on behalf of the company;<br>• identity documents of parties who are authorised to act for and on behalf of the company; and<br>• information on fund resources (insurance and pension fund) and objective of using such funds(financial institutions) |

461. The requirements under the Minister of Finance Decree regarding legal persons are similar to the requirements for the banking and the securities sectors. There is no specific requirement for NBFIs to verify that any person purporting to act on behalf of the customer is so authorised. However, as is set out in the table above, the 'supporting documents' that an

NBFI must obtain include power of attorney and the name and signature specimen of the person acting on behalf of a legal person. There is also no explicit requirement for NBFIs to verify the legal status of the legal person. NBFIs are, however, required to obtain business license and articles of incorporation of the legal person as part of the 'supporting documents'.

462. When the customer acts as a broker or an authorised person of a beneficial owner, NBFI should also obtain proofs of identity and beneficial owner, fund resources and the objective of using fund and other information regarding the beneficial owner. In addition, NBFIs are required to get a statement from the customer that he/she has reviewed the validation of identity and fund resource of beneficial owner (Article 7 of the Decree). With respect to identification/verification of beneficial owner for corporate customers, there is no explicit requirement for NBFIs to establish an understanding of the customer or to determine who the natural person exercising ultimate control over the customer. They are required to obtain "deed of establishment or articles of association". As was discussed in explanation about the banking and securities sectors presented above, articles of association do not necessarily include information on corporate ownership.

463. Article 15 of the same Decree states that: (1) NBFI should have an adequate information system to identify, analyse, monitor, and supply report regarding transaction characteristics conducted by customer(s) effectively; (2) such information system should enable NBFI to trace any transaction when necessary including customer identity, date of transaction, total and other engagement owned by customer at such NBFI.

464. Moreover, Article 9 requires NBFIs to update data when there is any change in a supporting document. Moreover, Appendix of Director General of Financial Institution Decree Number: Kep-2833/LK/2003 concerning Guidelines of Implementing Know Your Customer Principles requires NBFIs to maintain customer profile database, which at least should cover identity, scope of business, total revenue, the owned association and objective of opening the account. NBFIs are also required to update such database when new information on such customer data is discovered.

<u>Non-bank Money Changers</u>

465. Under BI Regulation Number 9/11/PBI/2007, all money changers including non-bank money changers are required to apply KYC principles. In applying the KYC principles, money changers are required to have policies regarding i) admission of customers; ii) procedure in identifying customers; iii) procedure of monitoring transactions of customers; and iv) procedure of risk management related to Know Your Customer Principles.

466. Moreover, according to BI Circular Letter Number 9/23/DPM, a non-bank money changer is required to 'investigate the identity of customer having performed a transaction of more than Rp. 100,000,000 or in the same amount in foreign banknote in one day.' In conducting the investigation, a non-bank money changer must at a minimum take the following steps:

1) For individuals:
   - Requesting customers to exhibit personal ID such as KTP, driver's license or passport
   - Checking the appropriateness of the customer and the ID by checking the likeness between photograph and signature with the customer

2) For a company:
   - Requesting customers to show their ID such as business license and/or Tax ID;

- Checking the likeness between the customer and their ID.

467. There is no detailed procedure prescribed for non-bank money changers' implementation of their obligation to identify/verify beneficial owner for corporate customers. The only legal provisions about identification/verification of beneficial owner that apply to non-bank money changers are those set out in the AML Law. The AML Law provides for only the basic requirement for all providers of financial services to confirm whether the users of financial services act for themselves or for another person and to obtain identity information of the beneficial owner. Under the AML Law, there are no specific requirements regarding how identification/verification of beneficial owner should be performed for natural persons vs. corporate customers.

***Risk***

Banking Sector

468. Article 12 of BI Regulation Number 5/21/2003 requires banks to appoint special officers responsible for dealings with customers deemed high risk, including bearers of state office, and/or transactions that may be categorized as suspicious transactions.

469. BI Circular Letter Number 5/32/2003 contains more specific provisions regarding enhanced due diligence. It is the responsibility of the board of directors of each bank to establish criteria for high-risk countries, high-risk businesses, and high-risk customers. It also states that approval for acceptance of prospective customers from high-risk countries, involved in high-risk business, or comprising high-risk customers must come from a bank officer holding authority at one level higher than the officer authorised to approve acceptance of the other customers.

470. With respect to simplified customer due diligence measures for low-risk customers, BI Regulation permits banks to apply simplified measures only for very limited and specific situations. Article 6 of BI Regulation Number 3/10/PBI/2001 states that if the customer is another bank in another country applying Know Your Customer Principles to at least equivalent extent as in the BI Regulation, it is sufficient for the bank to receive a written statement that the identity of the beneficial owner has been obtained and is administered by the bank in the other country. Competent authorities have not provided financial service providers with guidelines to determine countries that are deemed to have applied KYC principles at least equivalent to Indonesia.

Securities Sector

471. BAPEPAM Rule V.D.10 as was amended in August 2007 provides that a financial service provider conducting business in the capital market must conduct more stringent verification to potential customers who are deemed and or categorized as high risk of ML practices. More specifically, it states that the level of risk can be seen from the:

- background or profile of the customer considered as politically exposed persons, including government officials;
- business sector that is potentially being used for ML activities (high-risk businesses); and
- country of origin of customer that is potentially being used for ML activities (high-risk countries).

472. There was no explicit requirement under the old version of BAPEPAM Rule V.D.10 for obliged parties to perform enhanced due diligence for high risk customers. The obliged parties were given six months from July 2007 to establish internal control policies to implement the requirement under the amended version. The financial institutions interviewed during the on-site visit said that they were in the process of establishing such internal control policies, in keeping with the phased in timeframe. It is understood that all securities companies established internal control policies and standard operating procedures for KYC/AML by early 2008.

473. The BAPEPAM Rule allows the regulated parties to apply simplified CDD procedures only in very limited and specific situations. It states that a regulated entity can apply simplified procedure for identification/verification of beneficial owner when the prospective customer is another securities company, mutual fund manager, or a custodian bank that applies Know You Client Principles similar to those provided for in the BAPEPAM Rule. In such a case, it is sufficient for a regulated entity to receive a written statement from the prospective customer that it has performed verification of the supporting documents for the beneficial owners.

Financing Institutions, Insurance Companies, and Pension Funds (NBFIs)

474. There is no specific requirement for non-bank financial institutions to apply enhanced customer due diligence measures to high-risk customers. Nor are there any provisions that allow simplified CDD measures for NBFIs.

Non-bank Money Changers

475. There is no specific provision that requires non-bank money changers to perform enhanced customer due diligence for high-risk customer. Nor is there any provision that allows simplified CDD measures for low-risk customers.

***Timing of verification***

476. Generally, a provider of financial service is required to complete CDD before commencing a business relationship. Article 17 of the AML Law provides that any person engaging in a business relationship with a provider of financial service must give their complete identity by filling in the form specifically provided by the provider of financial service concerned for such purpose and attaching required supporting documents.

477. Regulations and rules issued by the regulators of each sector also state an obliged party must, before entering into a business relationship or an agreement, obtain Know Your Customer information and that the information must be proven with supporting documents (Article 4 BI Regulation Number 3/10/2001, Point 9 BAPEPAM Rule V.D.10, Article 6 Minister of Finance Decree Number 74 2006).

***Failure to satisfactorily complete CDD***

478. According to the Decree of the Head of PPATK Regarding Prevention and Eradication of Money Laundering, a provider of financial service must refuse to do business with a prospective customer unless satisfactory evidence of identity is obtained (Decree of the Head of PPATK Number 2/1/KEP PPATK/2003).

Banking Sector

479. Article 7 of the BI Regulation Number 5/21/2003 prohibits banks from conducting business with a prospective customer who does not provide KYC information, information about the

beneficial owner, or supporting documents for such information. There is, however, no specific requirement for banks to consider filing of an STR when they cannot satisfactorily perform CDD.

Securities Sector

480. In addition to the PPATK decree, point 4 (a) BAPEPAM Rule Number V.D.10 states that a regulated entity must obtain KYC information before accepting a customer to invest in the capital market. There is, however, no provision regarding a situation where a securities sector entity cannot satisfactorily perform customer due diligence.

Financing Institutions, Insurance Companies, and Pension Funds(NBFIs)

481. Article 7 of the Minister of Finance Decree Number 74/PMK.012/2006 prohibits a non-bank financial institution from entering into agreement with a prospective customer who fails to provide KYC information, information about the beneficial owner, or supporting documents for such information. There is no specific requirement for NBFIs to consider filing of STR when they cannot successfully perform CDD.

Non-bank Money Changers

482. BI Circular Letter Number 9/23/DPM provides that a non-bank money changer must not conduct a transaction with a customer who fails to provide proof of his/her ID, and/or if the officer of the non-bank money changer has a doubt for the originality/truthfulness of the customer identification. There is no explicit requirement for non-bank money changers to consider filing of STR when they cannot successfully perform CDD.

***Existing Customers***

483. When BI Regulation Number 3/10/2001 concerning Implementation of Know Your Customer Principles was first introduced, banks were specifically given six months to get CDD information that were lacking on the existing customers. Article 19 of BI Regulation Number 3/10/PBI/2001 reads as below:

484. Bank shall request the Customers, who already existed prior to the enactment of this Regulation and have not yet completed the documents as referred to in Article 4, Article 5, and Article 6, to provide and complete such documents at the latest 6 (six) months since the effective date of this regulation.

485. Neither BI nor the interviewed banks, however, said that they had specific records regarding how this provision was implemented and on how many existing customers CDD had been completed.

486. For NBFIs other than securities companies, article 4 para (1) letter MoFR No 45 year 2003, required data updating for existing customer to be done within 18 months, i.e. by 31 July 2004. Thus, when MoFR No. 74 was issued on 31 August 2006, updating data for existing customers has already been done by NBFIs. Follow up action for updating CDD data is a key objective of routine examination.

487. In relation to the securities sector, legal provisions related with updating customers' CDD data is governed in Rule V.D.10 Article 10b, which was in a transition implementation period

during the onsite visit and only became fully in force in February 2008. Monitoring of its effective implementation has not been achieved yet.

**Recommendation 6**

488. Providers of financial service are required under their respective regulations, decrees, or rules to treat persons holding important public positions as high-risk customers. Financial institutions interviewed during the on-site visit did not have any well-established risk management system or procedure to determine whether a potential customer is a politically exposed person. For the domestic PEPs, they said that they rely on information from public sources, mostly form media reports, and information provided by the customer regarding their occupation.

***Risk-management system to identify PEPs***

489. BI Regulation Number 3/10/PBI/2001 requires banks to appoint a special officer with explicit responsibility to handle high-risk customer, including individuals holding important public positions (Article 12).

490. According to the Elucidation to the Regulation, the meaning of 'individual holding important public positions' includes public officers as referred to in the Act No. 28 of 1999 concerning The Good Governance of State Administration. It includes public officers carrying out executive, legislative or judicative functions, and other public officers with main functions and duties associated with state administration as well as the parties related to those public officers, such as:

a company owned and managed by public officer;

b the immediate family of public officer including parents, siblings, spouse, children and in-laws;

c a close associate of a public officer including a person who is widely and publicly known to maintain an unusually close relationship with the public officer.

491. The Elucidation also states that the meaning includes foreign public officers.

492. According to BI Circular Letter 5/32/2003, approval for acceptance of a prospective customer from a high-risk country, involved in a high-risk business, or comprising a high-risk customer must be issued by a bank officer holding authority at one level higher than the officer authorised to issue approval for acceptance of non-high risk customers. In practice in Indonesia, this is usually the Head of Customer Relations or Branch Manager, but the absolute level is not a clear requirement. This does not meet the FATF requirement that senior management approval must be obtained before establishing business relationships with a PEP.

***Senior management approval to take on and continue to have PEPs as customers***

493. The Circular Letter of BI Number 5/32/DPNP Year 2003 requires banks to "conduct exten sive due diligence of any prospective customer deemed a high risk customer, including bearer of state office". The same Circular Letter states that approval for acceptance of a high-risk cu stomer should come from a bank officer holding authority at one level higher than the officer a uthorised to approve acceptance of non-high risk customers. Banks are also required to cond uct 'periodic monitoring of account entries to identify any possibility of entries not compatible w

ith the customer profile and to conduct 'more intensive' monitoring for high-risk customers. Ba nks are not obliged to obtain senior management approval to continue business relationships with a customer who becomes a PEP.

***Measures to establish the source of wealth and funds of PEPs***

494. There is no specific stipulation in the BI Regulation or Circular Letter regarding banks' obligation to obtain information about the source of fund when dealing with a PEP. Rather, under the BI Regulation, this must be done on an all-customer basis, regardless of whether the customer is an individual customer or a corporate customer, and also regardless of whether or not the customer is categorized as high risk or not.

495. In general practice, most banks focus on domestic PEPs even though the definition of PEP under the BI Regulation includes foreign PEPs. BI officials said that there is little likelihood that foreign PEPs will open and hold an account in Indonesia since foreigners need a Stay Permit to open an account.

496. There is no specific requirement for banks to perform enhanced on-going due diligence with respect to PEPs. Chapter IV B.3.a of BI Circular Letter 5.32.2003, however, states that more intensive monitoring is required for accounts of high risk customers, which include PEPs.

497. Under the version of the BAPEPAM Rule V.D.10, which was amended in August 2007, providers of financial services in the capital market are required to 'conduct more stringent verification to customers who is categorized as high risk of money laundering practices'. The same Rule states that 'the level of risk can be seen from, among other things, background or profile of the customer who is considered as politically exposed persons, including government officials'. While the BAPEPAM rules go further than those of other regulators, there is no specific definition of PEP or 'government officials', and it is not clear if the definition includes foreign PEPs. There is no specific provision regarding what measures need to be taken to perform 'more stringent verification. Nor is there any explicit stipulation regarding the requirement to obtain information on sources of fund when dealing with PEPs. Rather, the providers of financial services are required to obtain information on source of fund on an all-customer basis.

498. The new version of Rule V.D.10 was issued in August 2007, and according to informal agreement with the regulator, providers of financial services were given six months to establish their own internal policy regarding high risk customers. The financial institutions interviewed during the on-site visit said they were in the process of establishing their internal policies.

499. There is no explicit requirement for securities sector entities to perform enhanced or on-going due diligence with respect to PEPs. There is no explicit requirement for financing institutions, insurance companies, and pension funds (NBFIs) to perform enhanced due diligence for PEPs. There is no specific requirement for non-bank money changers to perform enhanced due diligence for PEPs.

500. Indonesia has signed and become party to UN Corruption Convention but has not yet fully implemented the Convention. This is an additional element for the purposes of the rating.

**Recommendation 7**

501. There is no specific requirement from BI for banks to gathering information from respondent institutions to understand fully the nature of their business and determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subjected to a ML or TF investigation or regulatory action.

502. Limited controls on correspondent banking relationships are included in Chapter III (4) of Bank Indonesia Circular Letter No.5/32/DPNP (December 2003). These obligations do not cover the full range of respondent activities, but relate to situations in which an Indonesian bank accepts a foreign bank as a corporate customer and the foreign bank is acting as an intermediary empowered by a beneficial owner.

503. Discussions with banks in Indonesia confirmed that they do not consider that there are any obligations from BI for correspondent banking. In some cases it was apparent that banks of their own volition do examine the reputation etc. of the prospective correspondent bank.

504. There are no specific instructions issued by BI requiring banks to assess the AML/CFT controls of the respondent bank and ascertain that they are adequate and effective.

505. There are no specific guidelines for banks or financial institutions prescribing that before establishing new correspondent relationship approval from senior management should be obtained.

506. Given the absence of specific controls on correspondent banking relationships, there have been no rules issued in relation to CDD obligations for customers of payable-through accounts. BI was not aware of the existence of payable through accounts.

507. Bank Indonesia has indicated that it is intended to develop and issue amended Regulations in relation to correspondent banking.

**Recommendation 8**

<u>Banking sector</u>

508. Under Article 4 Paragraph 4 of the BI Regulation Number 3/10/PBI/2001 Concerning the Implementation of Know Your Customer Principles, banks providing electronic banking service are required to meet the prospective customer at least at the time of account opening. Elucidation on this Article states that the “implementation of the Know Your Customer Principles covers face-to-face customer and non-face-to-face customer relations such as a customer who conducts transaction by phone, correspondence and electronic banking.”

509. The limit on the amount of transactions that bank account holders can conduct on an ATM varies from bank to bank and also depending on the type of cards, but the limit on a typical average customer is Rp.5,000,000 ($US500) per day. Pursuant to Article 8 of Bank Indonesia Regulation No.5/8/PBI/2003 concerning Risk Management, each bank is required to determine limits of transactions. There is no cap on fund transfers done through internet banking.

Securities Sector

510. There is currently no explicit requirement for securities sector entities to take measures to prevent misuse of technological advances although there are financial institutions in Indonesia that provide services utilizing such technologies. A new Law regarding Electronic Information and Transactions was enacted in early 2008, but after the time of the onsite visit. Provision from the new law will be added to BAPEPAM Rule of V.D.3.

Financing Institutions, Insurance Companies, and Pension Funds (NBFIs)

511. Currently alternative payment methods such as e-money are used only as monetary instruments for purchasing goods and or services. Rp.100,000,000 is the limit on such e-money products. If an issuer intends to provide fund transfer facility to e-money issued, then the issuer must obtain a business license as an issuer of e-money as well as business license as a provider of fund transfer of money remittance.

### 3.2.2 COMMENTS AND RECOMMENDATIONS

512. The Indonesian government authorities have issued laws, regulations and other legal instruments, and these instruments show a degree of compliance with the FATF Recommendations. There are however, some areas where financial institutions' lack of easy access to information, lack of clear internal control policy on how to obtain necessary information, or the absence of supporting systems raised concerns among the Evaluation Team members about effective implementation of the regime.

513. With respect to identification/verification of beneficial owners, there is no clear definition of the term "beneficial owner" in the AML Law or in any Regulation/Decree/Rule. The financial institutions that the Evaluation Team met had varying understanding of the scope of their obligations, especially with respect to corporate customers. Some financial institutions said that they were required to look into the ownership structure/relationship until they know the natural person who ultimately controls the customer/transaction. Others, however, said that they relied solely on the information written on articles of incorporation or deed of establishment, which is, in most cases, information on immediate ownership and different from the true beneficial ownership.

514. It seems that the concept of beneficial owner under the Indonesian regime is not in line with the FATF standard, especially when it comes to identification/verification of the beneficial owner for corporate customers. Banks are required under the BI Regulation to obtain identification documents of the "principal shareholders" when dealing with corporate customers, but the banks that the Evaluation Team interviewed did not have clear internal policies regarding the definition of "principal shareholders" or how to obtain information about the overall ownership structure.

515. For the other sectors, there is no explicit requirement to establish an understanding on the ownership structure or to determine who the natural person with ultimate control when dealing with corporate customers. They are required under decrees/rules of their respective sectors only to "obtain deed of establishment or articles of incorporation". These provisions were cited as the requirements for them to establish an understanding of the ownership structure. The Evaluation Team, however, is not satisfied that such provisions are resulting in effective implementation of the FATF standards. While they are required to obtain deed of establishment or articles of association, articles of association do not necessarily include information on ownership structure.

516. Some financial institutions that the Evaluation Team met expressed their opinion that an information framework that enables easier access to company registry information, such as a framework for internet-based search of the registry, would support more efficient and effective implementation of the FATF standards. Currently the company registry is limited.

517. Financial institutions' lack of clear internal control policies regarding implementation of enhanced due diligence also raised concerns Evaluation Team about the effectiveness and feasibility of the regime. Financial institutions in the banking and the securities sectors are required to conduct enhanced due diligence for high-risk customers, customers from high-risk countries, or customers engaged in high-risk businesses. For high-risk customers, financial institutions interviewed during the on-site visit uniformly said that bearers of state positions are one category of high-risk customers. Some of them said that they used commercial database for identification of PEPs, but other seemed to lack any clear risk control measures in place to identify PEPs. They said that they relied on information they could get from public sources. But the types of public sources that they cited were mostly media reports, which raised concern that the requirement might be implemented on an ad hoc basis. The definition of PEP under the BI Regulation is quite comprehensive and is largely in line with the FATF standards. It encompasses both foreign and domestic PEPs. Some banks, however, seemed to lack effective risk management control measures in place to enable them to identify PEPs.

518. The absence of controls on correspondent banking relationships is a significant weakness.

519. For high-risk countries or high-risk businesses, none of the financial institutions was able to present clear internal control guidelines or any guideline issued by government authorities.

*CDD*

- Indonesia should explicit enforceable provisions to:
    - perform CDD when there is doubt about the veracity of the CDD information previously obtained.
    - perform CDD when ML or TF is suspected regardless of any other exemption.
    - submit an STR on a suspicious occasional wire transfer regardless of the amount.

- Requirements for confirming whether a person acting on behalf a legal person is so authori sed and for ongoing due diligence should be included in laws or regulations
- Financial institutions should be clearly required to establish an understanding of a legal per son or to determine the natural person exercising ultimate control over the legal person.
- Non-bank financial institutions (NBFIs) should be required to conduct enhanced CDD for hi gh-risk customers.
- Authorities should provide clear guidance on which countries constitute a higher risk

*PEPs*

- All sectors should be required to perform enhanced CDD with respect to foreign PEPs.
- All sectors should be required to obtain senior management approval before establishing busi ness relationships with a PEP
- Supervisors should ensure financial institutions establish effective risk control measures to ide ntify PEPs and implement CDD measures related to PEPs.

*Correspondent Banking*

Indonesia should establish correspondent banking obligations requiring financial institutions to:

- gather information from respondent's institutions to understand fully the nature of their busines s and reputation.
- assess the AML/CFT compliance by the respondent.
- obtain senior management approval before establishing a new correspondent banking relation ship.
- establish specific controls on the maintenance of payable-through accounts.
- Indonesia should require the securities sector to have in place measures to mitigate risks asso ciated with transactions utilizing technological advances.

### 3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 TO 8

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.5** | **PC** | • There is no explicit requirement to perform CDD when there is dou bt about the veracity of the CDD information previously obtained.<br>• There is no explicit requirement to perform CDD when ML or TF is suspected regardless of any other exemption.<br>• Requirements for confirming whether a person acting on behalf a l egal person is so authorised and for ongoing due diligence are not s et out in laws or regulations<br>• Only banks have an explicit requirement to obtain identification doc uments for principal shareholders, which is set out only in OEM. The other sectors have no requirement to establish an understanding of a legal person or to determine the natural person exercising ultimate control over the legal person.<br>• Non-bank financial institutions (NBFIs) are not required to conduct enhanced due diligence for high-risk customers.<br>• At the time of the onsite visit, detailed guidelines had not been prov ided by competent authorities on which countries constitute a higher risk<br>• At the time of the on-site visit, securities companies were not requir ed to conduct enhanced CDD for high-risk customers<br>• Statistics do not demonstrate effective implementation of measures across all sectors, in particular CDD to ensure there are no anonym ous accounts and obligations to identify beneficial owners. |
| **R.6** | **NC** | • Only the banking sector has explicit requirements to perform enhance d CDD with respect to foreign PEPs, while other sectors are only requir ed to pay attention to domestic PEPs.<br>• Banks are not required to obtain senior management approval to cont inue business relationships with a customer who becomes a PEP.<br>• Financial institutions lack clear internal risk control measures to identif y PEPs and implementation appears to be very weak overall. |

| | | |
|---|---|---|
| **R.7** | **NC** | • There is no explicit or specific Regulation or instructions from BI to banks requiring them to gather information from respondent's institutions to understand fully the nature of their business and reputation.<br>• No explicit instructions to financial institutions to assess the AML/CFT compliance by the respondent.<br>• No explicit instructions to obtain senior management approval before entering into new correspondent banking relationship.<br>• No specific controls on the maintenance of payable-through accounts. |
| **R.8** | **LC** | • There is no requirement for the securities sector to have in place measures to mitigate risks associated with transactions utilizing technological advances. |

### 3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)

3.3.1 DESCRIPTION AND ANALYSIS

Banking Sector

520. Currently there is no specific rule that governs banks that rely upon third party services to perform CDD. There are Articles in the BI Regulation that envisage situations where a bank relies on third party services for CDD. For example, Article 4 Paragraph 4 of the BI Regulation Number 3/10/PBI/2001 requires banks providing electronic banking service to meet the prospective customer at least at the time of account opening. Elucidation on this Article states "the meeting between bank and customer can be held by a special officer or any person representing the bank to get assurance on the customer identification." There is, however, no provision within the same Regulation or any other law/regulation or OEM governing banks' use of third parties for services that involve CDD.

Securities Sector

521. The new version of BAPEPAM Rule V.D.10, which was amended in August 2007, sets out the following provisions regarding an agreement between an investment manager and a mutual fund selling agent:

a. Mutual fund selling agreement between an investment manager and a mutual fund selling agent must contain provision regarding implementation of Know Your Customer principles;
b. Mutual fund selling agent must implement Know Your Customer Principles determined by and under coordination of investment manager;
c. Investment manager is responsible for the implementation of Know Your Customer principles which is conducted through a mutual fund selling agent for the mutual fund customers;
d. Investment manager must have procedures of fit and proper test and supervision on mutual fund selling agent in implementation of Know Your Customer principles and apply such procedures;
e. Mutual fund selling agent shall provide information regarding customer data to investment manager with condition that all customer data can be used merely for the interest of such mutual fund activities.

522. Securities sector entities were given six months to implement the provisions, and the six months had not elapsed at the time of the on-site visit. Securities sector entities interviewed during the on-site said that they were discussing specific procedures to implement the provisions, such as use of common customer due diligence forms.

523. There was no specific rule regarding use of third parties for CDD purposes in the old version of BAPEPAM Rule V.D.10. The BAPEPAM Rule also allows the regulated parties to apply simplified CDD procedures only in very limited and specific situations. It states that a regulated entity can apply simplified procedure for identification/verification of beneficial owner when the prospective customer is another securities company, mutual fund manager, or a custodian bank that applies Know You Client Principles similar to those provided for in the BAPEPAM Rule. In such a case, it is sufficient for a regulated entity to receive a written statement from the prospective customer that it has performed verification of the supporting documents for the beneficial owners.

Financing Institutions, Insurance Companies, and Pension Funds (NBFIs)

524. There is so specific provision governing NBFIs that rely on third party services for CDD purposes.

### 3.3.2 RECOMMENDATIONS AND COMMENTS

- Indonesia should establish and implement explicit legal requirement for banks and NBFIs to have adequate procedures with respect to use of third parties for services that involve CDD.
- BAPEPAM should ensure that its Rule V.D.10 is effectively implemented as a matter of priority

### 3.3.3 COMPLIANCE WITH RECOMMENDATION 9

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.9** | **NC** | • There is no explicit legal requirement for banks and NBFIs to have ad equate procedures with respect to use of third parties for services that i nvolve CDD.<br>• BAPEPAM Rule V.D.10, introduced in Aug 2007, contains provisions that are broadly in line with the FATF standards, however parties given a 6 month transition period to establish specific internal controls |

## 3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)

### 3.4.1 DESCRIPTION AND ANALYSIS

525. Bank secrecy is stipulated under Article 40 of Banking Act which provides that bank shall keep information concerning deposit customer and their deposits confidential, except with the approval of the Chairman of BI, in the interests of:

- taxation investigations;
- resolution of a bank's claims conducted by the Agency for State Debt and Auction Affairs; court procedures in a criminal case, where a customer is suspected of a crime or facing a criminal charge;
- court procedures in civil case in which the bank be a party;
- information exchange between banks.

526. However, bank secrecy is overridden through various provisions of the AML Law, albeit in a limited sense of reporting obligations of Financial Services Providers. Article 14 of the AML Law provides that the reporting obligations of Providers of Financial Services which are banks shall be exempted from bank secrecy provisions as contained in laws regulating bank secrecy. The disclosures required other than those under reporting obligations may not be covered under the said Article. Accordingly, Article 27 provides exemption in respect of PPATK's powers to request and receive reports and conduct audit of Financial Services Providers. On the same lines, Article 33 disables secrecy of financial transactions for investigators, prosecutors and judges when they request information regarding assets of any person reported by the PPATK, a suspect or a defendant for the purpose of court proceedings in a ML case. Again scope of the provision is limited to ML cases only and cases of TF may not be covered under it.

527. Article 30 of Anti Terrorism Act provides powers to lift bank secrecy and request information from banks and other financial institutions for the purpose of investigating any criminal act of terrorism. In requesting such information investigators, public prosecutors or judges shall not be subject to the provisions of the legislation governing bank secrecy or other financial transaction secrecy. Depending if it is POLRI, prosecutors or the courts making the requests for information against Article 30, such requests may be authorised by the Provincial Police Chief; the Head of the Office of Public Prosecution; or the Chief of the Panel of Judges investigating the case.

528. The absence of controls on correspondent banking and introduced business (Recs 7 & 9) means that it is not clear that financial institutions are able to share information with other financial institutions in relation to correspondent banking relationships and CDD information of introduced customers. This has an impact on the implementation of this Recommendation.

**Effectiveness**

529. The sharing of information and records was found to be satisfactory. The officials of investigation and prosecution agencies told the Evaluation Team that secrecy of information and records was not an issue in Indonesia. The main users of information are BI, PPATK, POLRI and AGO. Being the regulator/ supervisor of banks, BI has no problems in accessing and getting any information from banks, which are subject to secrecy under the Banking Act.

530. In relation to applying the powers to lift bank secrecy in cases of TF, PPATK has been able to request information from banks related to TF cases.

531. It appears that once an STR is reported to PPATK, banks and NBFIs do not disclose the contents of the STR to the respective regulators due to confidentiality clause attached to STRs. Nonetheless, this does not limit BI's mandate of analysing transactions and records of banks to satisfy itself that transactions worth reporting are being so done. PPATK is also authorised to request and receive Reports from financial services providers.

532. For sharing of information, PPATK has signed MOUs with domestic authorities and FIUs of other countries. Currently it has 16 MOUs with domestic authorities and 20 with its counterparts in other countries. Investigation agencies and the AGO were comfortable with mechanisms to share information and obtain records from Financial Services Providers. The Evaluation Team posed specific queries to investigation agencies and AGO regarding any precedents in which provision of information/ records was refused by any Financial Services Provider. However neither could quote any example. In practice, secrecy is not a hurdle in the way of the AML/ CFT regime.

533. Information exchange between PPATK and investigation agencies appears to be was working well. Until September 2007, POLRI requested information more than 200 times, AGO more than 60 times and KPK more than 180 times, and the information was made available.

### 3.4.2 RECOMMENDATIONS AND COMMENTS

- Scope of Article 14 of AML Law should be extended to include information sharing beyond reporting obligations to avoid any legal challenges to PPATK.
- Exemption provided to investigators and prosecutors under Article 33 of AML Law should also cover TF.

### 3.4.3 COMPLIANCE WITH RECOMMENDATION 4

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.4** | **LC** | • The absence of controls on correspondent banking and introduced business (Recs 7 & 9) means that it is not clear that financial institutions are able to share information with other financial institutions. |

## 3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)

### 3.5.1 DESCRIPTION AND ANALYSIS

**Recommendation 10**

534. Article 17 of the AML Law provides that Providers of Financial Services shall maintain records and documents concerning the identity of users of financial services for five years as from the time the business relationship with the user of financial services concerned ends. The term "Providers of Financial Services" includes banks, securities companies, mutual fund managers, custodian banks, insurance companies and pension funds, money remitters, money changers etc. Banks are further required to administer documents/ data relating to customer's identity for at least five years after the termination of relationship. It is observed that both the obligations, i.e. under the Law as well as Regulation, are limited to documents concerning the identity of customers only, whereas the requirement should also cover records like account files and business correspondence to be maintained for at least five years.

535. The requirement for securities companies, mutual funds and custodian banks is provided in Article 5 of Rule Number V.D.10 regarding Know Your Client Principles which states that financial service providers shall keep and maintain documents and records related to its customers for at least five years since the closing of customers' account. Accordingly, Article l0 paragraph (2) of Decree of the Minister of Finance Number: 74/ PMK. 012/ 2006 states that NBFI should register/record and store data transaction between NBFI with Customer for at least five (5) years since termination of agreement with NBFI. BI's Circular Letter No.9/23/DPM dated 8 October, 2007 to Non-Bank Money Changers also stipulates that data and documents of the transactions above the threshold of one hundred million Rupiahs shall be administered no later than five years after the date of the transaction.

536. Notwithstanding the overlapping provisions contained in laws, rules and regulations, Article 11 of Law Number 8 Year 1997 concerning Documents of Company takes care of record retention requirement in another way by stipulating that a company shall maintain documents for ten years. This law applies to every company incorporated in Indonesia, including all the financial services providers . The term "corporate documents" comprises financial and other documents. Financial documents comprise notes, book-keeping evidence and financial administration supporting data which could serve as evidence of the rights and obligations as well as business activities of a particular company. "Other documents" comprise data or any writing containing information which shall be of use to the company although they are not directly linked with financial documents. As per standards, business correspondence is also required to be retained for at least five years as a part of record. The Law No. 8 does not explicitly mention business correspondence as a necessary requirement or part of corporate documents but it seems to cover it in some way under "other documents".

537. The availability of requisite records is addressed under Article 33 of the AML Law. The said Article requires that in case of ML, investigators public prosecutors or judges shall be authorised to request information from Providers of Financial Services regarding assets of any persons reported by PPATK, a suspect, or a defendant for the purpose of the court proceedings. PPATK is empowered to request and receive reports from Providers of Financial Services and conduct their audit. However, explicit provision of calling information, independent of reporting process, does not seem to be available. PPATK needs to have express powers of calling any information from financial services providers for domestic and international intelligence sharing. Banks are required to maintain database which must be

capable of supporting the preparation of reports and provision of information required for internal use in the bank and for the competent external authorities. Similarly, BAPEPAM Rule states that Recording System should be able to provide information in a timely fashion which can be understood by any authorised person who has interest of such documents. Accordingly, NBFIs are required to maintain database which should be updated to assist regulator /PPATK in analysing and tracing individual transactions.

**Effectiveness**

538. The discussions held with different types of financial services providers shows that records of all types are being maintained for a minimum period of 10 years as required under the Corporate Law of 1997. Regarding the manner in which records are maintained, majority of the entities have their own system supported data basis. However, some of the branches working in remote areas of the country are not currently integrated with the central databases. Supply of records to competent authorities is smooth. Investigators, prosecutors and judges are empowered to call any records from financial services providers under AML Law. The information required by investigation and prosecution agencies is obtained directly from Financial Services Provider by serving a letter on head of the entity concerned. The Evaluation Team enquired specifically from users of information in law enforcement and prosecution agencies regarding their experience of getting records from Financial Services Providers. It was invariably explained that since they are authorised to obtain records under a valid piece of legislation, supply of information by financial services providers is smooth and they are satisfied with the mechanism.

**Special Recommendation VII**

539. Indonesia has not yet implemented comprehensive controls on wire transfers in keeping with FATF standards.

540. There is no law or regulation in Indonesia requiring banks to obtain and maintain information relating to the originator of a wire transfer. Banks are under no obligation to obtain name, address, account number and identity of the person originating a wire transfer. Banks are not under any obligation to verify the identity of the originator of wire transfer before executing the order involving amount above a threshold of USD1000 or EUR1000 as provided for in the FATF standards.

541. No stipulation has been made in Indonesia putting an obligation on ordering financial institutions to ensure that cross border or domestic wire transfer messages above a prescribed cut-off are accompanied by full originator information or accompanied by batch file containing full originator information that is fully traceable in the recipient country. Similarly, there are no obligations on each intermediary and beneficial institution in the payment chain being required to ensure that all originator information accompanies the transmitted transfer.

542. In absence of any regulatory prescription dealing with wire transfers no period of preservation of records by beneficiary banks relating to information of originator of wire transfers is followed by banks.

543. Indonesia does not require banks in Indonesia to consider wire transfers not accompanied by originator information as high-risk. There is no regulatory prescription requiring a lack of the originator information to be one of the factors for a transaction to be treated as Suspicious

Transaction. Likewise banks are not required to consider terminating relationship with banks that do not provide full originator information.

544. In the absence of coverage of wire transfer rules, there is no effective monitoring of compliance of wire transfers by the supervisors and no available sanctions.

***Proposed future arrangements***

545. Indonesia has drafted amendments to the AML Law which, when passed, would cover wire transfers between banks, non-banks as well as between a bank and an NBFI. The requirement and procedure for obtaining a licence for offering wire transfer services would be prescribed by the BI for banks as well as non-banks. Supervision over the overall business of wire transfer for banks and non-banks would be entrusted to BI. Article 93 of the draft authorises the Bank to issue written warnings and penal sanctions for violations relating to wire transfer law including duplicating, intercepting or losing data or information system of the wire transfer. The draft law does not appear to include an explicit requirement that financial institutions should include name, address and identification details of the remitter in the wire transfer message.

### 3.5.2 RECOMMENDATIONS AND COMMENTS

Recommendation 10

- Consider modifying Article 17 of AML Law to impose a direct requirement to maintain transaction records in their entirety for a period of at least five years. Alternatively, BI should revise its KYC Regulation which is currently restricted to documents concerning identity of customers only.

- Business correspondence should be included in law or Rules/ Regulations as a part of record retention requirements.

- PPATK should be authorised to obtain information from financial services providers independent of reporting requirements. This would also take care of PPATK's needs for any additional information required in connection with STRs.

SR VII

- Indonesia should, as a matter of priority, establish comprehensive wire transfer obligations over its financial institutions and ensure that competent authorities are responsible for regulation and oversight of those provisions for all relevant sectors. These obligations should require that full originator information accompany wire transfers and to regard a lack of originator information as high-risk.

- Banks should be required to terminate or limit business relationships with banks that do not provide full originator information.

### 3.5.3 COMPLIANCE WITH RECOMMENDATION 10 & SPECIAL RECOMMENDATION VII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.10** | **LC** | • Although Corporate Law requires numerous documents to be maintained for 10 years, business correspondence is not clearly provided as a part of the records. |

| | | |
|---|---|---|
| **SR.VII** | **NC** | • Indonesia has not established comprehensive wire transfer obligations over its financial institutions and there is no competent authority responsible for regulation and oversight<br>• There is no requirement in Indonesia on wire transfers to be accompanied by full originator information.<br>• There is no requirement to regard a lack of originator information as high-risk.<br>• Banks are not required to terminate or limit business relationship with banks that do not provide full originator information. |

***Unusual and Suspicious Transactions***

## 3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

3.6.1 DESCRIPTION AND ANALYSIS

**Recommendation 11**

546. The requirements of FATF Recommendation 11 are partly addressed through relevant laws, regulations and rules, however the distinct requirements of Recommendation 11 (to monitor unusual transactions) and Recommendation 13 (to report STRs) are somewhat confused.

547. The definition of 'suspicious transaction' under the AML Law (Article 1 Paragraph 7) includes the concepts of both unusual transactions and suspicious transactions.

548. The Article defines a suspicious transaction as, inter alia, "1. a financial transaction deviating from the profile, characteristics or the usual transaction patterns of the customer concerned". In practice this is confusing and is not in keeping with the FATF standards which require monitoring of unusual transactions.

549. PPATK Guideline II for Identification of Suspicious Financial Transactions by Financial Dealers includes a list of indicators of Suspicious Financial Transactions including that it has an "unclear economical and business target." Item 3 of the guidelines also refer to "Economically irrational transactions". This guideline is not a binding obligation and relates to STR reporting rather than monitoring of unusual transactions.

Banking Sector

550. Article 2 of BI Regulation Number 3/10/2001 provides that banks must implement KYC principles including policy and procedures for monitoring customers' account transactions.

551. BI Circular Letter 5/32/2003 provides specific guidance on monitoring of account transactions and customer transactions. The Circular Letter requires banks to have a policy on monitoring of customer accounts and transactions including development of an effective information system capable of assisting bank staff in identification, analysis, monitoring, and reporting of transactions conducted by customers. According to the same Circular Letter, monitoring must include, among others, the following:

- Account monitoring, which encompasses the periodic monitoring of account entries to identify any possibility of entries not compatible with the customer profile; and
- Transaction monitoring, which encompasses the monitoring of all cash and non-cash transactions at the time that the transaction takes place in order to identify any possibility of transactions not compatible with the customer profile.

552. In effect, the above obligations mean that customer profiles must include information on what is a usual or unusual pattern of transactions. Banks are also required to keep documentation of findings from monitoring and evaluation of accounts and transactions regardless of whether reported or not reported to PPATK.

Securities Sector

553. The old version of BAPEPAM Rule V.D.10, which was first issued in January 2003, simply provided that the regulated entities must have information systems that are able to effectively identify, analyse, monitor, and provide reports concerning the transaction characteristics of clients.

554. Under the revised version of the same Rule (August 28, 2007), the regulated entities are required to keep records of the result of monitoring and evaluation of customer account and transaction, regardless of whether the transaction was reported to PPATK or not. BAPEPAM Rule V.D.10 was not fully in force at the time of the on-site visit.

Insurance, Pension Funds, and Other Non-bank Financial Institutions

555. Article 10 of the Minister of Finance Decree Number 74 Year 2006 requires regulated entities to maintain transaction data within a framework to monitor bank account and customer transactions.

556. There is no specific requirement for non-bank financial institutions to keep records of the result of such monitoring.

**Recommendation 21**

557. Article 16 of the BI Regulation 3/10/2001 dated June 18,2001 stipulates that an overseas office shall apply the Know Your Customer Principle (KYC P) (a) of that country if KYC principles of that country are equal or stricter than Indonesia, (b) of Indonesia if KYC principles in that country are not in force or less stringent than Indonesia, (c) if the bank is unable to apply it has to inform BI. However, beyond CDD for customer acceptance, no specific instructions from the supervisors of the Banking, Insurance, and Securities sectors have been issued requiring them to give special attention to business relationships and transactions with individuals or companies in countries which do not or insufficiently apply the FATF Recommendations.

558. Guidelines II issued by PPATK on Identification of Suspicious Transactions give guidance on how financial service providers can perform enhanced due diligence on customers from high risk countries. The Guidelines indicate that PPATK will separately publish a list of High Risk Countries but as at the date of the on-site visit no such list had been issued by PPATK. PPATK issues daily newsletters, which have included references to FATF statements and ME publications at the time of their publication.

559. The Guideline II issued by PPATK for Identification of Suspicious Financial Transactions by Financial Dealers defines "Suspicious Financial Transaction" as a transaction that is unusual or improper and is not always related to a certain criminal act. The list of indicators of Suspicious Financial Transactions includes fund transfer to/from high risk countries. It further adds that one of the general characteristics of a Suspicious Financial Transaction is that it has "unclear economical and business target." Item 3 of the guidelines also refer to "Economically irrational transactions". All Suspicious Financial Transactions require reporting to the PPATK.

560. There is no specific provision for counter measures against the countries that do not or insufficiently apply FATF. BI circular No.5/32/DPNP December 2003 (Para 5(c) of the Annex) requires the Board of Directors of banks to establish criteria for high risk: countries, business and customers. The Guidelines II issued by PPATK require banks to conduct enhanced CDD for high risk customers, high risk business and high risk countries.

561. Subsequent to the onsite visit, in June 2008 PPATK issued KEP-47/1.02./PPATK/06/08 concerning the Guideline on the Identification of high-risk products, customers, business, and countries for Providers of Financial Services. This is a welcomed development, however given the timing of the new measure, it will not be taken into account for the rating of Recommendation 21.

### 3.6.2 RECOMMENDATIONS AND COMMENTS

Recommendation 11

- Indonesia should take steps to remove confusion in the obligations to monitor unusual transactions and to report suspicious transactions by establishing clear, separate provisions for monitoring unusual transactions.
- Indonesia should establish explicit legal requirements for:
  - providers of financial services to examine as far as possible the background and purpose of unusual transactions;
  - NBFIs to keep records of the findings of account/transaction monitoring; and .
  - financial institutions to keep records of the findings of monitoring for unusual transactions.

Recommendation 21

- Indonesia should ensure that financial institutions are effectively implementing requirements to take into account country risk across all sectors.
- Indonesia should provide guidance to financial institutions regarding the identification of high risk countries
- Financial institutions should be required to give special attention to business relationships and transactions with individuals or companies in countries which do not or insufficiently apply the FATF Recommendations.

### 3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.11** | **PC** | • There is no explicit legal requirement for providers of financial services to examine as far as possible the background and purpose of unusual transactions. |

| | | |
|---|---|---|
| | | • There is no explicit requirement for NBFIs to keep records of the findings of account/transaction monitoring.<br>• There is no explicit requirement for financial institutions to keep records of the findings of monitoring for unusual transactions. |
| **R.21** | **PC** | • While financial institutions are obliged to take steps to determine high risk countries, the level of effectiveness across all sectors is not clear.<br>• At the time of the onsite visit Indonesia had not provided guidance to financial institutions regarding the identification of high risk countries<br>• Financial institutions are not required to give special attention to business relationships and transactions with individuals or companies in countries which do not or insufficiently apply the FATF Recommendations. |

## 3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

3.7.1 DESCRIPTION AND ANALYSIS

**Recommendation 13**

562. As noted above, the definition of 'suspicious transaction' under the AML Law includes concepts of both *unusual* transactions and *suspicious* transactions. Article 1 Paragraph 7 of the AML Law defines 'suspicious financial transactions' as:

a. financial transactions deviating from the profile, characteristics or the usual transaction patterns of the customer concerned;

b. financial transactions by customers that can be reasonably suspected to be conducted for the purpose of avoiding reporting of the transactions concerned as required of Providers of Financial Services in accordance with this Law; or

c. financial transactions whether or not completed using assets that are reasonably suspected to constitute the proceeds of crime.

563. Article 13 of the AML Law requires providers of financial services to report suspicious financial transactions to PPATK, the Indonesian FIU. A provider of financial service is required to submit report to PPATK within three business days after it knows that there is suspicious element to a financial transaction.

564. The obligation to report an STR is based on a 'reasonable grounds to suspect' that funds are the proceeds of crime.

565. Article 1 (7) of the AML Law covers attempted transactions and defines suspicious transactions to include "financial transactions whether or not completed using assets that are reasonably suspected to constitute proceeds of crime."

566. Financial institutions are required to report suspicious transactions regardless of the amount of transaction and regardless of whether the transaction is related to tax matters.

567. The Elucidation to the law gives general guidance as to what constitutes a suspicious transaction. It says that suspicious transactions do not have specific definable characteristics because they are influenced by variation and developments in financial instruments and services. It provides, however, examples of general characteristics of suspicious financial transactions that can be used as 'reference points'. The following are the examples given:

1) no clear economic and business purposes;
2) utilization of cash in relatively large amounts and/or conducted repetitively in an unusual manner;
3) transaction activity that is otherwise unusual and/or unnatural.

**Table: Number of STRs Submitted by Sector since 2001**

| Reporting Parties | Number of Reporting Parties that Submitted STRs | No of STRs | No of STRs |
|---|---|---|---|
| State-owned Banks | 4 | 2775 | |
| Private Banks | 58 | 4078 | |
| Regional Development Banks | 26 | 2353 | |
| Foreign Banks | 11 | 1074 | |
| Joint Venture Banks | 13 | 251 | |
| Rural Banks | 7 | 24 | |
| **Subtotal for banks** | **119** | | **10,555** |
| Securities Companies | 17 | 87 | |
| Investment Managers | 3 | 6 | |
| Money Changers | 18 | 108 | |
| Pension Fund | 1 | 1 | |
| Finance Companies | 11 | 101 | |
| Insurance Companies | 19 | 489 | |
| **Subtotal STR Non Bank** | **69** | | **792** |
| **Total No of STRs** | | | **11,347** |

**Table: Number of STRs Submitted by Year**

| Period | | Received by | Number of STRs | Average per Month |
|---|---|---|---|---|
| Year 2001 | | BI | 14 | |
| Year 2002 | | BI | 124 | 10.33 |
| Year 2003 | Jan 1 ~ Oct 17 | BI | 153 | |
| | Oct 18 ~ Dec 21 | PPATK | 127 | |
| | | | 280 | 23.33 |
| Year 2004 | | PPATK | 838 | 69.83 |
| Year 2005 | | PPATK | 2,055 | 171.25 |
| Year 2006 | | PPATK | 3,482 | 290.17 |
| Year 2007 | | PPATK | 4,554 | 506.00 |
| **Total STRs received as of Sep 30, 2007** | | | **11,347** | |

568. The Evaluation Team had discussions with each financial institution it met during the on-site visit to establish an understanding of how financial institutions distinguish unusual

transactions and suspicious transactions. According to the strict interpretation of the provisions in Article 1 Paragraph 7 of the AML Law, financial institutions are required to submit report on every unusual transaction. The Evaluation Team thought it was important to understand how this requirement is actually handled by financial institutions especially considering that the number of STRs submitted is not very high.

569. According to explanations provided by financial institutions, transactions that were reported along the internal line of reporting are reviewed and filtered by a special unit or person who is responsible for STR reporting. Such unit/person reviews the transactions whether they warrant submission to PPATK.

570. The STR obligation applies to assets employed directly or indirectly for terrorist activities. It is, however, unclear whether the obligation covers funds to be used by terrorist organizations or those who finance terrorism since there is no definition of "terrorist activities" in the AML Law or in any other law.

571. PPATK has issued detailed guidelines to support the reporting of STRs related to ML and the proceeds of crime.

572. There are low numbers of STRs received from non-bank financial institutions, including capital market entities.

**Special Recommendation IV**

573. The mandatory obligation to report STRs related to TF is not sufficiently direct.

574. As stated above, the obligation to report an STR is included in Article 1 (7)(c) of the AML Law financial transactions whether or not completed using assets that are reasonably suspected to constitute the proceeds of crime. There is no separate obligation in either the AML Law or Anti-Terrorism Law which directly mentions an STR obligation for terrorist funds.

575. Under Article 2 (1) of the AML Law, the term "proceeds of crime" is defined as assets derived from a list of criminal acts which includes "terrorism (Sub-paragraph "n")". There is no definition of "terrorism" in the AML Law, however terrorism and terrorist financing offences in Chapter III of the Anti-Terrorism Law are set out under Criminal Acts of Terrorism (see articles 6-19) and are included as predicate offences at Article 2(1)(n).

576. Given the STR reporting obligation, proceeds of the TF offences in the Anti-Terrorism Law relating to funding terrorist acts, a terrorist organisation or an individual terrorist appear to be covered. Obligations regarding proceeds of terrorism and terrorist financing offences would only appear to cover a limited range of illegitimate funds used for terrorist financing.

577. Article 2 (2) of the AML Law states "assets employed directly or indirectly for terrorist activities shall be deemed to be proceeds of crime referred to in Paragraph (1) shall be deemed to be proceeds of crime referred to in Paragraph (1) Sub-paragraph n."

578. The above article would appear to define legitimate funds provided for a terrorist acts as proceeds of crime for the purposes of the STR reporting obligation in the AML Law. It is not clear whether the obligation to report an STR related to TF applies to legitimate funds to be used by terrorist organizations or those who finance terrorism. There is, however, no definition

of the term 'terrorist activities' in the AML Law or any other law. The Evaluation Team, therefore, was not satisfied that the STR obligation applies to legitimate funds to be used for terrorist organizations or those who finance terrorism.

**Table: STRs related to terrorism / terrorist financing**

| Year | Spontaneous STRs | STRs based on a request by PPATK |
|---|---|---|
| 2003 | | |
| 2004 | | |
| 2005 | 0 | 5 |
| 2006 | | |
| 2007 | | |
| **Total** | 0 | 30 |

**Effectiveness – Recommendation 13 & Special Recommendation IV**

579. Indonesia's STR obligation includes a requirement to report STRs for both unusual transactions and suspicious transactions. In theory this should mean that all unusual transactions, even if there is no suspicion that they relate to ML or TF, should be reported. It is clear that PPATK guidance has assisted reporting parties to avoid over-reporting of unusual transactions.

580. Almost one quarter of all STRs are received from the four state owned banks. While they have a significant market share, this would appear to be disproportionately large number and may reflect a more rigid application of the obligation to report unusual transactions as suspicious.

581. Implementation of the STR reporting requirement varies across sectors. Overall reports from non-bank financial institutions are very low. Despite their high risks, there are low figures of STRs reported from money changers. Similarly the securities sector shows very low levels of STR reporting.

582. Given the risks of TF in Indonesia and the existence of UNSCR 1267-listed entities in Indonesia, there are very low rates of report for CFT-related STRs.

583. At the time of the onsite visits there was no guideline issued by the PPATK or any other government authorities regarding suspicious financial transaction reporting related to TF.

584. The lack of clear definition of the term "terrorist activities" in the AML Law raises serious concerns about consistent implementation of the regime to report STR related to terrorism. The obligations is not sufficiently direct and does not appear to cover legitimate funds suspected to be used for individual terrorists or terrorist organisations.

585. Providers of financial services that the Evaluation Team met with during the on-site said that they use media reports or newsletters circulated by PPATK as their guidance for STR reporting about TF.

586. PPATK had, at the time of the on-site visit, received 30 STRs related to TF. These reports, however, were all filed by financial institutions in response to an inquiry by PPATK or by POLRI. They cannot be interpreted as STRs in the true sense where financial institutions submit report to the competent authority as a result of exercise of their proactive surveillance and the establishment of suspicion.

**Recommendation 14**

587. Financial institutions and their employees are provided with necessary 'safe harbour' in relation to their reporting obligations. Article 15 of the AML Law stipulates that no civil or criminal action can be brought against Providers of Financial Services, their officials and their employees of their carrying out of reporting obligations. Article 40 of the same law further requires that any person reporting a suspicion that the crime of ML may have occurred shall be provided with special protection by the State against possible threats endangering the person, their life, their family and/or their assets. Its implementation is stipulated under Government Regulation and Decree of the Chief of Indonesian National Police concerning the Procedure for Special Protection of Reporting Parties and Witnesses.

588. Tipping off is a punishable offence under Article 17A of the AML Law. This Article provides that:

(1) Directors, officials or employees of Providers of Financial Services shall not disclose to their users of financial services, or any person, either directly or indirectly, by any manner, that it is contemplating making or has reported a Suspicious Financial Transaction to the PPATK.

(2) Officials or employees of the PPATK and investigators shall not disclose to users of financial services in any manner, either directly or indirectly, Suspicious Transactions Reports submitted to the PPATK or investigators.

(3) Directors, officials or employees of Providers of Financial Services, officials or employees of the PPATK and investigators, who violate the provisions of paragraph (1) and paragraph (2), shall be imprisoned for a minimum of 3 (three) years and a maximum of 5 (five) years and shall be fined a minimum of Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

**Effectiveness – Recommendation 14**

589. On the whole reporting parties are satisfied with the protection afforded by AML Law and Government Regulations. The Evaluation Team tried to explore any fears on the part of employees of Financial Institutions in relation to their reporting obligations. However, no apprehensions of any type were observed. There was a general feeling that they are reporting transactions as their legal duty and law provides them necessary protection.

590. No evidence of any tipping off was observed. The reporting parties have a clear view that tipping off is a criminal offence. All types of financial institutions have further emphasized the confidentiality of reporting process through respective rules/ regulations.

**Recommendation 25 (feedback and guidance related to STRs only)**

591. The regulators have provided some guidelines in the form of circulars and regulations. These provide some guidance to institutions for AML measures including STR reporting and ML and TF trends, typologies and case studies.

592. PPATK has provided general guidelines on CDD, record keeping and STR obligations, which include examples of suspicious transactions related to ML. At the time of the onsite

visit PPATK had not issued comprehensive Guidelines on identification of suspicion in relation to TF. In early 2008 PPATK did issue CFT-related Guidelines for STR reporting.

593. PPATK has been providing general feed back and guidance to financial services providers with the view to upgrade them on techniques, methods and trends of ML and TF through three different means.

(1) During the training seminars and workshops, participants were updated on techniques, methods and trends (typologies) relating to ML and TF.

(2) PPATK issues its Yearly Report, which contains statistics of STRs, with break-up of cases analysed and those referred to investigation agencies. The information on number of cases investigated, prosecuted and convictions achieved are also included in the Report.

(3) PPATK collects information from public and other sources about crimes, arrests and convictions etc. and arrange to send email alerts to all financial services providers on daily basis. The objective is to forewarn the institutions to exercise extra care in their dealings, should they encounter any transaction related to such parties.

594. However, PPATK does not seem to be providing case specific feed back relating to STRs. Further, STRs being reported through letters etc. are not being acknowledged by PPATK. Financial Services Providers, being unaware of the final results of the STRs, cannot know whether the act of reporting was correct or it was innocent transaction.

595. Some guidelines have been issued by regulators which seem to have been translated into the internal policies and procedures of Financial Services Providers. Examples of suspicious transactions and six guidance documents provided by PPATK have been found helpful by the reporting entities. These examples are kept in view while monitoring transactions and accounts of customers. The reporting entities also make use of daily emails being sent by PPATK. The entities regularly access such emails and take measures wherever required. Some banks expressed their desire to have complete list of proscribed persons and entities either to be maintained by BI or PPATK. In the absence of any list, they have to refer to various other lists like OFAC, UNSCR etc.

596. On the Evaluation Team's query about individual feedback on STRs, a couple of banks confirmed that they had reported good number of STRs to PPATK, but have been contacted to obtain additional information in few cases only. The fate of the rest of the cases was not known to them at the time of the on-site visit

**Recommendation 19**

597. Indonesia has considered and implemented a cash transaction reporting regime. This is in response to perceived risks of high-value transactions for ML and TF, particularly in the context of a predominantly cash economy.

598. Article 13 of the Law 25 of 2003 provides that Financial Service Providers will submit to the PPATK a report on Cash Financial Transactions in respect of transactions exceeding a cumulative total of Rupiah 500 million (approx US$5000) or more or an equivalent amount in another currency, made either in one transaction or in several transactions within one business day. Such reports are required to be filed within 14 business days from the date of transaction to PPATK. However, transactions related to inter-bank transactions, transactions with the Government, transactions with the central bank, payments of salaries, pension

payments, and other transactions as stipulated by the Head of PPATK are exempt from the reporting but the Financial Service Providers are required to maintain a list of transactions undertaken by such exempt transactions and for first year of exemption no such list need be prepared. Article 8 of the Law 25 also stipulates that a Providers of Financial Services who intentionally do not submit reports to the PPATK shall be fined a minimum of Rupiah 250 million subject to a maximum of Rupiah one billion.

599. A "Provider of Financial Service" has been defined under Law of Indonesia number 15 of 2002 as amended by 25 of 2003, relating to the Crime of Money laundering, as "any person providing services in the financial field or other services in relation to finance, including but not limited to banks, financial institutions, securities companies, mutual fund managers, custodians, trust agents, depository and settlement agencies, foreign exchange traders, pension funds, insurance companies and the post office." It goes on to define Cash Financial Transactions as "withdrawals, deposits or entrustments, on a cash basis or using other monetary instruments, utilizing Providers of Financial Services."

600. All reports are received by PPATK, as the FIU, and are securely stored on the PPATK database. PPATK utilises CTRs to identify ML and TF cases. So far, however, no case has been referred by PPATK to the Corruption Eradication Commission (KPK) on the basis of CTRs.

**Table: CTRs Received by PPATK**

| Year | Number of CTRs |
|---|---|
| Up to 2005 | 1,537,605 |
| 2006 | 430,575 |
| 2007 / 28 December | 2,360,950 |
| **Total** | **4,329,130** |

### 3.7.2 RECOMMENDATIONS AND COMMENTS

Recommendation 25

- PPATK should periodically provide case specific feedback to reporting entities.
- Competent authorities should issue comprehensive guidance to financial service providers to assist them to identify STRs related to TF

Recommendations 13 & SR IV

- Indonesia should amend the AML Law to ensure that the scope of proceeds of crime subject to STR reporting meets the FATF standard.
- Indonesia should amend the STR obligation to clarify confusion between obligations to monitor unusual transactions and to report suspicious transactions.
- Indonesia should take steps to support effective implementation of the STR obligation across all sectors, including securities, money changers and remittance providers.
- Indonesia should ensure that there is a direct obligation to report suspicious transactions related to both legitimate and illegitimate funds linked to or to be used for terrorism, terrorist acts, terrorist organisations or those who finance terrorism.
- Authorities should ensure that the STR obligation in relation to TF is effectively implemented, including proactive monitoring for suspicion.

3.7.3 COMPLIANCE WITH RECOMMENDATIONS 13, 14, 19 AND 25 (CRITERIA 25.2), AND SPECIAL RECOMMENDATION IV

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.13** | **PC** | • The scope of proceeds of crime subject to STR reporting falls short of the FATF standard.<br>• The obligation does not appear to cover funds provided for a terrorist organizations or an individual terrorist.<br>• Statistics do not show effective implementation of the STR reporting obligations across all sectors. |
| **R.14** | **C** | • Fully observed |
| **R.19** | **C** | • Fully observed |
| **R.25** | **PC** | • While general feedback is provided by PPATK, specific feedback is not provided<br>• There is a lack of detailed guidance on identifying STRs related to TF<br>• This recommendation is rated in a number of sections of the MER |
| **SR.IV** | **PC** | • The STR obligation is deficient in relation funds to be used by terrorist organizations or those who finance terrorism<br>• The obligation to report TF-related STRs is not sufficiently direct<br>• Implementation of the STR obligation in relation to TF is ineffective none of the terrorism-related STRs received have resulted from monitoring for suspicion, rather they were in response to a request by the FIU. |
| **R.32** | **PC** | • It is not clear that detailed statistics on STRs received across different sectors is shared with relevant regulators to support effective compliance |

***Internal controls and other measures***

## 3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT & FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

**Recommendation 15**

601. Article 2 of BI Regulation No. 3/10/ PBI/ 2001 requires banks to establish customer identification and acceptance policy, monitoring customers' accounts and transaction, and risk management policy and procedures pertaining to KYC principles. Risk management policy includes management oversight, delegation of authority, separation of duties, internal control system including internal audit and employee training. BI's circular letter No. 5/32/ DPNP dated December 4, 2003 further details necessary elements of internal controls. It provides that internal control system must be capable of fostering an effective and efficient monitoring and reporting of KYC principles, compliance with the applicable regulations and the

implementation of bank policies with the objective of minimizing the risk exposure of the bank. Similarly, BAPEPAM Rule V.D.10 requires securities companies and mutual funds to enact policies and procedures regarding identification and acceptance of customers, monitoring of accounts and transactions and risk management in relation to the implementation of KYC principles. On the same lines, Article 3 and Article 12 of Decree of the Minister of Finance Number: 74/ PMK. 012/ 2006 require Insurance companies and Pension Funds to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employees. These procedures, policies and controls should cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation.

602. For compliance function, BI has stipulated that the board of directors of a bank shall bear responsibility for the application of KYC principles and give firm commitment in this regard. At operational level, BI provides flexibility to banks to create special unit and/or depute bank officer who shall be directly responsible to the compliance director. BAPEPAM has also introduced V.D.10 under which Capital Market Financial Service Providers shall establish a working unit or assign a director or under director level officer who shall be responsible for implementation of KYC principles. A Ministerial Decrees imposes similar requirements on financial institutions and NBFIs- insurance companies and pension funds.

603. For timely availability of information, banks are required to develop an effective information system capable of assisting bank staff in identification, analysis, monitoring, and reporting of transactions conducted by customers. This information system shall enable the bank to trace individual transactions for bank internal use and/or BI, and in respect of any case before court. Other financial services providers are also required to maintain system supported data basis for updating customer related information and monitoring of transactions.

604. PPATK's Guidelines require that financial services providers must have continuous training program for staff with the view to understand the Law concerning Crime of Money Laundering, policies and procedures, identification and reporting of STR/ CTR. Additionally, training of employees and capacity building is also emphasized in Rules/ Regulations of various types of institutions. Securities Companies, Mutual Funds and custodian banks previously had no requirement of employees training as mentioned in MEQ, but recently issued BAPEPAM Rule V.D.10 requires them to perform training program on implementation of KYC principles for relevant staff and make report for information of BAPEPAM.

605. Indonesia has very recently introduced requirements for screening procedures at the time of hiring employees. These matters have been arranged in Internal Circular Letter No.9/44/Intern dated on 15 November 2007 which consists of: Recruitment, Information System and Documentation, Training and Employees Capacity Enhancement, Remuneration, Assessment and Employees' Working Evaluation, and Termination. AT the time of the onsite visit (prior to this new obligation) some financial institutions required letters of clearance issued by area police while others sought references of well known persons at the time of hiring. Some told that it is in the interest of institutions to hire people of high integrity. The very recent promulgation of the new rules means that their effective implementation cannot yet be established.

**Effectiveness**

606. It is apparent that due to close supervision in recent years, major banks have well established internal control systems and procedures for AML/CFT. Customer acceptance

policy is followed on the basis of risk associated with type of customer, nationality and business relationship or product. Banks refuse a relationship if not satisfied with any of the factors laid down in the policy. Monitoring of transactions, identification and reporting of transactions seems to be satisfactory. A ML/ CFT responsibilities appear to be clear to staff and management's oversight available. Banks maintain the position of Compliance Director for overall compliance function. In addition, banks depute senior level officers for ensuring compliance of AML/ CFT obligations or create special unit with dedicated staff for the purpose. The officers of special units are directly responsible to Compliance Director.

607. Insurance companies appear to be implementing AML/CFT requirements, including dedicated AML/CFT staff for taking care of AML/CFT issues. Discussion with insurance companies indicates that risk factors are taken into account. An example of implementation by insurance companies involved a customer who had entered into a single premium policy contract involving a significantly large amount. The customer soon came back to terminate the relationship which was viewed with suspicion and the case reported to PPATK.

608. However, gaps were found in respect of securities companies especially the mutual funds. While some securities companies seemed to be applying standards satisfactorily, mutual funds were entirely relying on custodian banks for application of KYC and reporting requirements. This means that internal controls and compliance mechanisms are currently non-existent in mutual funds. Although custodian banks might be applying standards when executing transactions on behalf of mutual funds, nonetheless the banks might not be in a position to analyse the exact nature of the business and, hence, possible flows of bad money cannot be ruled out. Full implementation of the new V.D.10 rules will assist to fill this gap. The new rule puts obligations on mutual fund selling agents to implement KYC/CDD measures and make CDD records available to investment managers.

609. Non-bank money remitters are another exception where AML/ CFT standards are not being followed. Money remitters which are banks, are, however, taking measures under the overall supervision of BI.

610. Except money remitters, all types of financial services providers are subject to audit. The majority of institutions have audit requirement either internal or external or both. Internal audit is conducted as a part of internal controls and risk management policies whereas Head Office/ Group level audit also exists. BI has recently issued circular letter dated 8 October, 2007 for money changers prescribing off-site and on-site supervision of money changers. The effectiveness of instructions has yet to be seen.

611. Training needs of employees are met through various sources. Besides institutional programs for new entrants, AML/CFT training is being arranged within and outside the country. PPATK has been arranging training workshops and seminars for staff of Financial Services Providers. The relevant staff seem to be aware of techniques, methods and trends of ML and TF with some reservations in the case of securities companies and mutual funds. As per discussions held with various financial service providers, relevant staff are aware of their responsibilities under the AML/ CFT regime.

**Recommendation 22**

612. BI has issued Regulations relating to KYC principles to be applied by branches of banks located outside Indonesia.

613. Article 16 of BI regulation 3/10/2001 dated June 18,2001 stipulates that an overseas office shall apply the KYC principles (a) of that country if KYC principles of that country are equal or stricter than Indonesia, or (b) of Indonesia, if the KYC principles in that country are not in force or less stringent than Indonesia.

614. Item (c) of Article 16 further provides that in case the application of KYC principles as required in the Regulations would result in violation of prevailing laws and regulations of the country the bank is required to inform BI that it is unable to apply the KYC principles.

615. Article 17 of the Regulations further provides a cut off limit in case of walk-in customers of overseas branches. It stipulates that in the case of customers who do not maintain an account with the bank and the transaction value does not exceed Rupiah 100 hundred million, the Regulations need not be applied.

616. BAPEPAM Rule V.D.8 relating to Activity of Security Company Opening in various Locations does not contain any provision regarding Branches/Subsidiaries of securities companies outside Indonesia.

617. Decree of the Director General of financial institutions (Number KEP-2833/ LK-2003) regarding implementation of KYC principles by Non Bank Financial Institutions does not specify any obligation on branches/subsidiaries of NBFIs outside Indonesia.

### 3.8.2 RECOMMENDATIONS AND COMMENTS

Recommendation15

- Necessary screening procedures should be introduced as a regular part of hiring employees.
- Mutual Funds need special attention of authorities in regard to internal controls, compliance function and reporting obligations.
- Securities companies should follow a risk-based approach in their KYC/AML compliance.
- Audit requirements for money changers and mutual funds should be enforced.
- Non-bank money remitters should be properly supervised for their AML/ CFT obligations.

Recommendation 22

- BI should issue explicit instructions to banks requiring them to apply AML/CFT norms to their subsidiaries outside Indonesia.
- NBFIs, including securities companies should be provided with direction on the application of AML/CFT guidelines to branches/ subsidiaries outside Indonesia.

### 3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.15** | **PC** | • Questions remain about effectiveness of the application of internal audit in the securities sector, given that the supervisor found many weaknesses across the board with the current low level CDD obligations |

| | | |
|---|---|---|
| | | • While most sectors have made significant efforts with training on internal controls, there is an issue of consistency across and within covered sectors.<br>• The very recent instructions to financial institutions regarding the need to put in place screening procedures to ensure high standards when hiring employees have not yet been effectively implemented. |
| **R.22** | **NC** | • There is no explicit or specific Regulation or instructions from BI to banks requiring them to apply AML/CFT norms to their subsidiaries outside Indonesia.<br>• There are no guidelines to NBFIs on application of AML/CFT guidelines to branches/ subsidiaries outside Indonesia.<br>• There are no guidelines to entities in Securities sector on application of AML/CFT guidelines to branches/ subsidiaries outside Indonesia |

## 3.9 SHELL BANKS (R.18)

3.9.1 DESCRIPTION AND ANALYSIS

618. While Indonesia is yet to implement comprehensive general controls over correspondent banking relationship (see Recommendation 7 above), it has taken steps in relation to shell banks.

619. There is no explicit legislative prohibition on setting up of a shell bank in Indonesia. However, in practice, BI has effective legal powers and policies in place to ensure that shell banks are not permitted .Law of the Republic of Indonesia No 7 of 1992 concerning Banking as amended by Law no 10 of 1998, in item 2 of the Article 1 defines Bank as a corporate entity mobilizing funds from the public in the forms of Deposits and channelling them to the public in the forms of Credit. Further, Article 16 of the Law also prescribes the requirement of obtaining licence from BI for banking in Indonesia. Article 21 also stipulates that (a) a commercial bank can be set up in form of (i) a limited liability company, (ii) a cooperative or (iii) a Regional Government Enterprise, (b) a Rural Bank can be set up by (i) Regional development Enterprise, (ii) a cooperative, (iii) a limited liability company or (iv) any legal form stipulated by Regulations. Item 3 of the Article further provides that form of a representative office or a branch office of a foreign bank shall correspond to the legal forms of the respective head office. Therefore, the bank licensing process followed by BI effectively precludes setting up of a shell bank in Indonesia.

620. Item 1(c) of the Article 7 of the BI Regulation 3/10/PBI/2003 as amended by 5/21/PBI/2003 dated October17,2003, provides that banks in Indonesia are required to refuse to open an account and/or refuse to conduct transactions with any prospective Customer incorporated as a shell bank.

621. Item 1(c) of the Article 7 of the BI Regulation 3/10/PBI/2003 as amended by 5/21/PBI/2003 dated October17,2003, also stipulates that banks in Indonesia are required to refuse to open an account and/or refuse to conduct transactions with any bank permitting its accounts to be used by shell banks.

### 3.9.2 RECOMMENDATIONS AND COMMENTS

622. The provisions contained in the BI Regulations clearly prohibit shell banks being permitted to be set up in Indonesia nor allowed to have banking relationship with banks in Indonesia or with their correspondent institutions. Banks in Indonesia appear to be are aware of the requirement and appear to have arrangements to prevent the misuse of the correspondent bank accounts relationship, directly or indirectly, by shell banks. There does, however, appear to be a problem with implementing the obligation to ensure that correspondent banks do not permit their accounts to be used by shell banks. This implementation weakness stems from the broad absence of controls on correspondent banking.

- Indonesia should ensure that controls on correspondent bank relationships are effectively implemented to ensure that correspondent banks do not permit their accounts to be used by shell banks.

### 3.9.3 COMPLIANCE WITH RECOMMENDATION 18

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.18** | **LC** | • Effective implementation of requirements on banks to ensure that their correspondent banks do not permit shell banks as customers was not demonstrated. |

***Regulation, supervision, guidance, monitoring and sanctions***

## 3.10 THE SUPERVISORY & OVERSIGHT SYSTEM - COMPETENT AUTHORITIES & SRO's ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25)

### 3.10.1 DESCRIPTION AND ANALYSIS

***Authorities' /SROs' roles and duties & structure and resources - R.23, 30***

623. There is non-integrated approach towards regulation of financial services providers in Indonesia. Besides primary supervisory authorities exercising their powers under sector-specific legislation, PPATK is also empowered to supervise implementation of AML requirements (STR and CTR reporting) under the AML Law. The financial services providers are under obligation to implement requirements of AML Law which precisely cover customer identification, record keeping, reporting of suspicious financial transactions and cash financial transactions. PPATK is authorised to issue guidance to providers of financial services concerning their obligations as set forth in the law or in other prevailing laws and regulations and assist in detecting suspicious customer behaviours. Additionally, PPATK is empowered to audit them for compliance with the reporting requirements.

624. Sector-specific rules/ regulations also impose AML requirements on various financial services providers, albeit at varying scales. These obligations cover range of measures – CDD/ KYC, risk management, monitoring of transactions, record keeping and reporting to PPATK.

625. PPATK has MOUs with both BI and BAPEPAM-LK to coordinate their varying areas of responsibility for supervision of KYC/CDD and STR reporting obligations.

626. The table below provides the allocation of responsibilities for supervision of financial services providers in Indonesia.

**Table: Supervisors' Division of responsibilities**

| Supervisor | What's covered | Financial Services Providers |
|---|---|---|
| **Bank Indonesia** | KYC/CDD requirements | Banks (commercial, rural & syriah banks) Money changers, money remitters (bank & non-bank) |
| **Ministry of Finance- BAPEPAM** | KYC/CDD requirements | Securities companies (securities exchanges, securities companies, broker-dealers, investment fund managers investment advisors and securities administration agencies), Mutual Funds, Custodian banks |
| **Ministry of Finance – BAPEPAM - LK** | KYC/CDD requirements | Insurance Companies, Pension Funds and Financing companies |
| **Stock Exchange** | Risk | Securities companies (members ) |
| **PPATK** | STR/CTR reporting | All financial services providers |

**Recommendation 23**

***Financial services providers under Bank Indonesia (BI)***

Banks

627. Bank Indonesia (BI) is the primary regulator of the banks as mandated by chapter VI of the Law of Bank Indonesia, 1999. Article 24 to 35 of the said law provides powers and authority of BI to license, supervise, issue regulations and impose sanctions on banks. The Banking Act No. 10 of 1998 provides for two categories of banks viz. Commercial Banks and Rural Banks. However, Commercial Banks are further classified into categories of State Banks, Joint Venture Banks, Regional (Development) Banks, Private Banks and Foreign Banks on the basis of ownership structure. BI has been issuing regulations and circulars since 2001 to introduce and enforce AML requirements. BI Circular Letter Number 6/37/DPNP/2004 concerning Assessment and Imposition of Sanctions states that BI will evaluate the implementation of KYC and other requirements pertaining to the AML Law. BI has five dedicated supervisory directorates and supervision Divisions in Branch Offices for overall supervision of banks. AML supervision is one of the necessary areas where dedicated staff is deputed to assess various AML component.

Money Remitters

628. BI is the supervisory authority for money remitters. Money remitters, which are banks, have to apply all AML requirements to which banks are normally subject to. However, non-bank money remitters are currently not forthcoming for registration and licensing though Rules provide for this. At the time of evaluation, five money remitters had obtained Registration Certificates from BI. However, BI was not aware of the exact number of branches/ agents/ sub-agents of such money remitters due to the absence of a reporting requirement. It is

believed that the number of money remitters operating without any registration or supervisory controls is quite large.

Non-Bank Money Changers

629. There are two categories of money changers. A bank money changer is a commercial bank that carries out conventional or Syariah-based business activities while a non-bank money changer is a non-bank incorporated corporation to transact the sale and purchase of banknotes and travellers' cheques. The bank money changers have to apply the usual requirements of AML for banks under the supervision of BI. For non-bank money changers, BI has recently refreshed its supervisory regime by issuing Regulation No. 9/11/ PBI/ 2007 and circular letter dated 8 October, 2007. Besides licensing and prudential requirements for non-bank money changers, BI has prescribed AML requirements in the form of CDD/ KYC, risk management, reporting requirements and related supervisory controls. However, the instructions are new and their effectiveness could not be gauged at the time of evaluation.

***Financial Services Providers under the Ministry Of Finance - BAPEPAM***

630. The Capital Market Supervisory Agency (BAPEPAM), is responsible for regulation and supervision of the capital market. BAPEPAM is required to report to the Minister of Finance. Under the Capital Markets Act No. 8 of 1996, BAPEPAM is mandated to supervise the capital market to ensure that its affairs are being conducted orderly, fairly and efficiently so that the interests of investors and the public are protected. The Act No. 8 provides that securities exchanges, securities companies, broker-dealers, investment fund managers investment advisors and securities administration agencies must be licensed by or registered with BAPEPAM. It had issued Rule Number V.D.10 in 2003 for capital market financial services providers requiring KYC policies and procedures. Article 8 of V.D 10 provides that without undermining criminal regulations in the capital market, BAPEPAM may impose any sanction to any person who violates provisions of said Rule. BAPEPAM has sufficient investigative powers in respect of its subjects directly or through appointing specific investigators. It is empowered to refer cases to the police where criminal charges are found. BAPEPAM has been conducting periodic audits of the securities companies and appears to have imposed some sanctions in the form of written warning and fines.

Securities Companies- coverage of Stock Exchange

631. The Stock Exchange has powers to monitor the activities of its member securities companies. The Stock Exchange mostly covers the risk areas in relation to market manipulation. The Stock Exchange also has powers to audit and impose sanctions on securities companies. While AML is not the priority area for the Stock Exchange, in the process of monitoring its members, the Stock exchange considers KYC/AML issues. If the members do not obey the SX findings, the SX will impose sanction and referred it to Bapepam-LK.

632. During the year 2006-2007, Jakarta/ Indonesia Stock Exchange (JSX) audited 104 securities companies, which included checks on compliance in implementing capital market laws and regulations, including KYC principles. Key weaknesses related to internal controls for account opening and designation of compliance officers.

***Financial Services Providers under the Ministry Of Finance- BAPEPAM-LK***

633. The Law No. 2 of 1992 confers supervisory authority of insurance companies to the Minister of Finance. In line with the legal authority, a separate Division of the Ministry of Finance is performing regulatory and supervisory responsibilities of insurance companies. The said law states that supervision of insurance business includes financial soundness for insurance companies, life insurance companies, and reinsurance companies, which covers:

1. Solvency margin;
2. Own retention:
3. Reinsurance;
4. Investment;
5. Technical reserves; and
6. Other stipulations related to financial soundness;

634. AML requirements have been imposed on NBFIs through Decrees of the Minister of Finance covering basic measures for CDD, monitoring of accounts and transactions, risk management and reporting of suspicious transactions. The Decree of the Minister of Finance provides that the Director of Insurance, the Director of Pension Funds and Director of Financing Services Businesses of the Ministry of Finance shall audit the compliance of NBFIs in fulfilling their obligations as set out in the Decree. The Decree also provides for sanctions for violations of the requirements. Finance companies are allowed to conduct the business of leasing, factoring, credit card and consumer financing. These companies are not allowed to accept deposits from the public; rather, resources like bank borrowing and shareholders equity are used for their activities.

***Financial Services Provides- Coverage of PPATK***

635. PPATK is empowered to conduct audit of providers of financial services to verify their compliance with the AML Law and guidelines for reporting financial transactions. PPATK has human resources mostly deputed from government departments and BI. PPATK conduct on-site examination of financial services providers for their compliance with STR and currency transaction requirements. During the year 2007, PPATK conducted 53 on-site examinations of 30 banks, nine insurance companies, ten securities companies and four other institutions. The reports finalized by PPATK are finally sent to the concerned regulator for imposing any required sanctions.

***Market Entry***

636. A licensing and registration mechanism is available for all types of financial services providers under their sector-specific legislation, although current mechanisms for money remitters are not obligatory. General powers for conducting fit and proper tests of controlling shareholders and senior management are also available to the supervisors with the exception of money changers, money remitters and pension funds.

<u>Banks</u>

637. Banks in Indonesia are required to obtain a license from BI before they can start banking business. Article 16 of Banking Act, 1998 requires banks to obtain a license by meeting the requirements of capital, management, ownership, expertise and feasibility plan. Banks are also subject to fit and proper tests to prevent criminals from holding positions as shareholders or senior managers. Regulation No. 2/23/PBI/2000 and Regulation No. 5/25/PBI/2003 concerning Fit and Proper Test provides that a criminal/offender is prohibited from

management function and or ownership or control of banks. The fit and proper test should be conducted by BI for :

- Prospective controlling shareholders and candidate managers of banks; and
- Controlling shareholders that have been approved by BI and the existing managers of banks and Executive officer of banks.

Securities companies, mutual funds and custodian banks:

638. The licensing requirement for capital market financial services providers is stipulated in Article 5 of Law No. 8 of 1996 for Capital Market Financial Services Providers which requires that BAPEPAM shall have authority to grant to:

1. ***business licenses:*** securities exchanges, clearing guarantee institutions, a central securities, depository, investment funds, securities companies, investment advisors, and securities administration agencies;
2. ***individual licenses:*** to underwriter's representatives, broker-dealer's representatives, and investment manager's representatives; and
3. ***approvals:*** to custodian banks;

639. Regarding fit and proper tests, Article 35 of Government Regulation No. 45 of 1995 states that a securities company may not be controlled, either directly or indirectly, by individuals who:

a) have committed a shameful act or that have been convicted of a crime involving a financial transaction; or
b) Lack good character and morals.

640. Directors, commissioners, and representatives of a securities company must:

a) be legally competent;
b) have not been declared bankrupt or have been the director or commissioner that caused the bankruptcy of a company;
c) have never committed a disgraceful act or have been convicted of a crime involving a financial transaction;
d) have good character and morals; and
e) have capital market expertise.

641. BAPEPAM Rule Number V.A.1 concerning Approval of Commercial Bank as a Custodian stipulates that BAPEPAM may conduct a fit and proper test upon the Board of Directors of a securities company. The same Rule further requires that to be a custodian a bank is prohibited from being controlled by beneficial owners or persons who have a criminal record.

Insurance

642. Under Article 9 of Law No. 2 of 1992, it is mandatory to obtain a license from Minister of Finance for conducting insurance business. The requirement of a fit and proper test is available under Article 5 of Decree of the Minister of Finance Number 421/KMK.06/2003 which stipulates criteria like competence and integrity for the Board of Directors and management of insurance companies. Additionally, Article 11 of Decree No. 426/KMK.06/2003 states that every director, commissioner or stakeholder of insurance or re-insurance Company shall pass the fit and proper test.

Pension funds

643. The licensing requirement is available through the Ministry of Finance**.** However, the safeguard of preventing criminals from holding positions as directors or senior manager is not available.

Financing institutions:

644. Articles 18 and 36 of the Decree of the Minister of Finance No. 84/ PMK. 012/ 2006 concerning Financing Companies provides that Shareholders, Boards of Directors, and Boards of Commissioners or administrators and supervisors of financing institutions shall at least fulfil the following requirements:

a. not in the banking Non Performing Loan List;
b. not in the list of unqualified person (unfit and improper person) in banking sector;
c. have never been found guilty of a criminal act;
d. the capital paid by shareholders does not come from loans and ML activities;
e. one of members of the Board of Directors or administrators shall have operational experience in a financing institution or the banking sector;
f. have never been declared bankrupt or been the directors or commissioners who were responsible for causing a company to go bankrupt.

Money remitters and money changers

645. BI is the licensing and registration authority for money remitters and money changers**.** There are apparently no instructions to prevent criminals and their associates from holding positions in the businesses of money remitters or money changers. Article 7 of the BI Regulation PBI 9/ /PBI/2007 dealing with money changers and item(c) provides that Management of Money Changers will not consist of persons having committed proven financial crime.

***On-going supervision and monitoring***

646. Banks, securities companies and insurance companies generally have measures applicable for wider areas of prudential safety and soundness. The measures covered for prudential purposes are also relevant to AML. In particular, the banks have a consistent framework of prudential measures in relation to core principles. Securities companies and insurance companies apply prudential safeguards of licensing risk management, on-going supervision etc. but there was low level of understanding in these sectors of the linkage between the prudential measures under core principles and the AML regime.

Banks

647. As a measure of wider prudential safety and soundness BI ensures implementation of laws, rules and regulations. As a bank supervisor, BI is mandated to grant and revoke licenses of commercial banks, conduct fit and proper tests of candidates for controlling shareholders of banks and bank management, prescribe prudential regulation, and conduct off-site supervision and on-site examination of the adequacy of systems and policies. BI also coordinates with PPATK to conduct special examinations or sharing information to handle cases related the banks. The supervisory framework of BI appears to be consistent with the core principles. Indonesia will adopt consolidated supervision of the financial sector through a supervisory board for which the targeted time is by 2010 at the latest.

648. For off-site monitoring, banks are required to submit periodic reports and returns through which BI monitors their overall condition and operations. In the case of on-site examinations, BI conducts inspection of banks at least once a year. It has five dedicated supervisory directorates and supervision Divisions in Branch Offices for overall supervision of the operations of banks. These directorates have defined responsibilities of examination based on classification of banks. AML supervision is one of the components of examination. During 2007, BI has covered 97% inspection relating to KYC/AML. The supervisory thrust is to assess the overall KYC/ AML framework in place with particular emphasis on the following aspects.

- Level of risk integrated in a bank and adequacy of its risk control systems
- Level of bank's compliance with laws, rules/ regulations and other instructions on KYC/ AML
- Adequacy of policies, procedures and internal controls to implement KYC/ AML
- Effectiveness of policies and procedures with respect to opening of accounts to reporting of suspicious transactions.
- Adequacy and effectiveness of infrastructure, human resources and authority possessed by responsible officials in implementation of KYC/ AML.
- Roles and responsibilities of related officials in reporting mechanism and quality of STRs being reported to PPATK

649. Each of the above factors has defined instructions and guidelines. BI conducts follow up checks on improvements made in weaker areas and violations identified during the examination. As of December 2006, the Banking Directorates have completed examination of 85 banks out of the total of 132 banks.

Securities Companies

650. BAPEPAM has legal authority to license, supervise and impose sanctions on securities companies. It also has authority to conduct fit and proper tests of shareholders in controlling positions and senior managers of securities companies. BAPEPAM issued Rule Number V.D.10 in 2003 for capital market financial services providers requiring KYC policies and procedures. It has been conducting compliance audits of securities companies in accordance with the requirements provided in the Rule. Since 2003, various audits conducted by BAPEPAM resulted in sanctions on about 100 securities companies. Despite having elements of prudential aspects of the core principles in its supervision, officials of BAPEPAM were not fully familiar with the concepts of the core principles. In addition, supervision of mutual funds was found below par due to the fact that these companies have been relying on custodian banks for KYC/ AML measures and not directly meeting their obligations till the time of this evaluation. The only supervisory action taken by BAPEPAM against mutual funds appears to be limited to two written admonitions during 2006 and three written admonitions during 2007.

Insurance Sector

651. Insurance companies are subject to licensing requirement under the law. Moreover, necessary prudential criteria are provided in laws and Ministerial Decrees. Law No 2 of 1992 makes the licensing of insurance companies conditional with the requirements of :

a. The Articles of Association,
b. Organizational structure,
c. Capital requirement;

d. Ownership,
e. Expertise in the field of insurance;
f. Feasibility of the business plan,
g. Other things needed to support the growth of insurance industry managed in sound business.

652. Despite having elements of the core principles in place, there was little awareness in supervisory staff as well as insurance companies about the core principles. BAPEPAM and LK have been carrying out compliance audits of insurance companies in accordance with Ministerial Decrees. The AML component forms the part of wider prudential supervision. The AML compliance audit during 2006 resulted in 20 written admonitions while 16 written admonitions were served during 2007.

653. On the whole, financial institutions subject to core principles have prudential safeguards and regulatory checks, which also have relevance to AML. The concerned supervisors are trying to ensure that requirements are complied with. Supervision is conducted through off-site information and on-site inspections. The areas covered during compliance audit include verification of internal controls and policies, measuring risks, availability of human resource and effectiveness of controls and policies. BI seems to be more consistent and structured in case of banks as compared to BAPEPAM and LK in relation to securities companies and insurance companies.

***Registration and Licensing of Money Changers and Money Remitters***

654. Regulation of BI Number 6/1/PBI/2004 provides that any person who desires to obtain a money-changer's license shall be legally incorporated as a limited liability company. Therefore, money changers need to be a company in the first instance and then acquire license from BI. The bank money changers have to apply the usual AML requirements for banks under the supervision of BI. For non-bank money changers, BI has recently issued Regulation No. 9/11/ PBI/ 2007 and circular letter dated 8 October, 2007. Besides licensing and prudential requirements for non-bank money changers, BI has prescribed AML requirements in the form of CDD/ KYC, risk management, reporting requirements and related supervisory controls. However, the 2007 instructions are new and their effectiveness could not be fully gauged at the time of evaluation. As per BI policy, money changers are required to verify identification of customer if transactions exceed one hundred million rupiah. CTR limit is five hundred million rupiah.

655. There is an association of money changers with which BI has close coordination regarding training and issues related to implementation of AML requirements.

656. There appears to be a general reluctance on the part of money changers to introduce AML measures due to fear of loss of business. However, even those willing to implement the measures need training on the subject. It was however, explained that if the identity of a customer cannot be verified or the customer refuses to provide identity documents, a transaction will be refused.

657. In response to identified vulnerabilities in the sector, BI has conducted a concerted program of AML compliance with money changers in the last two years. BI has increased the number of examinations of money changers and has issued an increasing number of money changers with summonses and sanctions.

658. In relation to money remitters, BI issued Regulation No. 8 / 28/ PBI/ 2006 and circular letter No. 8/ 32/ DASP which inter alia, imposes registration requirements. However, prior to this, BI indirectly supervised money remitters through the banks. At the time of the evaluation, there were only five entities which obtained a registration certificate. In their case BI had no information about the number of branches or agents. The authorities told the Evaluation Team that a Fund Transfer Law is being prepared which will cover all aspects of money remitters' business in the country. However, all is not well in regard to money remitters. Firstly, quite a large number of money remitters are seemingly operating without registration or any KYC/ AML obligations. Secondly, the mechanism of supervision is far below the level required for high-risk entities. It is not certain when the draft Fund Transfer Law will be passed and how the situation would improve.

**Recommendation 30**

659. BI is a legal entity created under Bank Indonesia Act. Article 4 of the Act provides that BI is an independent state institution, which is free from any interference of the Government and/or other parties, except for matters explicitly prescribed in the Act. Being the central bank of the country as well as the supervisory authority, BI allocates adequate financial and human resources to supervise the banking sector. Within the banking division, there are five directorates which conduct supervision of banks. The allocation of human resources is as follows:

**Table: Bank Indonesia supervision staff**

| Name of BI Directorate | No. of banks | No. of staff |
|---|---|---|
| Supervision 1 | 25 | 140 |
| Supervision 2 | 29 | 132 |
| Supervision 3 | 31 | 140 |
| Syriah banks | 20 | 133 |
| Rural Bank | 1822 | 80 |

660. During January through June 2007, BI conducted KYC/AML examinations on 85 out of 132 of commercial banks. Similarly, during January through April 2007, KYC/AML examinations on 964 out of 1822 of rural banks were conducted.

661. BI conducted 2040 examinations during the period 2005-07. This resulted in monetary penalties in five cases and the issuing of 2512 supervisory letters to Rural Banks and 291 letters to Commercial Banks.

662. BI has established a KYC/AML Core Team consisting of 114 members, representing nine directorates in head office and 34 branch offices. The aim of establishing the KYC/AML Core Team is to provide the same perception and perspective to all KYC/AML supervisors in conducting examinations.

***Ministry Of Finance***

663. Capital market financial services providers,(securities companies, mutual funds, custodian banks) and NBFIs – (insurance companies, pension funds and financing companies) fall under the regulatory jurisdiction of Ministry of Finance. BAPEPAM and LK are legally empowered to issue licenses, enforce regulations, supervise and impose sanctions under

sector-specific laws and regulations. Break-up of human resources for different institutions is as follows.

- Securities Companies, Mutual Funds and Custodian Funds: BAPEPAM has allocated 21 supervisory staff for supervision and oversight of 212 securities companies, 109 investment managers, 420 mutual funds and 21 custodian banks under the Ministry.
- Insurance Bureau: Insurance Bureau is led by the Head of Insurance Bureau. There are five divisions in the Insurance Bureau. The number of Insurance Bureau staff is 74 people. Three of five divisions deal directly with KYC/AML issues.
- Pension Fund: There are 24 pension funds in the country. There are 5 divisions consisting of 82 employees in Pension Fund Bureau. Three of five divisions deal directly with KYC/AML issues.
- Financing and guarantee bureau: The total number of financing companies is 215. The number of staff is 52.

664. It is observed that the number of supervisory staff allocated for securities companies is relatively low. The number of securities companies taken together with mutual funds is quite large against which only 21 employees are performing supervisory duties. This could be one of the reasons that all mutual funds have not been properly supervised. As a consequence, these entities have been relying on custodian banks for KYC/ AML requirements.

665. Funding and other resources are generally available in BI as well in BAPEPAM. It has system-based information resources and staff appear to be familiar with the uses and benefits of these resources.

666. As a result of compliance audits during 2007, BAPEPAM has imposed 120 fines, 13 admonition letters, five cases of revocation of license and five cases of business suspension. Supervision of mutual funds was, however, below par due to the fact that these companies have been relying on custodian banks for KYC/ AML measures and not directly meeting their obligations at the time of evaluation.

667. BAPEPAM-LK has conducted compliance audits in the insurance sector resulting in 49 sanctions. There does not appear to have been any monetary fine imposed on any insurance company. Sanctions were also imposed on two financing companies in two cases while the last audit of pension funds was conducted in 2005 under which no violations could be detected in relation to KYC/ AML.

668. For ensuring the integrity of supervisory staff, BI has Regulation Number 2/6/2000 which provides requirements and procedures for conducting examinations of banks. In conducting an examination, the team must have at least two examiners. The examiners must fulfil the following requirements:

- Not included in a blacklist
- Not affiliated party
- Good mental attitude, good ethic, high profession responsibility
- Independent, honest and objective
- Good understanding of all related provisions.

669. Confidentiality is part of the employment arrangement and there have not been any problems with professional breaches of trust.

670. BAPEPAM-LK also has some rules/ regulations and Law No. 43 of 1999 concerning government officials to ensure the integrity and confidentiality issues relating to supervisory staff. Additionally, there have been some training programs through which these issues were covered.

671. As per statistics provided by the authorities, BI has arranged training for its 72 employees. The training covered a range of subjects on AML/ CFT and financial frauds. These training programs include domestic as well as foreign training.

672. BAPEPAM- LK also arranged some training for its staff. The list provided by the authorities show that since 2004, staff of BAPEPAM attended 10 training workshops or seminars.

**Effectiveness**

673. BI seems to be applying wider prudential requirements which are also relevant to AML. While conducting fit and proper tests, BI uses data tracing processes by way of tracking records of BI databases being maintained. These databases are (i) Directorate of Banking Business License and Information, (ii) databases of banking fraud maintained by Directorate of Banking Investigation and Mediation, and (iii) database of Black List, non performance Loans List maintained by DPIP. Besides, criminal history records published in the mass media are also consulted. BI is receiving periodic information from banks as a part of off-site supervision and also conducting on-site examination to verify adequacy and effectiveness of systems and procedures.

674. BI has five specialized inspection directorates for on-site examination of banks. Examination and evaluation of KYC/ AML is conducted by using a standard template called the Assessment Working Paper. This covers five structural factors of KYC/ AML to assess compliance level as well as risks and vulnerabilities if any. As per statistics provided to the Evaluation Team, BI conducted 2040 examinations during the period 2005-07. This resulted in money penalties in five cases, 2512 supervisory letters for Rural Banks and 291 letters for Commercial Banks. It appears that the level of violations is quite high in case of Rural Banks. Moreover, BI relies heavily on supervisory letters rather than imposing monetary fines to create deterrence.

675. The statistics concerning examinations and sanctions indicated an enhanced focus on AML supervision by BI in the last two years. Discussion with the private sector confirmed that AML examination capabilities of BI appear to have significantly improved over the recent past and that on-site inspection is professional and in-depth.

676. The Ministry of Finance- BAPEPAM is supervising its subject under sector-specific legislation. BAPEPAM, has been conducting compliance audit of securities companies in accordance with the requirements provided in Rule Number V.D.10 in 2003. Since 2003, various audits conducted by BAPEPAM resulted in sanctions on about 100 securities companies. During the year 2007, BAPEPAM have imposed 120 fines, 13 admonition letters, five cases of revocation of license and five cases of business suspension. However, supervision of mutual funds was found below par due to the fact that these companies have been relying on custodian banks for KYC/ AML measures and not directly meeting their obligations till the time of evaluation. The only supervisory action taken by BAPEPAM against mutual funds is limited to two written admonitions during 2006 and three written admonitions during 2007. The number of fines on custodian banks on which mutual funds have been

placing onus of AML measures is only five. Given the weakness with implementation by mutual funds, this is a particular concern.

677. It has been further observed that, BAPEPAM has introduced revised V.D. 10 vide decision of the Chairman of the Capital Market and Financial Institutions supervisory Agency on August 28, 2007 in terms of which previous V.D. 10 has been revoked. The decision of the Chairman requires licensed entities to adjust their polices and written procedures regarding customer acceptance, customer identification, monitoring of accounts and risk management in relation to implementation of KYC principles as contained in the guidelines on KYC principles no later than 6 months after the enactment of the decision. This means that there was no obligation at the time of evaluation because the previous V.D 10 was not fully in force and revised V.D 10 allows time of 6 months from August 28, 2007.

678. Prudential safeguards are in place for insurance companies which are also relevant to AML. The Ministry of Finance- BAPEPAM and LK has been carrying out compliance audit of insurance companies in accordance with Ministerial Decrees. The AML component forms the part of wider prudential supervision. The AML compliance audit during 2006 resulted in 20 written admonitions while 16 written admonitions were served during 2007. From 2003 to 07, BAPEPAM has conducted compliance audits in insurance sector resulting in 49 sanctions. There does not appear any monetary fine imposed on any insurance company. Sanctions were also imposed on two financing companies in 2 cases while the last audit of pension funds was conducted in 2005 under which no violations could be detected in relation to KYC/ AML.

*PPATK*

679. The compliance audit function of PPATK covers the reporting obligations of financial services providers. PPATK has human resources mostly deputed from government departments and BI who conduct on-site examinations of financial services providers for their compliance with STRs and Currency Transactions. During 2007, PPATK conducted 53 on-site examinations comprising of 30 banks, nine insurance companies, 10 securities companies and four other institutions. PPATK is unable to apply sanctions on its own. The reports of inspections finalized by PPATK are sent to the concerned regulator for imposing sanctions. PPATK has been able to detect few cases in which STRs should have been reported.

680. In relation to STRs, by and large commercial banks are providing the bulk of all STR. Other types of financial services providers have reported STRs, but in low numbers. All required financial service providers have made currency transaction reports. PPATK seems to be taking measures like socialization, training of staff of entities and interaction through emails for further improvements of reporting systems and procedures.

681. JSX is self-regulatory body with powers to discipline its members mostly on prudential areas, however it does supervise for KYC/CDD implementation and may impose sanctions for violations and refer matters to BAPEPAM. During the year 2006-2007, JSX audited 104 securities companies, which included checks for KYC compliance. Key weaknesses related to internal controls for account opening and designation of compliance officers. There is scope to further expand the role of JSX to accord further importance to AML/ CFT irrespective of the fact that BAPEPAM is supervising securities companies on the subject. Given the moderate level of compliance in securities companies as evident from violations detected in various audit inspections carried out by BAPEPAM, securities companies can improve their AML/ CFT compliance through JSX.

682. BI supervision seems to be suitably structured and appropriate resources are available. BI has also arranged training of 72 employees since 2005. The allocation of staff in relation to number of banks is also reasonable. The banks told the Evaluation Team that staff of BI have significantly improved in terms of professional skills. However, the existing situation of supervision for money changers and money remitters needs improvement. There are over 800 money changers in the country. The recent promulgation of Regulations for money changers is a new step and its effectiveness could not be seen. However, the situation is vulnerable in case of money remitters. BI needs to pay full attention in registering and then enforcing AML regime on money remitters.

683. BAPEPAM appears to be improving its supervision of non-bank financial institutions, but its current supervision is below par especially in the case of mutual funds. The number of supervisory staff is relatively low in relation to entities. The supervisory staff of 21 persons is responsible for supervision of 212 securities companies, 109 investment managers and 420 mutual funds. As a result, supervision is not satisfactory, especially in case of mutual funds.

***Recommendation 32 (Supervisory Part Only)***

684. All the supervisory authorities have partial statistics of on-site examinations and compliance audits and provided the following statistics on the subject.

**Table: Bank Indonesia on-site examinations (up to December 2007)**

| | **2003** | **2004** | **2005** | **2006** | **2007** |
|---|---|---|---|---|---|
| **Commercial banks** | 131 | 131 | 128 | 85 | 85 |
| **Rural banks** | - | 2158 | 2009 | 1880 | 1887 |

**Table: BI compliance examinations on Money changers and Money Remitters**

| | **2003** | **2004** | **2005** | **2006** | **2007** |
|---|---|---|---|---|---|
| **Money changers** | | | 57 | 28 | 23 |
| **Money remitters** | - | - | - | - | - |

**Table: Compliance Audit by BAPEPAM**

| **Institutions** | **2003** | **2004** | **2005** | **2006** | **2007** |
|---|---|---|---|---|---|
| **Securities Companies** | 8 | 13 | 37 | 28 | 14 |
| **Mutual Funds** | | | | | |
| **Custodian Banks** | | | | | |

**Table: Compliance Audit by BAPEPAM- LK**

| | **2003** | **2004** | **2005** | **2006** | **2007** |
|---|---|---|---|---|---|
| **Insurance Companies** | 41 | 33 | 35 | 38 | 15 |
| **Pension Funds** | | | | | |
| **Financing Companies** | | | | | |

**Recommendation 29**

685. Informal money transfer channels continue to dominate the inflow of remittances into Indonesia, however money value transfer remitters are outside the supervised environment.

PPATK

686. Under Article 27 of the AML Law, PPATK has powers to monitor and ensure compliance with the STR and CTR reporting obligations of providers of financial services. PPATK has powers to issue enforceable regulations and notices, conduct offsite and on-site supervision, to demand reports on their operation and to give directions to improve compliance. PPATK lacks adequate direct powers of enforcement and sanction against financial institution, their directors and senior management. While PPATK does have dissuasive criminal sanctions it does not have any administrative sanctions and relies on powers of other regulators to ensure compliance with reporting obligations.

687. PPATK has entered into MOUs with various organizations like BI, BAPEPAM, Director General of Financial Services (DJLK) etc. to implement the AML Law, in particular, reporting obligations with respect of suspicious transactions and cash transactions by financial service providers. Under these MOUs, PPATK is authorised to conduct compliance audits of financial service providers including capital markets.

688. For effective implementation of the AML Law, PPATK depends, in particular for imposition of sanctions, on various Regulators.

BI

689. BI has powers to monitor and ensure compliance by the financial institutions it regulates for AML/CFT as a result of its statutory objective in Law 23 of 1999 on Bank Indonesia. Chapter VI (articles 24 – 35) provides wide ranging powers for BI to issue enforceable regulations and notices, conduct off-site and on-site supervision, to demand reports on their operation and to give directions to improve compliance. Under this law, BI has powers of sanction (criminal and administrative) to ensure compliance with reporting, monitoring and oversight obligations, although there are inadequacies in relation to monetary sanctions available (see Recommendation 17). Powers to apply monetary sanctions are available at Article 18 of the BI Regulation 5/21/PBI/2003 relating to application of Know Your Customers Principles and BI Circular Letter No. 6/37/DPNP/2004. BI has not frequently exercised the option of imposing monetary penalties.

690. BI has issued a circular (No.VI/37/DPNP 2004) on KYC Principles. On the basis of standard of application of KYC and AML Law commercial banks are rated on a scale of 1 to 5. The banks that are given rating 5 are subjected to administrative sanctions and downgrade in respect of their financial health.

691. BI has adequate powers of enforcement, although there are some inadequacies in relation to the quantum of monetary sanctions available to the regulator and a reliance on other administrative sanctions. (see Recommendation 17)

BAPEPAM-LK

692. BAPEPAM has powers to monitor and ensure compliance by the financial institutions it regulates with requirements to combat ML and TF. For securities companies, mutual fund

manager, and custodian bank relevant articles include Article 5g Law Number 8 Year 1995 concerning the Capital Market provides powers for inspection; Article 8 BAPEPAM Rule No V D. 10 regarding KYC Principles provides some sanctions.

693. For financing institutions, insurance, and pension funds relevant articles include Article 17 of Decree of the Minister of Finance Number: 74/PMK.012/2006 concerning Implementation of KYC Principles under which BAPEPAM and LK shall conduct compliance audits concerning implementation of KYC/AML principles by NBFI. Article 15 of Law Number 2 Year 1992 concerning Insurance Business stipulates that the Minister of Finance has power to conduct both regular and casual audits of insurance institutions. Article 50 of Law number 11 Year 1992 concerning Pension Fund provides that the Minister of Finance has the power to supervise and regulate pension funds including the management of asset and operating of pension programs. These powers may be exercised directly and indirectly

694. There are inadequacies in the range of monetary sanctions available to BAPEPAM to ensure compliance with reporting, monitoring and oversight obligations.

695. BAPEPAM is not authorised to see materials which a reporting party has provided to PPATK as an STR. This is an impediment to BAPEPAM's power of supervision.

**Recommendation 17**

696. A range of powers of sanction and enforcement are available to respective regulators in Indonesia. Most of the sanctions available are however only administrative in nature. Every sanction given to an insurance company will be considered during fit and proper tests for its directors and commissioners.

***Criminal Sanctions***

697. There are limited criminal sanctions available against financial institutions which breach their AML/CFT obligations.

698. Article 8 of the AML Law provides criminal sanctions for providers of financial services who intentionally do not submit STRs and CTRs. Available criminal sanctions on providers of financial services are a minimum fine of Rp.250,000,000 ($US2,500) and a maximum of Rp. One billion ($US100,000).

699. Law / 1992 Concerning Banking as amended by Law 10 / 1998 provides for criminal sanctions in Chapter VIII, which are applicable against member of the board of commissioners, board of directors, or bank employees. The term "bank employees" refers to all officials and employees of a bank. Article 48 provides criminal sanctions for a member of the board of commissioners, board of directors, or bank employee who fails to report the results of audit to BI. They shall be liable to a minimum of two years and maximum of ten years imprisonment and a fine ranging from a minimum of Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah) if done wilfully. Lesser criminal sanctions are available under Article (48(2)) if failure was through negligence. This offence is considered a misdemeanour and carries a lesser sentence than a felony.

700. Article 49 of the same law covers sanctions for a member of the board of commissioners, board of directors, or bank employee, who knowingly and wilfully does not take the necessary

measures to assure the adherence of the bank to the provisions of this law and other prevailing laws and regulations applicable to banks. Penalties are imprisonment for a minimum of three years and maximum of eight years and a fine of a minimum of Rp. 5,000,000,000 (approximately US$50,000) and a maximum of Rp. 100,000,000,000 (approx US$10,000,000).

701. Article 50 provides criminal sanctions against a wide range of affiliated parties who may influence a bank to avoid compliance with banking and other prevailing laws. "Affiliated Parties" are defined in the law as:

a) a member of the board of commissioners, auditors, the board of directors, or their attorneys, the officers, or the employees of a Bank;
b) a member of the board of management, auditors, board of directors, of their attorneys, the officers, or the employees of a Bank, especially for a Bank established in the legal form of a cooperative in accordance with the prevailing law;
c) a party providing services to the Bank, such as public accountant, appraiser, legal consultant, appraiser, legal consultant and other consultants;
d) a party which according to Bank Indonesia's judgment influences the management of a Bank, i.e., shareholders and their relatives, the relatives of the auditors, the relatives of the board of directors, and the relatives of the board of management;

702. Any affiliated party who knowingly and wilfully does not take the necessary measures to assure the adherence of a bank to the provisions of this Law and the provisions of other prevailing laws and regulations applicable to banks shall be imprisoned for a minimum of three years and maximum of eight years and fined a minimum of Rp. 5,000,000,000 (approximately US$50,000) and a maximum of Rp. 100,000,000,000 (approx US$10,000,000).

703. The elucidation of the law makes it clear that for Articles 49 and 50 the offences are categorized as felonies and carry stronger sanctions than will be imposed for misdemeanours.

***Administrative Sanctions***

704. While PPATK is the competent authority for auditing compliance by providers of financial services with STR and CTR obligations, PPATK has no direct powers to apply administrative sanctions to reporting entities. Where PPATK identifies a weakness with implementation of reporting obligations by a financial service provider, it refers any identified breaches to the relevant sector-specific regulator to apply administrative sanctions.

<u>Banks</u>

705. BI has powers to impose administrative sanctions in form of (i) written warnings, (ii) downgrading the financial health rating, (iii) freezing of certain business activities, and (iv) dismissal of management of the bank.

706. Article 52 of Law / 1992 Concerning Banking as amended by Law 10 / 1998 provides for Administrative sanctions including Chairmen of Bank Indonesia may revoke the operating license of a Bank which fails to comply with the Act and a variety of lesser sanctions. These include:

a. Imposition of a fine;
b. Dispatch of written warnings;
c. Degradation of Bank's soundness rating;
d. Prohibition from taking part in clearing activities;

e. Freezing of certain business activities of Bank, both for certain Branch Offices and for a Bank as a whole;
f. Dismissing the Bank management and then appointing a temporary substitute of the management until the General Meeting of Shareholders or the Meeting of Cooperative Members appoints the permanent substitute with the approval of Bank Indonesia;
g. Inclusion of members of management, Bank employee, shareholders in a list of disreputable (disgraceful) persons in Banking sector.

707. Article 53 also allows BI to impose administrative sanctions on an affiliated party which fails to meet obligations as stipulated in this Law, or submit recommendations to the competent agency to revoke the concerned license. Administrative sanctions an affiliated party may comprise:

a. a fine, i.e. the obligation to pay a specific sum of money;
b. dispatch of a written warning;
c. prohibition from performing the function as a director or a member of the board of commissioners;
d. prohibition of rendering services to banks;
e. dispatch of a recommendation to the competent agency to revoke or cancel the operating license as a provider of services to banks (e.g. consultant, legal consultant, public accountant and appraiser).

708. In terms of Article 18 of the BI Regulation 5/21/PBI/2003 relating to application of Know Your Customers principles in the commercial banking sector, any bank late in submission of guidelines and STR reports shall be liable to administrative sanctions comprising a financial penalty of Rp1 million ($US100) for each day of delay up to a maximum of Rp30 million ($US3000). Further, a bank failing to submit guidelines and reports shall be liable to administrative sanctions comprising a written warning and a financial penalty of Rp50 million ($US5000). It should be noted that BI levies these fines on a per-transaction basis, so failure to report a number of STRs over a number of days would lead to a greater fine.

Insurance

709. Law 73 of 1992 dealing with conduct of insurance business in Indonesia empowers the Ministry of Finance to impose sanctions on insurance companies in the form of written warnings, business restrictions and licence cancellation. The Insurance Law does not provide for the application of monetary penalties.

710. The Insurance Law does not provide any power to apply sanctions to individual directors. This is a significant weakness in the Insurance Law. Most of the sanctions available are however only administrative in nature. Every sanction given to an insurance company will be considered during fit and proper tests for its directors and commissioners.

Securities Market

711. Law 45 of 1995 dealing with securities market authorises BAPEPAM to impose administrative sanctions for violations of capital market rules and regulations by issuers, public companies, securities exchanges, clearing guarantee institutions, central securities depositories, investment funds, securities companies, investment advisors, underwriter's representatives, broker dealer's representatives, investment manager's representatives, securities administration agencies, custodians, and trust-agents. The sanctions can be in

form of i) a written warning; ii) a fine or obligation to pay a certain amount of money; iii) restrictions on business activity; iv) the suspension of business activity; v) revocation of a license; vi) cancellation of an approval; and vii) cancellation of registration. Article 63 of the Law further empowers BAPEPAM that in relation to a securities exchange, clearing guarantee institution or central securities depository, it may subject it to a fine of five hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of five hundred million Rupiah; while in the case of a securities administration agency, custodian bank, or trust-agent it may subject it to a fine of Rp one hundred thousand Rupiah for each day of delay in submitting a report, up to a maximum fine of one hundred million Rupiah.

712. Article 14 of BAPEPAM and LK rule Number V.D.10 (2007) provides for BAPEPAM and LK to impose sanctions against any violation of the Rule. V.D.10 does not provide details of the nature of those sanctions.

Money Changers

713. The Regulation issued by BI in September 2007 empowers BI to impose sanctions on non-bank money changers (non-bank PVA) in form of (i) first warning, (ii) second warning, (iii) summons of management and/or shareholders and (iv) revocation of licence.

714. The Regulations issued by BI also empower BI to impose sanctions on bank money changers in the form of (i) a written reprimand, (ii) management appraisal in the evaluation of financial health level and/or (iii) withdrawal of approval for money changing activity. BI is also authorised to impose monetary sanctions on bank money changers for non-compliance.

Non Banking Financial Institutions

715. Article 21 of the Decree No. 45/KMK.06/2003 of Minister of Finance Minister of Finance relating to application of Know Your customer principles for Non Banking Financial Institutions provides for administrative sanctions for non observance of the KYC principles.

716. The Director of Insurance, Director of Pension Funds, and Director of Banking and Financing Services Businesses of the Ministry of Finance are authorised to audit compliance by NBFIs as regards their compliance with KYC principles.

Money Value Transfer Services

717. Chapter VII of the BI Regulation No 8/28/PBI/2006 relating to Money remittance services empowers BI to exercise supervisory authority over the money value transfer service providers. Chapter VIII of the Regulation also authorises BI to impose sanctions in the form of (i) a written sanction, (ii) closing of a branch and (iii) cancellation of business license. However, the regulation dealing with sanctions shall become operative only after January 1, 2009.

**Recommendation 32 - statistics**

**Commercial Banks – inspections and sanctions, including AML/KYC**

| Year | PPATK Inspections | BI inspections | Supervisory letters | Monetary penalties |
|---|---|---|---|---|
| **2003** | | | | |
| **2004** | | 130 | 130 | 0 |
| **2005** | 34 | 128 | 128 | 2 |
| **2006** | 24 | 85 | 85 | 2 |
| **2007 (April)** | 33 | 85 | 85 | 1 |
| **Total** | **91** | **428** | **428** | **5** |

**Rural Banks –inspections and sanctions, including AML/KYC**

| Year | PPATK Inspections | BI inspections | Supervisory letters | Monetary penalties |
|---|---|---|---|---|
| **2003** | | | | |
| **2004** | | 2158 | 2158 | 0 |
| **2005** | | 2009 | 2009 | 0 |
| **2006** | | 1880 | 1180 | 0 |
| **2007 (June)** | 6 | 964 | 964 | 0 |
| **Total** | **6** | **7011** | **7011** | **0** |

**Money Changers –BI inspections and sanctions, including AML/CYC**

| Action by Bank Indonesia | Year | | |
|---|---|---|---|
| | 2005 | 2006 | 2007 |
| Sanction Letter period I | - | 78 | 40 |
| Sanction Letter period II | - | 94 | 40 |
| Summons for management and/or shareholders | - | 197 | 64 |
| License Revocation | 16 | 6 | 27 |

**Securities Companies – Inspections and sanctions, including AML/KYC**

| Year | PPATK Inspections | BAPEPAM inspections | No. of sanctions | Written Admonition | Suspension |
|---|---|---|---|---|---|
| 2003 (from July) | | 8 | 7 | 4 | 3 |
| 2004 | 4 | 30 | 14 | 11 | 3 |
| 2005 | 14 | 37 | 37 | 36 | 1 |
| 2006 | 8 | 28 | 28 | 24 | 4 |
| 2007 (until August) | 12 | 37 | 14 | 14 | 0 |
| **Total** | **38** | **140** | **100** | **89** | **11** |

**Insurance & Broker Insurance – inspections and sanctions, including AML/KYC**

| Year | PPATK Inspections | BAPEPAM inspections | No. of Sanctions related to AML | Written Admonition | Suspension | Fines |
|---|---|---|---|---|---|---|
| 2003 | 0 | 41 | | | | |
| 2004 | 4 | 33 | 10 | | | |
| 2005 | 4 | 35 | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2006 | 8 | 38 | 12 | 20 | | |
| 2007 | 11 | 15 | | 16 | | |
| **Total** | **27** | **162** | **22** | **36** | **0** | **0** |

**Mutual Funds – inspections and sanctions, including AML/KYC**

| Year | PPATK Inspection | BAPEPAM inspection | Written Admonition | Suspension | Fines | License Revocation |
|---|---|---|---|---|---|---|
| 2003 | | | | | | |
| 2004 | | | | | | |
| 2005 | | 24 | | | | |
| 2006 | 2 | 36 | | | | |
| 2007 | 3 | 63 | 13 | 5 | 120 | 5 |
| **Total** | **5** | **123** | **13** | **5** | **120** | **5** |

**Financing Companies – inspections and sanctions, including AML/KYC**

| Year | PPATK Inspections | BAPEPAM Inspection | No. of sanctions | Written Admonition | Revocation of license / Suspension | Fines |
|---|---|---|---|---|---|---|
| 2003 | 0 | | | | | - |
| 2004 | 2 | | | | | - |
| 2005 | 1 | | | | | - |
| 2006 | 4 | | 2 | | 2 | - |
| 2007 | 4 | 22 | | | | - |
| **Total** | **11** | **22** | **2** | | **2** | |

NB – revocation of licenses for the two financing companies were for failure to implement internal KYC controls in keeping with Min of Finance Decree 74/PMK.012/2006.

**Capital Venture Companies – inspections and sanctions, including AML/KYC**

| Year | PPATK Inspections | BAPEPAM Inspection | No. of sanctions | Written Admonition | Revocation of license | Fines |
|---|---|---|---|---|---|---|
| 2003 | | | | | | - |
| 2004 | | | | | | - |
| 2005 | | | | | | - |
| 2006 | | | 7 | | 7 | - |
| 2007 | | 15 | | | | - |
| **Total** | | **15** | **7** | | | |

NB – revocation of licenses for the seven capital venture companies were for failure to implement internal KYC controls in keeping with Min of Finance Decree 74/PMK.012/2006.

718. Sanctions were also imposed on financing companies in two cases.

719. Twenty-two of the 27 administrative penalties given by BAPEPAM from 2005-2007 were for failure to file KYC policies outlining internal controls for AML/CFT.

**Effectiveness**

720. While PPATK is empowered to conduct audits of reporting institutions' compliance with STR reporting obligations, PPATK does not possess any administrative sanctions to ensure compliance with those audits. Instead PPATK refers breaches to BI and BAPEPAM to apply sanctions.

721. BI and BAPEPAM are taking steps to apply administrative sanctions against those reporting institutions which have failed to implement effective internal controls for AML/CFT or have failed to report STRs. In a number of cases this has included revocation of licenses

722. PPATK has never referred a matter to the AGO for application of criminal sanctions for failure to report STRs or CTRs.

723. While statistics were not available for all monetary penalties issued by BI for failure to comply with the AML/KYC Regulations, in an example of fines for failure to report 26 STRs the institution received a written warning and a fine of approximately US$175,000.

724. The implementation of appropriate sanctions is not consistent across all sectors. It is clear that in recent years BI has taken particular action to apply a range of administrative sanctions against banks and money changers.

725. Statistics on the use of sanctions are not well kept. There are no statistics on the use of criminal sanctions in relation to violations of ML laws.

**Recommendation 25**

726. The regulators have provided some guidelines in the form of circulars and regulations to provide some guidance to institutions for AML measures. BI introduced Standard Guidelines for KYC Principles via Circular Letter No. 5/ 32/ DPNP/2001. These Guidelines serve as the reference for minimum standards to be met by banks when putting together practical guidelines for application of KYC Principle. The subjects covered under the Guidelines include, inter alia, customer acceptance and identification, monitoring and reporting, risk management, internal controls and employees training etc. BI has also provided some guidance to money changers as a part of its supervisory regime vide its recently issued Circular Letter No. 9/23/ DPM and Regulation No.9/11/ PBI/ 2007. The Chairman, BAPEPAM- LK recently issued Rule No. VD. 10 for implementation of KYC principles by Capital Market Financial Services Providers which provides a certain level of guidance on practical aspects of AML/ CFT obligations of the entities. For implementation of AML Law, PPATK has provided six sector-specific pieces of guidance to financial services providers which include Guidelines on Prevention and Eradication of Money Laundering, Recognition of Suspicious Transactions, Reporting of Suspicious Transactions and Reporting of Cash Transactions.

727. PPATK has been providing general feedback to financial services providers with a view to informing them on techniques, methods and trends of ML and TF. This occurs through training seminars and workshops; the PPATK Annual Report which contains statistics and typologies; and the PPATK open-source information email alerts to all financial services providers, which is sent on a daily basis to identify ML and TF risks.

728. DNFBPs are not currently covered as reporting parties. Therefore, no guidance or interaction with them seems to be in place regarding AML/ CFT safeguards.

**Effectiveness**

729. Some guidelines have been issued by regulators which appear to have been translated into internal policies and procedures of financial services providers. Examples of suspicious transactions provided by PPATK have been found helpful by the reporting entities. These examples are kept in view while monitoring transactions and accounts of customers. The reporting entities also make use of daily emails being sent by PPATK. The entities regularly access such emails and take measures wherever required.

730. Case specific feedback on STRs being reported by financial services providers is not provided by PPATK or any other regulator in practice.

### 3.10.2 RECOMMENDATIONS AND COMMENTS

Recommendation 23 & 30

- BAPEPAM should provide comprehensive KYC/ AML instructions in securities sectors. Its V.D 10 does not cover all the aspects of AML requirements.
- BAPEPAM should improve its AML/CFT examination process preferably by developing examination manuals or similar instruments to assess the potential AML/CFT risks and vulnerabilities of securities companies.
- BAPEPAM should regularly conduct thorough supervision of securities companies and should ensure that adequate resources are available to achieve this.
- Mutual funds should be directly supervised and not leave to custodian banks their KYC/ AML obligations.
- BAPEPAM should provide focused training to on-site examiners. The examiners should have technical skills and training to assess the effectiveness of internal controls in securities companies and mutual funds, identify the weaknesses and ensure corrective measures through management of these entities. If violations attract sanctions, monetary fines may be imposed.
- Safeguards to prevent criminals from controlling or holding positions in pension funds, financing companies, money remitting and money changing businesses should be put in place.
- For imposing sanctions, BI has mostly used written admonitions. Keeping in view the higher level of violations in rural banks, the need is to create an effective deterrent. Money penalties can be one way of doing that. The same is true in case of BAPEPAM and LK.
- BI needs to allocate resources for an effective mechanism of supervision of money changers
- Money remitters should be registered/ licensed and requirements of AML be imposed on them. These entities should then be monitored and supervised for AML compliance.
- All regulators should ensure that staff involved in supervision and monitoring of AML/CFT compliance are subject to screening and re-screening for integrity.

Recommendation 25

- Regulators should provide guidance to institutions on a more regular basis

- PPATK should consider providing case-specific feedback to reporting entities.
- BI or PPATK should provide updated UNSCR 1267 lists of designated entities to reporting entities and may also consider maintaining list of proscribed persons and entities for ease of reference while monitoring transactions.
- DNFBPs should be made subject to AML/ CFT requirements.

Recommendation 29

- PPATK should be given wider powers to ensure compliance with reporting obligations to include direct enforcement powers through sanctions.
- BAPEPAM should be given wider powers to ensure compliance with reporting, monitoring and oversight obligations.
- BAPEPAM and other relevant supervisors should be authorised to see STRs in the course of conducting supervision of a reporting party.

Recommendation 17

- Indonesia should ensure effective and dissuasive administrative penalties are available to all regulators for all sectors for their respective supervision of AML/CFT obligations.
- Effective and dissuasive monetary penalties should be extended to all sectors.
- PPATK should be empowered to apply direct administrative sanctions for violations of reporting obligations.
- Sanctions should be available for money value service providers.
- Powers should be available to impose sanctions on directors or members of the senior management of insurance companies.
- Indonesia should demonstrate effective implementation of available sanctions across all sectors, including NBFIs.

Recommendation 32

- The regulators/ supervisors should maintain proper statistics of on-site examinations/ compliance audits of all institutions under them and of all sanctions levied.

3.10.3 COMPLIANCE WITH RECOMMENDATIONS 23, 29, 17 & 25

| | Rating | Summary of factors relevant to s.3.10 underlying overall rating |
|---|---|---|
| **R.17** | **PC** | • Available administrative penalties are inconsistent and there is a lack of persuasive monetary penalties available.<br>• PPATK lacks powers to apply direct administrative sanctions in relation to compliance with reporting obligations;<br>• The sanctions available to a number of Regulators are only administrative,<br>• At present no powers are available to sanction Money Value service providers.<br>• Regulators lack powers to impose sanctions on directors or members of the senior management of insurance companies.<br>• Statistics do not demonstrate effective implementation of sanctions on financial institutions and no money value sanction has been imposed on any NBFI. |

| | | |
|---|---|---|
| **R.23** | **PC** | • Supervision of Mutual Funds is weak, although improving.<br>• Implementation of supervision of money exchange businesses appears to vary across the archipelago.<br>• Supervisory framework for money remitters is either non-existent or ineffective<br>• Necessary safeguard against criminals' entry in money changing and money remitting businesses is not available. |
| **R.25** | **PC** | • CFT specific guidelines had not been issued at the time of the onsite visit. |
| **R.29** | **PC** | • Money remitters are not currently regulated or supervised<br>• PPATK lacks powers to apply direct administrative sanctions in relation to compliance with reporting obligations;<br>• BAPEPAM is not permitted to inspect STR records in the course of conducting supervision of a reporting party. |
| **R.30** | **PC** | • There are significant resources gaps in supervision of money remitters and money changers<br>• BAPEPAM and LK lack supervisory staff, given their wide range of responsibilities.<br>• BAPEPAM and LK examiners require additional training on assessing effectiveness of internal controls and risk assessment.<br>• there is a lack of screening and re-screening for regulatory personnel |
| **R.32** | **PC** | • Statistics for on-site examinations across sectors were not well maintained.<br>• Statistics of sanctions by regulators were poorly kept. |

## 3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)

### 3.11.1 DESCRIPTION AND ANALYSIS

731. Figures provided during the on-site visit indicate that Indonesia's payment and remittance sector includes a significant informal remittance sector that is not subject to AML/CFT controls and which may pose vulnerabilities for misuse for ML and TF.

732. The National Strategy for Prevention and Eradication of the Money Laundering in Indonesia (Fiscal Year 2007-2011) highlights the need to strengthen regulations on alternative remittance systems. The Strategy observes that "the main objective of Regulatory action on money remittance activity is to support shifting of money remittances activity from informal business activity to be formal business activity."

733. The study conducted by East Asia and Pacific Social Development Unit of the World Bank in September 2007 has noted that Indonesia had total remittance inflows from all countries of US $ 5.6 billion in 2006 while formal inflows into Indonesia from all countries were only US $ 1.9 billion in 2005. Therefore, approximately 80% of the total remittance inflow into Indonesia is through informal channels. The study has noted that Malaysia-Indonesia remittance corridor might contain the second largest flow of undocumented workers in the world only after the United States-Mexico corridor.

734. Indonesia is the second largest supplier of labour migrants in SE Asia, known as "Tenaga Kerga Indonesia" (TKI), with 680,000 overseas workers' contracts concluded in the year 2006 alone. Since 2003 the number of contract has doubled.

735. Before December 2006 there was no explicit framework for regulation of remittance in Indonesia outside of the banking sector.

736. In December 2006 BI issued new regulations BI Regulation 8/28/PBI/2006 Concerning Money Remittance Services allowing remittance agents to conduct remittance transfers. This regulation includes transitional arrangements to encourage the movement of remittance business into regulated channels. BI has adopted a gradual transition from registration to licensing from remittance agents. The transition period provides an opportunity to those entities currently operating informally to register by December 31, 2008.

737. BI Regulation 8/28/PBI/2006 Concerning Money Remittance Services provides for both individuals and corporate entities to provide remittance services or act as an agent for networks owned provided by other operators. Commercial banks as provider of money remittance are not obliged to register with BI under the Regulations, but are able to conduct such business under the banking license. However, in keeping with BI Regulation Number 8/28/PBI/2006 banks that operate money remittance providers must submit the following reports to Bank Indonesia as the following:

- Money remittance transaction reports
- Branch office reports and opening plan for branch office
- Caretakers changing reports
- Provider and Operator cooperation reports
- Reports of cooperative termination with Operator

738. This regulation is an effort by BI to encourage individual remittance providers to shift from informal to formal systems covered by AML/CFT controls. An additional initiative has been to support an ATM cross-border link in which one provider has established links with its counterparts in Malaysia, Singapore and Thailand. The facility allows ATM cash withdrawals in the participating countries.

***Registration and Licensing***

BI is the designated authority to register and license money value transfer service operators. Under BI Regulation No.8/28/PBI/2006 on Money Remittance Services are regulated by the BI through registration, licensing and supervision. However, the licensing regulation becomes applicable only after January 1, 2009. Under transition arrangements, until 1 January 2009 existing and new service provider may engage in money transfer business by registration (Article 30). The requirement to undertake the full licensing process with BI only applies from January 2009.

739. It is not clear that all the obligations in the Regulation apply to registered entities prior to them receiving a license. It appears, for instance, that sanctions available under Chapter VIII Regulation empower BI to impose sanctions of warning and termination only to license holders.

740. It is not clear that BI or another competent authority has undertaken outreach to identify natural and legal persons providing money value transfer services and to encourage them to

register under the terms of the BI Regulation. As of October 2007 the following five agencies have been granted registration by the BI:
(1) PT. Indorem Pratama,
(2) PT Tiki Jalur Nugraha Ekakurir,
(3) CV. Syaftraco,
(4) PT. Pos Indonesia (Persero), and
(5) PT. Agung Remittance Global.

***Application of AML/CFT obligations to remittance providers***

741. The AML Law does not yet apply to remittance providers registered under the BI Regulation No.8/28/PBI/2006 on Money Remittance Services. As such they are not subject to relevant preventative measures, supervision and monitoring, nor to appropriate sanctions for non-compliance with such obligations.

742. The provision for BI to issue implementing guidelines does not apply until after January 2009.

743. In terms of item (f) of Article 14 of the BI Regulation the Money Value Transfer, providers are required to maintain documents related to money remittances according to company law. However, Article 14, item (g), of the Regulations also provides for Suspicious Transaction Reporting to the competent authority according to law concerning ML.

744. Comprehensive CDD obligations are not included in the Regulations. Article 14 of the regulation places the following obligations on providers of remittance services:

a. to register transactions of money remittance;
b. to submit reports periodically and incidentally to BI;
c. to submit reports in written to BI if there is management modification by completing a statement from new management into an authentic deed as referred to in Article 10 letter b and Article 11 letter b;
d. to assure that money given by the correspondent party shall be remitted to and received by the beneficiary party who is entitled within a period agreed;
e. to provide information to the correspondent party in relation with that money remittance;
f. to maintain documents related with money remittance in accordance with prevailing laws and regulation concerning company documentation; and
g. to report suspicious transactions to a competent authority based on prevailing laws and regulation concerning the crime of ML.

745. BI has not yet sought compliance with the above obligations. In relation to item (g) above the obligation to report STRs does not yet apply to remittance providers.

746. Competent authorities have not yet commenced supervision and oversight of non-bank remittance operators.

747. According to the Regulation any Indonesian citizen or non-bank entity can be appointed as agent or sub-agent of money transfer business. Article 13 of the Regulation requires registered remittance providers to report to BI on the identity, profile, capability and security of any agent. This obligation is yet to be implemented for the five registered providers. However, at present BI does not have any information either about the number of branches/agents/sub-agents of entities engaged in money transfer or their addresses.

748. The extant AML/CFT guidelines of PPATK are applicable to only the five registered money value transfer service providers. At this stage network operators such as Western Union and Moneygram have not registered separately as remitters in Indonesia, however if such operators cooperate with banks then their service shall be part of banking products and subject to banking laws and regulations and other relevant provisions.

***Sanctions***

749. No sanctions are available under the Regulation against registered remittance providers during the transition period. It does not appear that any sanctions under other laws would apply to unregistered remittance providers until January 2009. Sanctions are limited to revocation of the license for a licensed remitter.

3.11.2 RECOMMENDATIONS AND COMMENTS

- In view of the enormous scale of the unregulated informal remittance channels which operate in Indonesia and the new regulation for remittance agents from BI, it is critical that AML/CFT obligations should apply to remittance agents as a matter of priority.
- The AML/CFT regime contemplated in the BI Regulation on Remittance should be updated prior to its coming into effect in 2009 to reflect the full FATF obligations on AML/CFT controls of remittance dealers.
- Indonesia should consider shortening the transition process for implementation of the new remittance regulations.
- Indonesia should consider working with foreign counterparts to work to identify informal remittance dealers who have a presence in countries in the Asia/Pacific region.

3.11.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VI

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.VI** | **NC** | • Large scale unregulated informal remittance channels continue to operate without inclusion in national AML/CFT measures.<br>• Currently there is no clear obligation on Money Remitters to register or obtain licence, although there is a transition process in operation.<br>• The AML/CFT regime for money remitters contemplated in the BI Regulation is not adequate and is not yet in force.<br>• No system in place to monitor and ensure that Money Value Transfer services are compliant with FATF Recommendations.<br>• Lists of money value transfer agents/sub-agents are not available. |

# 4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

***Scope of application of the AML requirements to the DNFBP sectors***

750. At present DNFBP sectors are not included under AML/CFT requirements in Indonesia. The current AML Law does not include a reporting obligation for professions and providers of goods and services outside the financial sector.

751. Gambling, including casinos and internet casinos, is outlawed in Indonesia.

752. A proposed amendment to the current AML Law has been included in the National Priority Legislative List. It is expected that this draft law will be enacted in 2008. This amendment to Law Number 15 Year 2002 concerning the Crime of Money Laundering as amended by Law Number 25 Year 2003 specifically imposes a reporting obligation for suspicious transactions on certain professions that engage in transactions on behalf of their clients and also a reporting obligation on financial transaction in the amount of Rp. 500 million by providers of goods and services. Included professions are lawyers, notaries, land register officials, public accountants and liquidators. Providers of goods and services that are subjected to reporting obligations under the proposed legislation are property agents/company, car dealers, jewelleries dealers, artistic/antique shops or auctioneers.

753. Since 2006 a series of consultations and discussions and seminars concerning the inclusion of DNFBPs as reporting parties have been conducted by PPATK. The discussions and seminars were held in a number of cities throughout Indonesia and were attended by notaries, lawyers, accountants, real estate agents, precious stones traders, and others. The aim of these discussions and seminars has been to introduce an initiative to include DNFBPs as reporting parties and to obtain input from them regarding appropriate regulation.

754. Discussions with DNFBP industry bodies indicate that consultation with the regulator has been effective and there does appear to be support from DNFBPs for an expansion of AML/CFT controls over the sector. This is a welcome development and reflects constructive outreach by PPATK and other agencies in Indonesia.

## 4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

### 4.1.1 DESCRIPTION AND ANALYSIS

755. As DNFBPs are not yet included in Indonesia's AML/CFT regime, there are no comprehensive CDD obligations on any of the DNFBP sectors.

756. Limited record keeping requirements are in place for those DNFBPs which are formed as companies. Article 11 of Law Number 8 Year 1997 concerning Documents of Company stipulates that a company shall maintain documents for 10 (ten) years. The said law is applicable to every company incorporated in Indonesia and all the financial services providers fall under the definition of Company (DS – what about DNFBPs?). The term "corporate documents" comprises financial and other documents. Financial documents comprise notes, book-keeping evidence and financial administration supporting data which could serve as evidence of the rights and obligations as well as business activities of a particular company. Whereas other documents comprises data or any writing containing information which shall be

of use to the company although they are not directly linked with financial documents. As per standards, business correspondence is also required to be retained for at least 5 years as a part of record. The Law No. 8 does not explicitly mention business correspondence as a necessary requirement or part of corporate documents but it seems to cover it in some way under "other documents".

4.1.2 RECOMMENDATIONS AND COMMENTS

- Indonesia should take steps to extend CDD measures to the full range of DNFBPs as soon as possible.

COMPLIANCE WITH RECOMMENDATION 12

| | Rating | Summary of factors relevant to s.4.1 underlying overall rating |
|---|---|---|
| **R.12** | **NC** | • As DNFBPs are not yet included in the AML/CFT regime in Indonesia, CDD requirements do not extend to DNFBPs |

## 4.2 SUSPICIOUS TRANSACTION REPORTING (R.16)

4.2.1 DESCRIPTION AND ANALYSIS

757. As DNFBPs are not yet included in Indonesia's AML/CFT regime, STR obligations do not extend to any of the covered DNFBP sectors.

4.2.2 RECOMMENDATIONS AND COMMENTS

- Indonesia should take steps to extend STR measures to the full range of DNFBPs as soon as possible.

4.2.3 COMPLIANCE WITH RECOMMENDATION 16

| | Rating | Summary of factors relevant to s.4.2 underlying overall rating |
|---|---|---|
| **R.16** | **NC** | • As DNFBPs are not yet included in the AML/CFT regime in Indonesia, STR requirements do not extend to DNFBPs |

## 4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25)

4.3.1 DESCRIPTION AND ANALYSIS

758. As DNFBPs are not yet included in Indonesia's AML/CFT regime, DNFBP sectors are not subject to AML/CFT supervision.

759. Competent authorities, including SROs, have not established guidelines in relation to AML/CFT. Competent authorities have taken steps to consult with DNFBP sectors and to begin to raise awareness of AML/CFT.

4.3.2 RECOMMENDATIONS AND COMMENTS

- Indonesia should take steps to regulate/supervise/monitor the full range of DNFBPs for AML/CFT purposes as soon as possible.

4.3.3 COMPLIANCE WITH RECOMMENDATIONS 24 & 25 (CRITERIA 25.1, DNFBP)

| | Rating | Summary of factors relevant to s.4.3 underlying overall rating |
|---|---|---|
| **R. 24** | **NC** | • As DNFBPs are not yet included in Indonesia's AML/CFT regime, DNFBP sectors are not subject to AML/CFT supervision. |
| **R. 25** | **PC** | • As DNFBPs are not yet included in Indonesia's AML/CFT regime, competent authorities have not issued AML/CFT guidelines to DNFBP sectors. |

## 4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 DESCRIPTION AND ANALYSIS

***Other non-financial businesses and professions***

760. The Indonesian authorities are conscious of the potential threat of ML and TF that may be posed by other institutions and non-financial business and professions.

761. The draft Law Concerning Prevention and Eradication of the Crime of Money Laundering includes car dealers, auctioneers, art and antique traders, liquidators, pawnshops, land deed registration officials in the list of reporting parties.

762. Article 41 (b) of the draft Law Concerning Prevention and Eradication of the Crime of Money Laundering also authorises PPATK to determine the category of users who can be potential conduits of ML and TF.

***Modern and secure Technologies***

763. Indonesia has taken steps to encourage the development and use of modern and secure techniques that are less vulnerable to ML.

764. Indonesia is developing electronic money (E-money) as an alternative to monetary instruments. BI regulates and licenses business of E-money which can be issued by a bank and other financial institutions in either chip based cards or web based virtual accounts. This instrument is developed mainly to facilitate retail micro payments and is issued subject to a ceiling of Rp 1 million (approx US$100).

765. Indonesia still remains predominantly a cash-based economy. The highest denomination currency note is Rupiah 100,000 which corresponds to approximately US$10. However, the country has initiated some steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.

766. In 2006 BI launched the initiative on the cashless society with goals including the creation of a secure, efficient and reliable e-money instrument for the public. E-money is envisaged as

filling an important gap in the existing array of non-cash payment instruments, ranging from low value/retail instruments such as cheques, bilyet giro, credit cards and so on to high value instruments such as transactions generated by the inter-bank money market and processed through the BI-Real Time Gross Settlement system (BI-RTGS).

767. BI has recognised the need to develop a micro non-cash payment instrument to complement the high value and low value instruments currently available in order to deal with very small payments of high frequency using a high-speed payment process.

768. BI has undertaken consultation on issues and/or amendment of regulations governing e-money. BI has released a number of working papers for industry and public consultation on the issue including ”Promoting the use of Non-Cash Payment Instruments through Development of E-Money”, ”Operational Study of E-Money”, ”Impact of Non-Cash Payments on the Economy and Monetary Policy” and ”Research of Perceptions, Preferences and Behaviour of Service Providers to E-Money” in addition to the proceedings of the international seminar on ”Towards a Less Cash Society” in Indonesia.

769. A wide network of ATMs is in operation in Indonesia. These include improved payment systems such as the credit card network, debit cards, SMS and internet banking. Salary deduction for payments of various services, including insurance, is now common practice. Since 2004 a number of Indonesian banking groups have offered interbank electronic payment systems. For payments of public utility charges, direct debits from the accounts of users are widely used by arrangement between utilities companies and commercial banks.

770. A variety of cards are used for payments in Indonesia. ATM cards are generally used for the withdrawal and deposit of cash. There are five local inter-bank ATM networks (ALTO, ATM BERSAMA, CAKRA, FLASH, and BCA) and two international networks (CIRRUS and PLUS). Debit cards (EFTPOS) are available in larger cities. Other cards in use include credit cards and prepaid cards which include “smart cards,” issued by telephone companies and other entities.

### 4.4.2 RECOMMENDATIONS AND COMMENTS

771. Indonesia has taken steps to consider applying AML/CFT preventative measures to non-financial businesses and professions other than the DNFBPs. The draft amendments to the AML Law include coverage of car dealers, auctioneers, art and antique traders, liquidators, pawnshops and land deed registration officials.

772. While Indonesia remains a predominantly cash-based economy a number of measures are being implemented to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.

### 4.4.3 COMPLIANCE WITH RECOMMENDATION 20

| | Rating | Summary of factors relevant to s.4.4 underlying overall rating |
|---|---|---|
| **R.20** | **C** | • The Recommendation is fully observed |

# 5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

## 5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

### 5.1.1 DESCRIPTION AND ANALYSIS

773. The main types of legal person in Indonesia are:

- companies formed by notorial deed registered in accordance with Law 3/1982 and the Limited Liability Company Law, Law 1/1995 limited by shares usually. Limited by guarantee and unlimited companies appear not to be directly prohibited; and
- businesses – Firm Association (sole proprietorship) and dormant partnerships (Commanditaire vennootschap-CV) under the framework of Chapter II Commercial Code, as amended by Official Gazette 1940 No. 450, and Law 1/1995 as amended by Law 40/2007. A Decree of the Minister of Legal Affairs & Human Rights *Registration of gives its legalization effect.*

***Registration of companies and legal persons***

774. Under Indonesian law, all associations and partnerships, which are formed for the purpose of gain, must be formed by Notarial deed and registered under the law 3/1982. Information to be supplied to the Companies Registrar on application for registration included company name; initial directors; name and address of each shareholder, and number of shares allotted; and Memorandum and Articles of Association. Under Law 3/1982 changes of company shareholders did not require public records to be maintained.

775. In 2007 new legislation was passed to increase the transparency of companies and to create a public list of company information for the first time. The new obligations require names and address of share holders to be reported, but do not extend to the concept of beneficial ownership information. That data can be accessed by the public, but only by request.

776. Law 40/2007 requires notification to the Minister & Companies Registry of any changes to directors, shareholders or registered address no later than 30 days from the change, by a decision of the RUPS; Article 94(1) to (9), especially (7). While Law 40/2007 has a requirement for the Company Registry to be notified of changes to directors and shareholders, the competent authorities are yet to issue implementing regulations and provide a support structure to receive such reports. As such, these obligations are not yet implemented.

777. Implementation of Law 40/2007 will require the establishment of the Registry and its database should give effect to the obligations to file annual returns, balance sheets and profit and loss accounts, and which may then be available for public access. In the case of businesses, accessible historical information includes name of business, principal address of business, type, date established, and details of the owner.

778. Chapter IX, Articles 138 to 141 of Law 40/2007 provides powers of examination over corporations by the regulator, however it is limited to instances where they are suspected to have committed illegal acts. The Article requires that notice is given in writing, Article 138(8) to the District Court requires any corporation for three experts to be appointed to conduct examination on any Directors, members of the Board of Commissioners or employees who

must provide all information required. Article 139(6). It would be possible for this to be used to determine information and particulars of any shares acquired or held directly or indirectly either for a person's own benefit or for the benefit of any other person or any other corporation. Examination expenses are paid by the corporation, Article 141, but criminal sanctions for non-compliance appear to be absent.

779. All companies must keep certain records in accordance with the law on Corporate Documents Law 8/1997. The record keeping obligation does not extend to beneficial ownership and control of legal persons beyond registered shareholder information , but does include a requirement to keep list of shareholders, minutes and financial documents and other documents at the domicile.

780. Trust Agent Companies operate in Indonesia under the Capital Market law, law 8/1995 Articles 50 to 54 and BAPEPAM Regulations. Such Trust Agent Companies are reporting institutions under the ML Law. Requirements on Trust Agent Companies include records of the Trust agency agreement covering such matters as; 1) the principal, interest and other benefits to be paid to the issuer, 2) the maturity date, 3) the guarantee, 4) the paying agent and 5) the duties and functions of the trust agent. They are subject to the obligations imposed by the BAPEPAM Chairman KYC Guidelines No. KEP 313/BL/2007 and Rule V.D.10. These include obligations to establish, verify and record beneficial ownership and control of transactions which they conduct on behalf of their clients, and to maintain all records of such transactions. The BAPEPAM Chairman KYC Guidelines, at 9(a)(4) when dealing with Customer Acceptance and Identification deals with beneficial ownership by requiring "Identity of other party, in case that the potential customer acts for and on behalf of other party." This guideline refers to ‘those persons who exercise ultimate effective control over a legal person or arrangement’.

***Access to information on the beneficial ownership and control of legal persons***

781. There is no requirement for legal persons to maintain a record of beneficial owners or to lodge with the Minister or the Companies Registrar any information as to whether company shareholdings are held beneficially and if so, details of beneficial owners.

782. Law enforcement and regulatory agencies have some powers to obtain information on beneficial ownership directly from companies, however given the lack of record keeping requirements, the timeliness and adequacy of such information is questionable.

***Bearer shares***

783. Law No. 1 Year 1995 Concerning Of Limited Liability Company recognised two types of shares, both bearer shares and registered shares. This law was superseded in 2007 by the new Law 40/2007. The rights of shareholders, and when they may exercise these rights, are also regulated in detail under the new law.

784. As mentioned above, competent authorities are yet to issue implementing regulations for Law 40/2007 and the process of removing all bearer shares from the Indonesian system is not clear. Previously issued bearer shares would appear to remain a feature of the Indonesian system.

5.1.2 RECOMMENDATIONS AND COMMENTS

785. Indonesia should:

- implement the provisions to establish a central Companies Registry to make publicly available current information about legal persons and their beneficial ownership.
- ensure that previously issued bearer shares do not continue to be a feature of the Indonesian system.
- develop and effectively implement transparency obligations on corporate entities, including publicly available beneficial ownership information.

5.1.3 COMPLIANCE WITH RECOMMENDATIONS 33

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.33** | **NC** | • Legal persons are not required to maintain a record of beneficial owners or whether company shareholdings are held beneficially.<br>• The Companies Registry has not yet established a publicly available central registry of current information about legal persons.<br>• While there is a requirement in law to notify the company registry of changes to directors and shareholders, the competent authorities are yet to issue implementing regulations and provide a support structure to receive such reports.<br>• While law enforcement and regulatory agencies have some powers to obtain information on beneficial ownership, the timeliness and adequacy of such information is questionable.<br>• Bearer shares were a feature of the companies law in Indonesia until 2007 and no transition arrangement has been established to ensure their use is not continuing in practice. |

## 5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 DESCRIPTION AND ANALYSIS

786. Indonesian law does not have a system of trust law and does not recognise express and discretionary trusts.

787. Indonesian law does not prohibit foreign trusts from operating in Indonesia. Indonesia does not prohibit financial institutions in Indonesia executing a trust in Indonesia which is based on foreign law. Where a foreign trust is a customer of an Indonesian financial institution, the financial institutions are required to perform CDD under the AML Law and various sector-specific regulations. Indonesian financial institutions have faced challenges in performing effective CDD on the foreign trusts.

5.2.2

RECOMMENDATIONS AND COMMENTS

788. In keeping with findings in other APG and FATF assessments, Recommendation 34 is not applicable in the Indonesian context.

COMPLIANCE WITH RECOMMENDATIONS 34

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.34** | **NA** | • Recommendation 34 is not applicable in the Indonesian context. |

## 5.3 NON-PROFIT ORGANISATIONS (SR.VIII)

### 5.3.1 DESCRIPTION AND ANALYSIS

***Review of the domestic non-profit sector***

789. Indonesia has not yet conducted a comprehensive review of its domestic NPO sector as envisaged in the FATF standards. Some work has gone on in Indonesia to review the adequacy of domestic laws related to NPOs in the context of developing new over-arching legislation to cover the sector. Indonesia has not adequately reviewed the features and types of NPOs that are at risk of being misused for TF.

790. Indonesia is continuing to receive some technical assistance from international donors to work towards conducting a review of the NPO sector.

791. Indonesian authorities do not appear to have a clear idea of the true number of NPOs operating in Indonesia, nor of the activities of many of the organisations registered as some form of NPO.

792. There is evidence of abuse of NPOs in Indonesia, including significant cases of TF. A number of Indonesian charities are listed by UN 1267 Sanctions Committee as terrorist organisations. There appears to be limited knowledge within Indonesian authorities of the scale of wider abuse in the sector.

793. Legislation for the regulation of NPOs is not effectively enforced. It appears that ministries either do not have the resources to regulate NPOs effectively, or feel that the regulation of NPOs is not properly government business or do not consider it a priority issue.

794. There are no well established self-regulatory structures within the NPO sectors in Indonesia.

795. Foundations (*yayasan*) are established as statutory bodies consisting of assets constituting a separate legal estate allocated to achieve certain objectives in social, religious and humanitarian fields. Foundations are not membership organizations.

796. Foundations are governed by Law Number 16 Year 2001 concerning Foundation as amended by Law Number 28 Year 2004. The foundation has the status of a legal entity after the deed of establishment of the Foundation has been approved by the Minister of Law, Human Rights and Justice.

797. As of November 2007 there were approximately 11,827 Foundations registered to operate in Indonesia. There are indications that many of those Foundations operate outside of their terms of registration, for example being membership organisations.

798. Social organizations / Associations are formed on the basis of Law Number 8 Year 1985 concerning Social Organization Associations. Based on their scope of work, Associations are registered at a national , provincial or district/city level. At the national level NPOs are registered by the Ministry of Home Affairs and some in other technical ministries based on its scope of activity.

799. Mass Organisations / Associations are governed by:

- Law Number 8 Year 1985 concerning Mass Organization;
- Government Regulation Number 18 Year 1986 concerning the Implementation of Law Number 8 of 1985;
- Circular Letter of the Minister of Home Affairs Number 223/1302.DI on August 29, 2002 to all Governors/Regents/Mayors throughout Indonesia on Mass Organization and NPOs;

800. As of October 2007, 1049 Associations were registered in the Ministry of Home Affairs. Approximately 8,000 Associations were registered in provincial level and Districts/City. There are indications that many of those Associations operate outside of their terms of registration.

801. *Wakaf* mass organisations are formed for assets which are put aside by a Moslem or an organization owned by a Moslem as stipulated in Law Number 38 Year 1999 concerning *Zakat* Management. In general, Indonesia does not have a centralised system of zakat management. There is, however, a new government-established and supervised Zakat organization known as BAZ (Badan Amil Zakat), as well as community initiated zakat organizations known as LAZ (Lembaga Amil Zakat). There is no clear requirement that smaller zakat should be part of the larger government-coordinated BAZ. Zakat organizations are regulated by the Ministry of Religious Affairs.

802. Indonesian authorities were unable to provide accurate statistics on the number of zakat related Associations or other types of zakat NPOs operating in Indonesia.

Islamic NPOs and Zakat administration

803. It is clear that there are a significant number of religious organisations with members which are NPOs, but are not registered as associations. Many of these are registered with the Ministry of Religious Affairs. There are no effective controls for good governance, transparency or AML/CFT measures.

804. Indonesia has a legal framework for the collection, administration and distribution of Zakat (alms-giving). The Zakat regime appears to only cover about 10% of the total Zakat organisations operating in Indonesia, so that the vast majority of Indonesia Zakat organisations remain unregulated. The vast majority of zakat is given at the village level directly to the mosque or to organisations related to the mosque.

Zakat Management Law

805. The responsible institution for Zakat affairs is the Zakat Management Law and respective Ministry Religious Councils established by legislation. The Badan Amil Zakat (BAZ) also issues best practices in Zakat collection and distribution procedures.

806. NPOs are generally subject to tax under the Income Tax Law. There appears to be no exemption for charitable purposes or for organisations established exclusively for the purposes religious worship or the advancement of religion. NPOs are not reporting institutions under the AML Law.

***Outreach programs, transparency and accountability***

807. Some outreach initiatives have been undertaken to raise awareness of TF risks in the NPO sector and efforts are being made to enhance transparency, accountability and governance in the sector.

808. To increase the awareness of the NPOs on its vulnerability to terrorism financing, the PPATK, in collaboration with POLRI and Ministries of Communication & Religious Affairs conducted nationwide socialisation and awareness programs on AML/CFT involving 1,049 Mass NPO Organisations and 11,827 NPO Foundations.

809. The PPATK outreach program to NPOs has included some coverage of the risks of terrorist abuse. The PPATK has formally established its own internal ML Socialisation Department in July 2006 which intends to conduct future outreach drawing on the experiences of other relevant agencies such as the IMF and UK Charities Commission.

810. Transparency, accountability and public confidence in the administration and management of NPOs is very weak in Indonesia. While a number of laws and regulations have been passed to attempt to introduce improved transparency and accountability, their implementation has been weakly supported. Various un-coordinated laws support improved transparency including: registration of societies/companies (and powers to deregister); supervision by registrar and ministries & the investigation by court order (including approval of directors and officers, filing of annual returns and audited financial statements), but some of the laws are not enforced and some laws have been passed such as Foundation Law 16/2001 & 28/2004. These laws lack implementing regulations and continue to be ineffective. Some of the laws on funds collection and disbursement are outlined below.

811. Law No. 8 Year 1985, which governs NPOs registered with the Ministry of Home Affairs, does not address transparency and accountability of NPOs.

812. Transparency principles have been mandated in Articles 48, 49, 50, 51 and 52 of Foundation Act (regarding annual report). Accountability principles have been mandated in Articles 2, 28 until 47 (regarding organizational structure of a foundation and its functions) of Foundation Act. There is no evidence that these provisions are being implemented by foundations.

813. There is little evidence of effective self-regulation within the NPO sector. What good practice there is seems to be donor imposed, and is therefore narrowly focused on demonstrating that particular project funds have been applied properly.

814. Reports undertaken by technical assistance bodies indicate that there is some resistance within the NPO sector to the idea of greater transparency. It appears that few NPOs have their accounts externally audited and even fewer make such information available to the public. The most effective scrutiny appears to come from members (for those organizations that have them).

815. It also appears that many NPOs are operated outside of their remit. For example Foundations operating as membership organisations and so on.

816. Despite the serious TF risks in Indonesia and the identified abuse of NPOs for TF, Indonesia has not yet taken concrete steps to achieve effective supervision and monitoring of NPOs.

817. Both foundations and mass organisations/associations are required to provide details of their purpose and objectives and information on directors and office holders. Such information is not publicly available at present.

818. Articles 14 and 26 of Law 16 / 2001 concerning Foundations requires foundations to initially register purpose and objective of activities, total assets, disintegrated with personnel assets, ways to obtain and use assets. Articles 40, 48 and 53 of the Foundations Law provide for supervision over foundations and obliges them to submit their annual report, and examination against foundations. This is not done in practice in Indonesia.

819. In the registry process for an Association applied in the Ministry of Home Affairs, an applicant shall make a request for registration which must be signed by the Chairman and Secretary General of the prospective NPO to the Director General of State Unitary and Politic, the Ministry of Home Affairs.

820. Registration with the Ministry of Home Affairs for an Association requires provision of:
1. Deed of establishment of NPO legalized by a Notary.
2. Article of Association of NPO legalized by a Notary.
3. Working programs of NPO signed by its Chairman and Secretary General.
4. A Decree regarding Organizational Structure of Central Management signed by founders/chairman of national council.
5. Registry letters of NPO in Provincial level, minimum from 3 (three) provinces.
6. Resume (CV) of central management of NPO.
8. Tax Registry Number (NPWP).
9. A letter regarding domicile of secretariat office from the District/Regency.

821. Information on the NPOs registered with the MoHA is available to other government departments on request or can be publicly searched via paper copies at the Ministry.

***Sanctions***

822. Based on Article 13 of Law No. 8 Year 1985, government has an authority to impose administrative sanctions in term of restraint of management of NPO if they:
a. Perform activities that harm public security and orderliness;
b. Obtain funds/assistance from foreign country/individual without an approval from Government;
c. Provide assistance to foreigner(s) that hampers the interest of State and Nation.

823. If an NPO whose management is restrained still conducts violations then under Article 14 of Law No. 8 Year 1985, the government may terminate such an NPO. Besides the above violations, under Article 16 of Law No. 8 Year 1985, the government shall also have authority to terminate an NPO that has devoted, developed and expanded communism, Marxism-Leninism and other ideology that is contrary with Pancasila and the 1945 Constitution.

824. Article 70 of the Foundation Act provides that “Every member of foundation organs violating the provision as meant in Article 5 is sentenced to imprisonment of 5 (five) years. In addition to the imprisonment, the member as meant in paragraph (1) is also subjected to additional sentence in the form of the obligation to return money, goods or assets of the foundation which are transferred or shared.”

825. Article 71 (3) provides that The Foundation which does not adjust its Articles of Association shall not use the word “Foundation” before its name and may be dismissed pursuant to the judgment of the Court upon the request of the District Attorney’s Office or the stakeholders.

826. NPOs are required to register, but there is very weak compliance with those obligations. Based on the weak implementation of existing legislation and external studies of Indonesia’s NPO sector it appears that a very significant number of NPOs are operating in Indonesia without registration.

***Financial records***

827. NPOs regulated by the Ministry of Home Affairs are not required to keep financial records. Under Law No. 8 Year 1985 and its implementing regulation, Government Regulation No. 18 Year 1986, NPOs are not required to submit financial statement to the Ministry of Home Affairs , unless they obtain funds from foreign countries or individuals. In this case the NPO must obtain an approval from government. If NPO obtained funds form foreign country/individual without having an approval from government, then the government shall terminate the management of NPO (Article 13 of Law No. 8 Year 1985).

828. For foundations, Law Number 16 Year 2004 requires them to keep records on their assets/accounts and maintain them. Obligations of a foundation are governed in Articles 49, 50, 51 and 52 of the Foundation Act, that principally provides a foundation shall be required within certain period of time no later than 5 (five) months as from its fiscal year ends to prepare annual report. For foundations that have assistance (fund) from the State, foreign country/individual, or other party in the amount of Rp. 500,000,000 or more within 1 (one) fiscal year period or have assets outside wakaf in the amount of Rp. 20 billion or more then it must be audited by public accountants. Results of audit by public accountants must be submitted to the monitoring agency and its copy carbon is submitted to the Minister of Law and Human Rights and other relevant agencies.

829. However, all NPOs that carry out activities that generate income or have chargeable income are obliged under the *Income Tax Laws* to maintain financial records for a period of 5 to 7 years and to lodge annual income tax returns. Where the NPO has filed such records for tax purposes, the PPATK is able to access those records under a MOU with the relevant ministries.

830. No measures are in place to ensure that Associations are not raising or expending funds in a manner inconsistent with their stated purposes. No guidelines have been issued for fundraising which include the requirement that prior approval be obtained from the relevant Ministry, and there is no requirement for an audited statement of accounts be filed following the collection & expenditure. And there is no legal obligation on societies to maintain records of transactions in sufficient detail to verify that funds have been expended in a manner consistent with the society’s objectives.

Information held by the Inland Revenue

831. NPOs are not able to obtain 'tax exempt' status. NPOs are required to submit annual tax returns to the DG Tax, but it is not clear that this is often done in practice. Tax returns should include:

- donor particulars where the donation exceeds Rp.5,000.
- a financial statement and, in the case of entities with affiliated bodies, a set of consolidated accounts showing all donations to and expenditure by the entity and its affiliate.

832. The DG Tax may hold information which could assist regulators and law enforcement agencies to determine whether an NPO is collecting and expending its funds in a manner consistent with its stated objectives. However tax authorities are constrained from sharing information by strict secrecy provisions which prevent them from spontaneously sharing information as to suspicious activity. Taxation authorities are able to consider requests from PPATK and law enforcement agencies for information.

***Domestic and international cooperation***

833. Overall there is no clear policy for the identification and close monitoring of those NPOs which might be regarded as being more vulnerable to possible misuse for TF or ML.

834. Article 53 of Law 28 /2004 on Foundations provides powers to the Attorney General's Office to investigate a foundation in order to get data or information if there is a suspicion that said foundation: a. conducts illegal activities or violates its Article of Incorporation; b. is negligent to implement its duties; c. conducts activities that harm a foundation or third party or; d. conducts activities that harm the state. These powers may only be invoked by a court order, and must be based on a complaint by a third party. The regulator cannot directly refer a matter for investigation to the court without a public complaint.

835. Ministry of Law and Human Rights shall only authorize to provide legalization of legal entity status of a foundation and does not have authority to request for information on accounts of a foundation.

836. Indonesia lacks mechanisms for the prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action when there is suspicion or reasonable grounds to suspect that a particular NPO is being exploited for TF. There is no evidence that Indonesia has investigative capacity to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations. As mentioned above, there are a number of charities operating in Indonesia which are designated as terrorist organisations by the UN 1267 committee.

837. Indonesia relies on PPATK and POLRI as contact points for international information sharing requests. There are no clear mechanisms to respond to international requests for information regarding particular NPOs.

**Effectiveness**

838. It is not clear that there is political will to improve transparency and good governance in the NPO sector and to ensure that measures are in place to prevent and detect the abuse of NPOs for TF.

839. There is no effective regulation, oversight or supervision of NPOs in Indonesia, either by government agencies or by self-regulatory bodies within the NPO sector. Efforts to implement some regulatory controls over the sector have been ineffective.

840. Efforts by PPATK to reach out to the NPO sector to raise awareness of TF risks should be highlighted as a positive step, however there is a lack of action by the NPO regulators themselves to take up issues of transparency, good governance and compliance with laws and regulations. NPO regulation is not a role for the FIU and there is a need for political will to drive a process to improve regulation and oversight of charities.

**Recommendation 30 (NPO regulators)**

841. Both the Ministry of Home Affairs and the Ministry of Law and Human Rights lack capacity and resources to implement effective controls in the NPO sector. Both regulators have not been effective in working with the NPO sector to raise awareness of controls over the sector. The Ministry of Law and Human Rights has not issued implementing regulations and guidance to the sector.

5.3.2 RECOMMENDATIONS AND COMMENTS

842. Indonesia should:

- Institute a process to improve regulation and oversight of charities as a priority.
- Conduct a coordinated review of the domestic NPO sector;
- Support the implementation of a strategy to identify and mitigate significant TF risks within Indonesia's NPO sector;
- Include religious NPOs in effective controls to improve good governance and ensure AML/CFT measures are effective in the sector;
- Conduct further outreach to the NPO sector or focus on TF risks by NPO sector authorities to date;
- Conduct outreach and implement measures to improve transparency and good governance within the NPO sector
- Implement measures, including existing laws relating to Foundations, to ensure that all relevant NPOs operate within the terms of their registration and make publicly available information on their activities, their office holders and financial activities.
- Support sector-driven regulation, including the formation and operation of self regulatory organizations in the NPO sector.
- Remove barriers to information sharing between the DG Tax and other NPO regulators, POLRI, PPATK and other relevant CFT agencies
- Support improved mechanisms for information exchange with foreign counterparts;

5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **SR.VIII** | **NC** | • Indonesia has not yet undertaken a review of its domestic NPO sector.<br>• No ongoing strategy to identify and mitigate significant TF risks within Indonesia's NPO sector.<br>• Limited outreach to the NPO sector or focus on CFT risks by NPO sector authorities to date.<br>• Weak transparency and good governance available on the NPO sector as a whole.<br>• Very weak implementation of the existing legal regime to require reporting of constitutional, programmatic or financial information.<br>• Indonesia lacks capacity to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.<br>• Inadequate mechanisms for information exchange with foreign counterparts. |

# 6 NATIONAL AND INTERNATIONAL CO-OPERATION

## 6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31)

6.1.1 DESCRIPTION AND ANALYSIS

843. Indonesia places strong emphasis on coordination and cooperation between domestic competent authorities to develop and support the implementation of policies and measures to effectively combat ML. The AML coordination mechanism is clearly effective. The coordination mechanism established to address CFT issues appears to be less effective.

844. The National Coordination Committee on AML (NCC) and Inter-agency Committee on International Terrorism (ICIT) are the mechanisms for coordinating AML/CFT strategy and policy formulation at the national level. Subcommittee structures within the NCC ensure specialist attention is focused at on operational level on AML issues including investigations, training and terrorist-financing issues.

845. At present there is a gap in operational level coordination between supervisory agencies (PPATK, BI, POLRI, Prosecutors), in respect of common issues relating to the AML/CFT policy framework, development and refinement of guidelines and outreach, joint investigations and examinations, compliance actions and enforcement. There is a need to ensure there are no gaps in coverage or effectiveness of implementation across all reporting institutions. Supervisory authorities may wish to establish a coordination mechanism within the broader AML coordination mechanism.

<u>The National Coordination Committee - AML</u>

846. The National Coordination Committee was established in 2004 by Presidential Decree No. 1/2004 to enhance cooperation among domestic agencies involved in AML. (see Section 1.5

of this report). The NCC is hosted by the Office of the Coordinating Ministry for Political, Legal and Security Affairs.

847. As the NCC meets only annually, it may not meet regularly enough coordinate policy cooperation regarding development and implementation of AML/CFT efforts. The NCC has a wide membership which can periodically been expanded to include additional ministries and agencies to address particular issues (e.g. relevant Ministries in relation to a future NPO sector review).

848. The NCC plays a key role in coordinating measures to prevent ML, to collaborate on policy formulation, to assist agencies and ministries work together to develop law reform proposals, developing regulation and enforceable guidance and sharing opportunities for training.

849. In March 2007 the NCC promulgated an 80 page "National Strategy – Prevention & Eradication of the Crime of Money Laundering In Indonesia – Fiscal Year 2007-2011".

850. The NCC assists Indonesia to coordinate the request and receipt of technical assistance and training from bilateral and multilateral donors for both AML and CFT. This is a particularly effective mechanism and has been used by the APG and the FATF as a model for in-country coordination between AML/CFT donor agencies and implementing ministries.

851. While the NCC has some focus on AML issues, it gives only limited regard to CFT issues and is not the lead body for CFT coordination.

Inter-agency Committee on International Terrorism (ICIT) - CFT

852. The Inter-agency Committee on International Terrorism (ICIT) is the mechanism for coordinating CFT strategy and CFT operational efforts at the national level. The ICIT is hosted by the Office of the Coordinating Ministry for Political, Legal and Security Affairs. Key agencies involved in CFT are involved in the ICIT.

853. The Evaluation Team was unable to meet with the ICIT during the on-site visit.

854. It is not clear that the ICIT is effectively coordinating various agencies to ensure effective implementation of CFT measures in Indonesia. In particular, there is a lack of coordinated efforts and there are challenges with implementing measures to investigate and prosecute, freeze and seize terrorist assets, combat cash couriers, protect alternative remittance systems from abuse and finally to ensure that NPOs are not abused for TF.

Operational Cooperation

855. In addition to the NCC's lead role in policy formulation, three NCC sub-committees have been established; as set out below.

856. *The Working/Operational Team Sub-Committee (for Investigation Support)* - was established to support operational level cooperation between the PPATK and investigation agencies in order to optimise the use of STRs for investigations of ML cases. The Working/Operational Team has met only annually since 2004

857. *The Working/Operational team Sub-Committee* develops and co-ordinates capacity building programs amongst all law enforcement agencies and officers.

858. *The Technical Sub-Committee* was established in 2007 to develop the National ML Strategy for 2007 to 2011 and to implement that strategy. This Sub-Committee is also studying mechanisms and structures for managing assets/property that have been frozen, seized and forfeited under ML Law and the still in draft Assets Forfeiture Law.

859. *Sub-Committee for Counter Financing of Terrorism* - was established to discuss matters relating to the TF and to provide training in this matter. This Sub-Committee is also responsible to oversee the implementation of TF aspects of the Anti-Terrorism Law.

860. The nine meetings of the NCC and the seven meetings of its Sub Committees are listed at paragraph 816.

Mechanisms for consultation between authorities and covered sectors

861. The PPATK and BI have sought to focus on dialogue and consultation with various financial sector industry bodies (bankers association etc) and DNFBP professional associations and NPO/SROs. As part of Indonesia's staged approach to application of the AML Law over various sectors, the PPATK has consulted with relevant regulatory and supervisory authorities and with industry associations/representatives before the various AML Bill obligations are introduced into law on the reporting institutions. The obligations on the reporting institutions are discussed during the consultations and the views of the reporting institutions appear to have taken into consideration, when appropriate, during drafting of the AML Bill.

862. One of the professional industry bodies representing securities brokers, but not lawyers, accountants and notaries, has established an ML Law Task Force within their organisation, to consult or communicate with the PPATK on ML Law related matters. The mainstream financial institutions have Compliance Officers Networking Groups that liaise with the PPATK and BI on ML Law issues.

863. Dialogue sessions, called multilateral meetings with the compliance officers of the reporting institutions and awareness programs are held between the PPATK and the law enforcement agencies and reporting institutions in regional offices/cities. During these dialogue sessions and awareness programs, the reporting institutions seek to harmonise and clarify any AML/CFT issues with regard to the AML Law implementation and their reporting obligations.

864. There may be scope for the establishment of Compliance Officers Network Groups in other parts of the financial sector such as the securities/financial sectors and DFNBPs, and for the PPATK to increase its sector-specific outreach and regular engagement with financial sector groups such as non-bank money remitters and money changers.

**Recommendation 32 (Domestic coordination)**

865. The effectiveness of the AML/CFT measures is reviewed through the NCC process and activities by the PPATK.

NCC - AML

866. Since it was established, the NCC has held three meetings, in 2004, February 2006 and February 2007.

867. The Working/Operational Sub-committee has held meetings in September 2004, April 2005, January 2006 and January 2007.

(ICIT) - CFT

868. Statistics and other information were not available on the work of the ICIT to address CFT coordination issues.

Other coordination meetings

869. Regional dialogue sessions held on AML/CFT involving PPATK, law enforcement agencies, financial supervisors and selected reporting parties to harmonize the approach to AML/CFT:

- Jakarta (October 2004 and August 2006)
- Bogor (August 2005)
- Medan (December 2005)
- Mataram (September 2006)
- Palembang (December 2006)
- Banda Aceh (February 2007)
- Banten (March 2007)
- Bengkulu (May 2007)
- Purwokerto (June 2007)

870. Bilateral meetings between PPATK and relevant agencies, as follows:

- PPATK -- Bank of Indonesia (July 2006)
- PPATK – BAPEPAM-LK (July 2006)
- PPATK – Customs (July 2006)
- PPATK – Post and Telecommunication (August 2006 and February 2007)
- PPATK – Attorney General's Office (May 2007)
- PPATK – Indonesian National Police (May 2007)
- PPATK – Customs / Airport (May 2007)

### 6.1.2 RECOMMENDATIONS AND COMMENTS

871. The NCC provides an excellent structure to bring together policy and implementing ministries and agencies to ensure that Indonesia implements an effective national AML/CFT system in keeping with the international standards.

872. It is not clear that the ICIT is effectively coordinating various agencies to ensure effective implementation of CFT measures in Indonesia. In particular, there is a lack of coordinated efforts with implementing measures to investigate and prosecute, freeze and seize terrorist assets, combat cash couriers, protect alternative remittance systems from abuse and finally to ensure that NPOs are not abused for TF.

873. As mentioned in Section 2.7 there is a need for a dedicated policy focus to support AML/CFT implementation with border enforcement agencies. The NCC and/or the Working/Operational Group and Technical Team Sub Committees appear to be excellent vehicles to achieve this.

874. The financial sector supervisory authorities should consider establishing a more formal mechanism for more regular supervisory coordination and regular information exchange specific to the financial regulatory authorities, which could be a general framework incorporating AML/CFT coordination as one aspect, or could be dedicated to AML/CFT supervisory coordination.

875. Authorities may consider encouraging the establishment of Compliance Officers Network Groups in other parts of the financial sector and DFNBP sectors similar to the first one established in the securities sector.

- Indonesia should:
  - Enhance the operation of the ICIT to effectively coordinate various agencies to ensure effective implementation of CFT measures across Indonesia.
  - Address gaps in operational level coordination in relation to supervisory agencies
  - Support cross-agency coordination of supervisory initiatives specific to AML/CFT.
  - Support inter-agency coordination in relation to establishing and implementing effective cross-border currency reporting systems

6.1.3 COMPLIANCE WITH RECOMMENDATION 31

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.31** | **PC** | • It is not clear that the ICIT is effectively coordinating various agencies to ensure effective implementation of CFT measures in Indonesia.<br>• Coordinated efforts to implement CFT measures have not addressed significant gaps with implementation of SR II, SR III, SR VI and SR VIII.<br>• There are gaps in operational level coordination in relation to supervisory agencies.<br>• Limited focus on cross-agency coordination of supervisory initiatives specific to AML/CFT.<br>• A need for inter-agency coordination in relation to establishing and implementing effective cross-border currency reporting systems. |
| **R.32** | **PC** | • Statistics were not available in relation to the operation of domestic coordination mechanisms for CFT. |

## 6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 DESCRIPTION AND ANALYSIS

**Recommendation 35 and Special Recommendation I**

876. Indonesia is a state party to the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). The Vienna Convention was ratified by Law 7/1997 and through the criminalisation of the laundering of proceeds from drug trafficking in the Narcotics Law, Law 22/1997.

877. A number of deficiencies in the scope of the ML offence hamper full implementation of the obligations in the Vienna and Palermo Conventions (see analysis at Recommendations 1, 2 and 3).

878. Indonesia is a Signatory State to the UN Convention against Transnational Organised Crime (the Palermo Convention). The Indonesian Government is taking concrete steps to accede to the Palermo Convention, which is expected to be done in the 2008, following the passage of a package of legislation designed to give legal effect to Indonesia's obligations under the Palermo Convention.

879. The UN Convention on the Suppression of Terrorist Financing has been ratified through Law 6/2006, and implemented by the Law 15/2003 Government Regulation in Lieu of Law 1/2002, Concerning the Eradication of acts of Terrorism.

880. Indonesia's TF offence as currently conceived does not effectively implement Article 2 of the UN Terrorist Financing Convention (see analysis at Special Recommendation II & III).

881. As regards implementation of Indonesia's obligations under UNSCRs 1267 and 1373, the present arrangements do not fully implement the requirements of UNSCR 1267 and 1373, as they do not provide effective mechanisms for the freezing of assets related to designated terrorist entities without delay. The only freezing mechanisms available are those available under the criminal procedures code to be in used in the context of investigation of a terrorism or TF offence (See analysis at Special Recommendation III).

882. Indonesia is a party to a number of anti-terrorism instruments negotiated under the Association of Southeast Asian Nations (ASEAN), which include the following:

- The ASEAN Mutual Legal Assistance Treaty on 29 November 2004; signed in November 2005 and ratified the Convention by Law No. 15/2008.
- Joint Declarations for Co-operation to Combat International Terrorism with other jurisdictions including the EU, United States of America, India, Australia, Russian Federation, Japan, Korea, Pakistan, New Zealand and Canada.
- A tripartite agreement following a 20-22 January 2003 ASEAN Workshop on Combating Terrorism with the Philippines, Cambodia and Thailand in relation to the sharing of intelligence and border control and handing over terrorist suspects amongst the 10 ASEAN countries.
- PPATK has also signed MOUs with 22 FIUs in other countries for the sharing of information and financial intelligence exchange.

883. Indonesia has also signed the Agreements on Information Exchange and Establishment of Communication Procedure with the United States and Australia.

884. Indonesia is party to the 2001 ASEAN Declaration on Joint Action to Counter Terrorism which inter alia tasks the Ministers to take additional measures including "enhancing information/intelligence exchange to facilitate the flow of information, in particular, on terrorist and terrorist organizations, their movement and funding, and any other information needed to protect lives, property, and the security of all modes of travel."

### 6.2.2 RECOMMENDATIONS AND COMMENTS

885. Indonesia should accede to and fully implement the UN Palermo Convention on the Suppression of Transnational Crime as soon as possible.

886. Indonesia should amend and implement laws and other instruments to fully implement the Vienna Convention.

887. Indonesia should amend and implement laws and other instruments to fully implement the UN Terrorist Financing Convention.

888. Indonesia should amend and implement laws and other measures to fully implement UN Security Council Resolutions 1267 and 1373 and their successor resolutions.

### 6.2.3 COMPLIANCE WITH RECOMMENDATION 35 & SPECIAL RECOMMENDATION I

| | Rating | Summary of factors underlying rating |
|---|---|---|
| **R.35** | **PC** | • Full implementation of the Vienna and Palermo Conventions has not been achieved.<br>• Indonesia has not yet acceded to the Palermo Convention, although some laws and measures have recently been put in place to cover part of its AML-related requirements<br>• Indonesia has not fully implemented the UN TF Convention |
| **SR.I** | **NC** | • Indonesia has not fully implemented the UN TF Convention<br>• Indonesia has not fully implemented UNSCR1267 and its successor resolutions or UNSCR 1373 and its successor resolutions, as they do not provide effective mechanisms for the freezing of assets related to designated terrorist entities without delay |

## 6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)

6.3.1 DESCRIPTION AND ANALYSIS

**Recommendation 36 (mechanisms for mutual legal assistance)**

889. Indonesia's mutual legal assistance mechanisms are set out in the Mutual Legal Assistance in Criminal Matters Law 1/2006 (MLAC). Mutual legal assistance is co-ordinated by the Ministry of Law and Human Rights as the designated central authority under the MLAC. Mutual legal assistance matters are dealt with in the AGO's International Affairs Division, which has a Mutual Legal Assistance Unit and an Extradition Unit.

890. Indonesia is able to provide mutual legal assistance in criminal matters in Article 5 where:
- the requesting foreign State has a treaty or agreement with Indonesia to provide assistance in criminal matters; and
- where no treaty or agreement with Indonesia exists. In this situation the Minister may give a special direction that the MLAC shall apply to that foreign State in relation to the requested assistance.

891. ‘Mutual Legal Assistance’ is defined in Article 3 s of Law 1/2006 as a request for assistance in relation to a (criminal) investigation, prosecution and examination before the court in accordance with the domestic laws & regulations of the Requested State. These forms of assistance are listed in Article 3 a) to k). These also include ancillary proceedings such as those for the obtaining and enforcement of restraining orders and forfeiture orders or other assistance in accordance with the MLAC law.

892. Under the MLAC, Indonesia is able to seek and to provide a wide range of assistance in criminal matters, including the following:

- providing and obtaining evidence, including the taking of statements from persons;
- making arrangements for persons to give evidence, or to assist in criminal investigations;
- recovering, forfeiting or confiscating property in respect of a serious offence or a foreign serious offence;
- restraining dealings in property, or freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- executing requests for search and seizure;
- locating and identifying witnesses and suspects;
- service of process;
- identifying and tracing proceeds and instrumentalities of crime
- recovering pecuniary penalties in respect of a serious offence or a foreign serious offence; and
- examining things and premises.

893. Indonesia is a party to the *ASEAN Treaty on Mutual Legal Assistance in Criminal Matters* which has been signed by ten of the ASEAN Member Countries. At the time of the onsite visit Indonesia had not ratified this treaty and it was not in force under Indonesian law. The ASEAN treaty will provide an additional tool to combat transnational crime in the region. It is intended to operate in conjunction with the existing mechanisms for mutual legal assistance in criminal matters, both formal and informal, including existing co-operative mechanisms such as the International Criminal Police Organisation (INTERPOL). The ASEAN MLA Treaty was subsequently enacted on 30 April 2008.

894. Indonesia has a Memorandum of Understanding on mutual assistance in criminal matters with Australia which came into effect on 22 February 2002, and an Agreement on Information Exchange and Establishment of Communication Procedure with Malaysia, the Philippines and Indonesia which came into effect on 7 May 2002. A MLAC treaty with Hong Kong is in place and ratified by Law 1/2001. MLAC treaties with China and South Korea are in progress.

895. Indonesia appears to provide mutual legal assistance in a constructive and effective manner. Based on statistical material provided, processing times are quite speedy and this is partly due to the short time periods in the ML Law and may also be partly attributable to allocation of resources for MLAC in the AGO, National Police and the Courts.

896. The grounds for refusal of assistance are provided in Articles 6 & 7 of the MLAC. These appear to include both mandatory and discretionary grounds, although there is variation in practice.

897. Article 6 outlines a number of grounds upon which a request for assistance must be refused including:

- the request relates to the investigation, prosecution or punishment of a person for an offence that is an offence of a political nature; or is an offence under military law. Article 6 (a);
- the request relates to a person of a crime of which he has been acquitted, awarded clemency or has completed the criminal sanction. Law 1/2006, Article 6 (b);
- the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Indonesia would not have constituted an offence against the laws of Indonesia; Law 1/2006, Article 6 (c); and
- there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions, Article 6 (d);

898. The grounds for refusal appear to be unexceptional except for the following:
- the prohibition where dual criminality cannot be established, Law 1/2006, Article 6 (c).
- the prohibition where the request may be harmful to the sovereignty, security, interests and national law of Indonesia, or for a crime of capital punishment and if it would be harmful to an investigation, prosecution and examination before the court in Indonesia, endanger safety of a person or be a burden on the state. Law 1/2006, Article 6 (d) to (g).

899. It was submitted by Indonesian officials that a flexible approach is being applied to the principle of dual criminality, to ensure as far as possible that in practice this requirement does not impose an impediment to the provision of assistance. Indonesian officials also advised that to date, Indonesia had not refused a request for assistance on this ground. As such the provisions at Article 6 do not appear to be mandatory grounds for refusal.

900. There appears to be a contradiction in the MLA law. Article 7 provides discretionary grounds for refusal in cases equivalent to Article 6. Article 7 provides that the request for assistance may be refused if:

(a) the request for Assistance relates to the investigation, prosecution, and examination before the court or punishment of a person for a crime that if said crime committed within the territory of the Republic of Indonesia is not a crime;

(b) the request for Assistance relates to the investigation, prosecution, and examination before the court or punishment of a person for a crime that if said crime committed outside the territory of the Republic of Indonesia is not a crime;

901. Notwithstanding this, both requirements have the potential to unreasonably prevent the provision of assistance, particularly given the mandatory wording in Article 6 (a) to (g) if the grounds are found to be present.

902. Requests to Indonesia for MLA are first received by the Minister of Law and Human Rights through diplomatic channels and forwarded for execution to the International Affairs Division of the AGO, POLRI or the KPK for executing the requests and returned to the Minister for dispatch of material to the requesting State.

903. In relation to urgent requests, officers of the AGO, POLRI and KPK are able to facilitate early execution by alerting the relevant law enforcement agency and by commencing work on the basis of an advance copy of the request.

904. A request for MLA cannot be refused on the sole ground that the offence involves fiscal matters. Nor can it be refused on the ground of laws that impose secrecy or confidentiality requirements on financial institutions or designated non-financial businesses or professions.

905. In response to requests for MLA law enforcement officers and investigative officers are able to seek a wide range of orders, including orders for the production of any thing on any premises, production of records held by financial institutions, search and seizure, and the giving of assistance to locate or identify persons.

906. Indonesian officials advise that to date there have not been any conflicts of jurisdiction. In such an event, the treaties to which Indonesia is a party contain provisions for settlement of disputes through consultation or negotiation between the parties through diplomatic channels or any other peaceful means. In one case a person accused of three murders in the US was tried in Indonesia with US witnesses giving evidence in Court in Indonesia through use of this mechanism.

907. Direct requests are able to be made by foreign judicial or law enforcement authorities to domestic counterparts in Indonesia, for assistance in compelling production of documents, and for search and seizure. However in this event Indonesian agencies are required to forward the request to the Minister and Attorney General to seek approval on whether to comply with it.

**Recommendation 37 (dual criminality relating to mutual legal assistance)**

908. In the absence of dual criminality mutual legal assistance under the MLAC may still be given, in cases of non-intrusive measures.

909. Indonesia provides mutual legal assistance where both countries criminalise the conduct underlying the offence. A restrictive approach is not taken when considering how the requesting country categorises or names the relevant offence, and technical differences between laws do not appear to impede the provision of assistance.

**Recommendation 38 (foreign freezing and forfeiture orders)**

910. Foreign forfeiture orders are able to be enforced in Indonesia where they have been made in any judicial proceedings instituted in that foreign State, against property that is reasonably believed to be located in Indonesia. Once registered the foreign forfeiture order is enforceable as if it were an order made in Indonesia. Indonesian prosecutors advised that the Criminal Procedure Code Execution of Judgments, Part XIX, Articles 271 to 276 have application and are to be applied in these cases.

911. Article 41 of the MLAC Law 1/2006 provides for the making of requests to Indonesia for the search and seizure of material relating to a criminal matter in the foreign State, where there are reasonable grounds for believing that the material is located in Indonesia. Following the receipt of a request for mutual legal assistance, the Police or Prosecutor in the Attorney General's Chambers may apply to the Local District Court for search and seizure warrants.

912. Article 44 of the AML Law provides that Indonesia can undertake mutual legal assistance with other countries through bilateral or multilateral forums in accordance with prevailing laws and regulations and based on a mutual legal assistance agreement or under principles of

reciprocity. Article 44A provides for the enforcement of foreign orders, including restraining orders

Article 44A

(1) Mutual legal assistance as referred to in Article 44 includes inter alia:
a. collecting evidence and statements from a person, including the implementation of a rogatory letter;
b. providing evidence in the form of documents and other notes;
c. identifying and locating a person;
d. executing a warrant to search for and seize evidence;
e. searching for, freezing, and sequestering the proceeds of crime;
f. obtaining the agreement of persons to testify[17] or provide assistance to an investigation in the requesting state;
g. other assistance in accordance with the purpose of mutual legal assistance that is not unlawful.

(2) In providing mutual legal assistance as referred to in paragraph (1), the Minister who is responsible for law and regulation may direct an authorised officer to undertake police functions such as searching, freezing, sequestering, examining documents, taking testimony or taking other actions, in accordance with the procedures contained in the Criminal Procedure Law (KUHAP) and this Law.

913. The English version of the AML Law provides a commentary on the definition of "Sequestering" and points out that the Indonesian term is often translated as seizure or confiscation. The AML indicates that sequestering occurs in Indonesian law pursuant to the Penal Code Article 39. Under Penal Code Article 46 (2), seized items may be returned at a later point, but may also be confiscated by order of the court (as is appropriate in the case of criminal proceeds, KUHAP Article 39(1)c.). Both terms are readily understood in Indonesian to refer to blockage or freezing of an account. A significant number of the concepts in the field of ML are new and Indonesian terms for key concepts are still developing.

914. Compliance with requests under the MLAC is subject to the requirement for dual criminality. Requirements under the AML Law are not subject to requirements for dual criminality.

915. Indonesia does not appear to have legal provision to give effect to foreign orders to freeze or confiscate property of corresponding value, as there are no arrangements for domestic orders in this area. Indonesian authorities have not yet received any foreign requests to freeze or confiscate property of corresponding value, however they claim that Indonesian courts would be able to rely on Article 42 of the MLAC and Article 39 of the Criminal Procedure Law. That Article provides that the Local District Court may issue search and seizure warrants for assets *that are related to* crimes committed under the law of the requesting state. Given the generality of this provision and the lack of clear provisions in the criminal procedure code to support the provision to be used in this way, the evaluators consider that the need remains for a clear legal provision to give effect to foreign orders to freeze or confiscate property of corresponding value.

916. Indonesia does not have formal arrangements for co-ordinating seizure and confiscation actions with other countries, but in practice strives to do so wherever possible in accordance with Law 1/2006 Articles 52 & 53 empowering the Minster of Law and Human Rights to

negotiate and arrange the delivery to the Requesting State of the result of the seizure conducted by the AGO.

917. Property forfeited under the ML Law is vested in the Government. Indonesia has no provision or formal mechanism for sharing of confiscated assets with other countries as yet but can come to ad hoc agreements in a case by case basis. However, where confiscation is directly or indirectly a result of co-ordinated law enforcement initiatives, asset sharing can be done by on an informal basis by mutual agreement with the other country or countries.

918. Foreign non-criminal confiscation orders appear to be able to be recognised and enforced under the Criminal Procedure Code Part XIX, the Execution of Judgments, Articles 271 to 274 and possibly a provision similar to a *Reciprocal Enforcement of Judgments Law, and with similar* civil procedures for the enforcement of such orders as provided in the Civil Code and *Rules of the Court*. governed in Article 16 and 18 of the General Provisions on Legislation (Algemeine Bepalingen van Wet Gevinge (AB)).

**Special Recommendation V**

919. The obligations of mutual legal assistance apply to TF and terrorist offences in the same manner as they do to other serious offences. As noted, absence of dual criminality is a mandatory ground for refusal of assistance. However it should be noted that the requirement of dual criminality does not appear to have prevented Indonesia from providing a significant level of mutual legal assistance in non-terrorism-related cases. Based on statistics provided, of the 60 requests for MLAC assistance which Indonesia received from 2002 to November 2007, none were terrorism-related offences

920. See comments above regarding the requirement for dual criminality and the previous absence of fully effective offences of terrorism and TF. It should however be noted that Indonesia has provided assistance in relation to foreign freezing orders based on TF offences.

921. The additional elements apply to TF offences to the extent that they apply to other offences.

**R.30 (Resources and training: prosecution agencies involved in MLA and extradition)**

922. The Minister of Law and Human Rights is the central authority for mutual legal assistance. Mutual legal assistance and extradition are also under the purview of the International Affairs Division of the AGO, and have their own specialised units within this Division. Coordination of extradition requests is undertaken by the Directorate of International Law of the Ministry of Law and Human Rights in conjunction with the AGO.

923. Staff of the Directorate of International law responsible for functions related to MLA and extradition are required to have law degrees. Specialised training in international cooperation has only been provided to police and the AGO.

924. The Directorate of International Law of the Ministry of Law and Human Rights Unit is staffed with six personnel who are responsible for MLA, extradition and other areas.

925. MLA and Extradition are handled by a Special Task Force on Trans-national Crimes under Deputy Attorney General for General Crime (JAM PIDUM) are consist of 5 units namely pre-prosecution unit (3 personnel), prosecution and legal action unit (5 personnel), execution and

examination unit (4 personnel), research and evaluation unit (3 personnel), cooperation unit (4 personnel), and secretariat (3 personnel). The MLA and Extradition are being handled by 4 personnel under the Cooperation Unit. Totally, there are 22 personnel who in charge in the Special Task Force on Trans-national Crimes. Indonesian officials advised that there had been some delays in filling key positions in the MLA and Extradition related unit, due to difficulty in obtaining people with the appropriate experience.

926. As public servants, officers of the AGO are subject to the Official Secrets Law, which binds all public servants to maintain confidentiality in discharging their functions. Officers are also required to sign a letter of undertaking with the government, and are subject to security clearance before appointment in the public service sector. Public officers are subject to a number of processes and procedures coordinated by the Public Service Department, and which are designed to maintain standards of integrity. These include Internal Recruitment Procedures, the Rules of Disciplinary Board of Public Service, and Public Service Instructions.

927. Specialised training for public officers is also provided by the National Institute of Public Administration.

928. Government officers are required to undertake training for a minimum of seven days per year. Indonesian officials advised that judges and officers from POLRI, AGO, KPK, Custom, BI and BAPEPAM-LK had attended special training courses organised by PPATK and the Judicial and Legal Services Training Institute on AML/CFT and extradition related issues.

929. In handling MLA requests, the International Affairs Division works with the Prosecution Division's Forfeiture of Property Unit and is assisted by them on ML and confiscation issues. The AGO advised that it did not currently provide its officers with specialised training to assist them in dealing with requests for mutual legal assistance in the areas of ML, TF and confiscation although some of the officers of the International Affairs Division have received training in these areas in previous years. This shortcoming is recognised and the AGO has plans to provide such training in the near future.

930. The AGO has established the Team on Hunting Corruptors, which is an interdepartmental team that goes after proceeds of corruption, particularly in cases where the assets have moved offshore. The Team on Hunting Corruptors support the AGO working with Ministry of Law and Human Rights to speed up MLA requests.

**Recommendation 32 – MLA**

931. Indonesia maintains adequate statistics on requests made and received for mutual assistance, the type of matters to which the requests relate, and the outcomes of such requests. The following table summarises the number of requests for mutual legal assistance that were received and granted for the years 2002 to 2007.

**Table: Mutual legal assistance requests received by Indonesia**

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Total |
|---|---|---|---|---|---|---|---|
| **No. of requests received** | - | - | 2 | 18 | 28 | 22 | **68** |
| **No. of requests completed** | - | - | 2 | 9 | 9 | 7 | **27** |
| **In progress** | | | - | 9 | 17 | 15 | **41** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **No. of requests refused** | - | - | - | - | 2[3] | | **2** |

**Table: Source of MLA requests received by Indonesia**

| Country | Requests received | Responded to** | Refused | Offences |
|---|---|---|---|---|
| Australia | 7 | 6 | 1 | Drugs, ML, murder, etc. *(request for investigation on murder case is refused)* |
| Belgium | 6 | 6 | 0 | Fraud, drugs, embezzlement |
| Bulgaria | 1 | 1 | 0 | ML |
| Netherlands | 10 | 10 | 0 | Arms, drugs, child sex, fraud etc. |
| Brazil | 3 | 3 | 0 | ML, Drugs, etc. |
| China | 1 | 1 | | Civil matter |
| Finland | 4 | 4 | 0 | Cyber crime, civil matter, etc |
| Hong Kong, China | 2 | 2 | 0 | ML, gambling, fraud, |
| UK | 5 | 5 | 0 | Tax evasion, IP, Terrorism, Fraud, embezzlement, etc |
| Germany | 10 | 10 | 0 | Forgery, fraud, civil matter, Corruption, etc |
| Japan | 1 | 1 | | People Smuggling |
| Korea | 2 | 2 | 1 | Civil matter, embezzlement *(request to obtain records from Indonesian notary)* |
| Malaysia | 1 | 1 | 0 | Stolen Cars |
| Cameroon | 1 | 1 | 0 | Banking fraud |
| Cambodia | 1 | 1 | 0 | Fraud |
| Lithuania | 1 | 1 | 0 | Fraud |
| France | 2 | 2 | 0 | ML |
| Portugal | 1 | 1 | 0 | Civil matter |
| Poland | 6 | 6 | 0 | ML, Fraud, embezzlement, etc |
| Switzerland | 5 | 5 | 0 | Cyber crime, forgery, corruption, etc |
| Spain | 1 | 1 | 0 | Fraud |
| Singapore | 1 | 0 | 0 | Corruption |
| US | 3 | 3 | 0 | Drug smuggling, murder |
| Greece | 1 | 1 | 0 | |
| **Total** | **76** | **74** | **2** | |

932. Indonesia first received a request for MLA in 2004. Of the 74 requests responded since that time, Indonesia advised that 27 have been fully executed, and the remaining 45 are still in

[3] The two refusals related to: i) request for taking evidence on investigation of murder case of Journalist in East Timor in 1975 - refused due to Lapse of Time; ii) request for taking evidence on fraud investigation - refused due to Statute of Limitation.

** Responded means: Central Authority followed up the request to the competent authority and communicated with requesting countries

progress.[4] Indonesia further advised that 6 of the requests related to ML. Three of the six ML-related requests had been fully executed[5].

933. In early 2008 Indonesia received two requests for MLA in relation to TF matters[6].

934. From statistics provided by Indonesia it is clear that Indonesia has responded to all MLA requests received. It appears that the average time taken to respond to MLA requests is approximately 2-3 months.

**Table: MLA requests made by Indonesia**

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Total |
|---|---|---|---|---|---|---|---|
| **No. of requests made** | - | | - | 12 | 6 | 3 | **21** |
| **No. of requests completed** | - | - | | 0 | 1 | 1 | **2** |
| **In progress** | | | | 2 | 5 | 1 | **8** |
| **Response not received from requested country** | | | | 10 | 0 | 1 | **11** |
| **No. of requests refused** | - | - | - | 0 | 0 | 0 | **0** |

935. Indonesia is unable to provide systematic data for MLA requests made during the period 2002-2004.

**Table: MLA requests made by Indonesia**

| Country | Requests by Indonesia | Responded to | Offences[7] |
|---|---|---|---|
| **China** | 2 | 0 | Corruption |
| **Spain** | 2 | 0 | Corruption, **ML** |
| **Netherlands** | 4 | 0 | Corruption, Banking fraud, **ML**, and Drugs |
| **US** | 3 | 1 | Corruption & murder |
| **Singapore** | 1 | 0 | Corruption |
| **Canada** | 2 | 0 | Corruption |
| **UK** | 1 | 0 | Corruption |
| **Switzerland** | 2 | 2 | Corruption & **ML** |
| **Australia** | 2 | 1 | Corruption |
| **UAE** | 1 | 1 | Banking fraud |
| **Hong Kong, China** | 2 | 2 | Banking fraud and embezzlement |
| **Italy** | 1 | 1 | Banking fraud |
| **Totals** | **23** | **7** | |

[4] (10 request from the 45 requests in progress has been executed as at 30 April 2008)
[5] ML Request has been executed: (1). request from Poland [Andreij Dmowski]; (1) request from Bulgaria [ML by 4 Bulgaria citizen], and (1) request from USA [Then Kie Seng case];
[6] Request refreshment in early 2008 from Germany [case ABU BAKAR BAFANA], and UK [ISMAIL KAMOKA]
[7] Money Laundering MLA requests case: ECW. Neloe Case to Switzerland (2006), Gamasmart Karya Utama Case (2007), and Pauliene Maria Lumowa Case/New (2008)

936. Indonesia's statistics for MLA request were only kept from 2005. Of the 23 requests made by Indonesia since 2005, 12 have related to corruption, 3 to money laundering, 1 to embezzlement, 4 to bank fraud, 1 to drugs offences and 1 to murder. Of these, 3 corruption matters involved a request for tracing or freezing assets; 3 bank fraud matters involved a request for tracing or freezing assets; and 2 ML matter involved a request for tracing or freezing assets. Only two of the 23 matters have been successfully finalised, with Swiss authorities having confiscated monies in one matter.

**Effectiveness**

937. The above figures indicate that Indonesia does not receive or make a large number of requests for mutual legal assistance, although the number of requests received is increasing. Notably only a small proportion of the MLA requests relate to ML and none related to TF.

938. The AGO has advised that the average time needed to complete a request is affected by numerous factors, including the quality of the requesting documents and the complexity of the request. In general the time needed for completion of requests appears quite reasonable when considered within the international context.

939. A small concern is the time taken for the initial processing of a request to enable a decision to be made on whether Indonesia can accede to it. Among the contributory factors are the transmission of the formal copy of the request through the diplomatic channel, preliminary consultations with the executing agencies and the need to address any shortcomings in the requests themselves such as insufficiency of information. In addition the Evaluation Team was of the view that understaffing and a lack of specialised training may be impeding the timely completion of this part of the process. AGO officials advised that the AGO has not as yet been able to fill all its allocated positions within the Mutual Assistance and Extradition Units. The AGO further advised that it did not currently provide its officers with specialised training to assist them in dealing with requests in the areas of ML, TF and confiscation, although some of the officers of the International Affairs Division have received training in these areas in previous years. This shortcoming is recognised and the AGO has plans to provide such training in the near future.

940. Significantly, very few of the MLA requests made by Indonesia to other countries have been responded to. This may reflect a problem with the preparation of MLA requests.

941. Statistics show relatively little MLA international cooperation with regional partners. Statistics above show that Indonesia has only received MLA requests from one ASEAN member and has only made a request of one ASEAN member. This would appear to go to the issue of effectiveness.

942. Potential impediments to effective implementation are the requirement for dual criminality except for non-intrusive measures, and the prohibition of requests where the material sought may prejudice state interests; and the absence of a dedicated Asset Forfeiture Law allowing equivalent value forfeiture for foreign confiscation orders.

943. As noted, Indonesian officials have submitted that a flexible approach is applied to the principle of dual criminality and that to date Indonesia has not refused a request for assistance on this ground.

944. Nevertheless it was considered that these requirements may impede the effectiveness of Indonesia's response to mutual assistance requests. Similar comments apply with regard to Indonesia's effectiveness in dealing with requests to enforce foreign forfeiture orders.

### 6.3.2 RECOMMENDATIONS AND COMMENTS

945. Indonesian laws and procedures regarding mutual legal assistance are substantially comprehensive and are available in relation to most serious offences.

946. Indonesia should consider making the absence of dual criminality a discretionary rather than a mandatory ground for refusal, at least in relation to less intrusive measures. It would appear that the time limits for the bringing of all criminal prosecutions in Indonesia do not accord with most other foreign states, which have no time limit for indictable offences

947. Indonesia should consider removing the requirement that the assistance sought should be refused when the foreign state cannot comply with Article 6 (f) & (g). In addition Indonesia could consider entering into agreements for asset-sharing, in the interests of enhanced international cooperation.

948. In general Indonesia appears to provide mutual assistance in a cooperative and effective manner, although the MLAC legislation is yet to be fully utilised. The AGO appears to operate effectively as a central authority's main delegate to streamline the processing of mutual assistance requests. Officers of the AGO are appropriately skilled and subject to high standards of integrity. However the AGO should consider strategies for filling its allocated staff positions in International Affairs, MLAC & Extradition areas as soon as possible, and should provide specialised training in mutual legal assistance requests relating to ML, TF and confiscation.

949. It is recommended that:

- The MLA law should be amended to make the absence of dual criminality a discretionary rather than a mandatory ground for refusal of mutual legal assistance;
- Indonesia should consider removing the requirement that assistance sought be not be detrimental sovereignty & national interests of Indonesia, and Indonesia should consider entering into international agreements for sharing of confiscated assets; and
- The AGO should take steps to fill its allocated staff positions in the International Affairs branch.
- Indonesia more actively pursue international cooperation related to ML, TF and proceeds of crime through mutual legal assistance.

### 6.3.3 COMPLIANCE WITH RECOMMENDATIONS 36 TO 38 AND SPECIAL RECOMMENDATION V

| | Rating | Summary of factors relevant to s.6.3 underlying overall rating |
|---|---|---|
| **R.32** | **PC** | • This Recommendation is rated in more than one section |
| **R.36** | **PC** | • Mandatory requirements as to dual criminality with time limits for all criminal prosecutions in Indonesia presenting, and time expiry immunity from prosecution being potential impediments and when many offences may not be crimes in Indonesia including fully |

| | | |
|---|---|---|
| | | compliant ML & TF offences.<br>• Statistics do not demonstrate effective implementation |
| **R.37** | **LC** | • The requirement for dual criminality in respect of most types of mutual legal assistance may be restrictive, although Indonesia appears to take a flexible approach in practice. |
| **R.38** | **NC** | • Only "derived from" assets are included as proceeds; excluded is the thing “stolen” itself or the actual subject of the predicate offence. Non criminal assets of equivalent value to criminal proceeds cannot be confiscated.<br>• Corporeal, incorporeal and instrumentalities are not included in the definitions of property or assets.<br>• There are no provisions for confiscation of non-criminal proceeds to a value equivalent of criminal proceeds and there is only ad hoc sharing of confiscated assets.<br>• With the identified deficiencies in the ML offence, mandatory requirements as to dual criminality with time limits for criminal prosecutions may be restrictive.<br>• Statistics were not available to demonstrate effective implementation |
| **SR.V** | **PC** | • As with other serious offences, mandatory requirements as to dual criminality and time limits for all criminal prosecutions in Indonesia and deficiencies in the scope of coverage of the Anti-Terrorism law present potential impediments.<br>• The potential impediment to legal assistance remains in the case of requests relating to conduct prior to the enactment of the Anti-Terrorism law even though a flexible approach is taken to the requirement for dual criminality.<br>• Statistics do not show effective implementation of MLA measures for CFT.<br>• This Recommendation is rated in more than one section; please see section 6.4.3 for additional reasons for this rating. |

## 6.4 EXTRADITION (R.37, 39, SR.V)

### 6.4.1 DESCRIPTION AND ANALYSIS

**Recommendation 39 (mechanisms for extradition)**

950. Extradition matters are governed by the *Extradition Law 7*/1979. They are coordinated through the Ministry of Law, which conducts all communications with the requesting State and processes the request on the advice of the AG. Execution of extradition requests frequently involves other agencies including the National Police.

951. Article 22(3) & (4) of the *Extradition Law 1/1979* requires that an extradition request to Indonesia be supported by:

- an original or authenticated copy warrant for the fugitive’s arrest issued in the requesting country, or a certificate of the fugitive’s conviction in that country;

- particulars of the fugitive;
- the relevant facts and the law under which the fugitive is accused or was convicted;
- evidence of witnesses on oath, sufficient to justify the issue of a warrant of arrest in Indonesia ;
- text of the legal basis from the requesting country of the offence violated & or the content of the legal provisions applicable; and
- A request for seizure of evidence, if required.

952. Indonesia has concluded extradition treaties with seven other jurisdictions, being: Malaysia, Philippines, Thailand; Australia, Hong Kong, Korea and Singapore. Under its Extradition Law 1/1979 Indonesia is able to consider extradition requests from countries where there is no bilateral or regional extradition treaty, or multilateral convention.

953. Article 4 of the *Extradition Law 1/1979* defines an extradition offence as any of the 33 offences listed in the Annex.

**Article 4**

(1) Extradition shall be conducted against offences that are listed in the list of offences as attached as an integrated transcript of this Law.

(2) Extradition may also be conducted based on policy of the requested country against other offences excluded in the list.

(3) Thru Government Regulation, list of offences as referred to in paragraph (1) may be added with other types of offences based on the Law is determined as an offence.

954. ML is not on the list of offences, but may be included within Article 4(2), as attempts, abetments and conspiracies to commit such offences are included as item 33 in the Annex.

955. The Minister is obliged to refuse to extradite an Indonesian citizen, under Article 7(1) unless the Minister exercises his discretion under Article 7(2). In that event the case must be submitted to the AGO for consideration of prosecution of that person in Indonesia. Extradition Law, Law 7/1979 Article 7(1) & (2) and Article 5 may apply if it is a terrorist case against an Indonesian citizen, allowing the extradition of an Indonesian citizen in terrorist case.

956. Indonesian officials advised that Indonesian nationals have been extradited to face prosecution in foreign countries. They advised that to date Indonesia has once been requested to prosecute a Indonesian national in lieu of extradition. In that case Indonesia had sought the cooperation of the requesting country, U.S.A., through formal and informal channels to ensure the availability of admissible evidence and the efficiency of the prosecution in Indonesia for evidence to support a trial of three murders in the U.S.A.

957. Indonesia provides measures to handle urgent requests in connection with extradition. Under the Law on Extradition, 7/1979, requests for provisional arrest may be sent directly to POLRI or the AGO through diplomatic channels, Interpol, post, or telegram. The Law on Extradition imposes deadlines in order to expedite the extradition process, e.g., a requesting state must formally request extradition within 60 days of the provisional arrest of the person sought. Requesting states encounter difficulties in meeting these deadlines because of delays in the diplomatic channel and because incomplete or illegible documentation is provided.

958. There are limited measures to avoid undue delay with extradition requests and proceedings. The *Extradition Law*, 7/1979 does not prescribe time limits to govern the

processing of an extradition request, including extradition requests in relation to ML offences. However, when a fugitive is arrested in Indonesia Article 25 Criminal Procedure Code, applies similar or equivalent to a provisional warrant he or she may not be remanded in custody for an indefinite period of time, and 30 day time limits apply, in Articles 34 and 35, but which may be extended. The fugitive is to be discharged from custody if the court has not received from the Minister, within such reasonable period of time as the Minister may fix, notification that a formal request has been made for the fugitive's surrender Extradition Law 7/1979, Article 21 or if the request for extradition is refused, Article 34(c).

959. It appears that extradition from Indonesia cannot be granted on the basis only of warrants of arrest or judgments. The *Extradition Law* 1/1979 requires evidence similar to that of a prima facie case be established in support of a request, requiring the submission of a Code system dossier of evidence. This extradition procedure is conducted in Court within 7 days of the dossier being received in Court for determination, Article 27.

960. Indonesia has formal simplified procedures for extradition with Australia and Korea. ~~.~~ Indonesia has ad-hoc, by consent, procedures to achieve simplified extradition, which was used for three persons in terrorism cases.

961. In April 2007 Indonesia signed the extradition treaty with Singapore, after many years of negotiation. The treaty has not yet been ratified by the Indonesian parliament, so is not yet in force. The Extradition Treaty, once ratified, will be retroactive and will apply to crimes going back 15 years. The treaty covers a list of 31 crimes, including financial crimes, bribery, corruption, bank fraud and money laundering. The treaty also touches on terrorism and terrorist financing.

**Recommendation 37 (dual criminality relating to extradition)**

962. Dual criminality appears to be a requirement when considering extradition; as the offence must be on the list of offences in Article 4(1) or based on policy of the requesting country, Article 4(2), but must be refused if the right prosecute the offence in Indonesia has expired, Article 12; Law 7/1979. The list of offences can be enlarged, Article 4(3) in Government Regulations**.**

963. Indonesia is able to extradite persons where both countries criminalise the conduct underlying the offence. The Evaluation Team has been advised that a restrictive approach is not taken when considering how the requesting country categorises or names the relevant offence, and technical differences between laws do not appear to impede the provision of extradition assistance.

**Special Recommendation V**

964. As mentioned above, Article 4 (1) of the Extradition Law provides that extradition shall be conducted against offences that are included in the List attached to the Extradition Law. Terrorist Financing offences are not included on the list. However Article 4 (2) of the Extradition Law provides that Extradition may also be conducted based on policy of the requested country against other offences excluded in the list. Based on Article 4 (2) extradition is not precluded for TF offences.

965. The Extradition Law 7/ 1997, Art. 7[1] prohibits extradition of Indonesian citizens unless the Minister makes a direction under Law 7/ 1997, Art.7[2]. Extradition is only available for double criminality Art3[2].

966. There is no obligation in Law 7/ 1997 to prosecute in Indonesia a person requested to be extradited but refused. This is a deficiency in Law 7/ 1997, but in some Extradition agreements, such a provision is or can part of the Formal Agreement, or part of an ad hoc agreement. In practice, Indonesia has shown flexibility with this principle for non-terrorism cases. There has been at least one case of prosecution of an Indonesian for Murder, in accordance with this provision.

967. Law 7/ 1997 does not prohibit prosecution in Indonesia of a person for a TF Offence committed overseas. No such case has been reported to the Evaluation Team.

968. While Indonesia does not have experience with TF matters, Indonesia does adopt procedures to allow extradition requests to be handled without undue delay. Non-terrorism requests have been received and such “fast-track” procedures have been followed. A hearing is scheduled after 7 days of the dossier being received by the Court.

**Additional Elements**

969. There are no simplified extradition arrangements available in Indonesia under the Extradition Law 7/ 1997.

970. Indonesia is not yet a party to the simplified extradition scheme operating between a number of ASEAN countries.

971. Indonesia appears to have applied simplified extradition arrangement when a person sought for extradition waives extradition hearing and waives all formalities and consents to extradition.

**Recommendation 32 - Extradition**

**Table: Extradition requests received by Indonesia**

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Total |
|---|---|---|---|---|---|---|---|
| **Number of requests received** | - | - | - | - | 2 | 3 | 5 |
| **Number of requests accepted** | | | | | 2 | 3 | 5 |
| **Number of requests completed** | | | | | 0 | 0 | 0 |
| **Number of request refused** | | | | | | 1 | 1 |

972. Of the five extradition requests received by Indonesia, four have been accepted and are in progress, while one has been refused following a decision by the Jakarta District Court. None of the Extradition requests have related to ML or TF offences.

973. Of the five requests received, three were on the basis of reciprocity (Korea and France) while two were on the basis of a treaty (Australia and the Philippines).

**Table: Extradition requests made by Indonesia**

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | Totals |
|---|---|---|---|---|---|---|---|
| **Number of requests made** | - | - | - | 3 | 1 | 0 | 4 |
| **Number of requests accepted** | | | | 3 | 1 | 0 | 4 |
| **Number of requests completed** | | | | | 0 | 0 | |
| **Number of request refused** | | | | | | 1 | |

974. Of the four requests made, two were on the basis of a treaty (Australia, both relating to corruption) and two were on the basis of reciprocity (Hong Kong, China and India).

975. In relation to the time taken to process extradition requests, Indonesian officials advised that the time required to complete an extradition request was affected by many factors, including the quality of the documents received and the extent to which fugitives exercised their rights to challenge the extradition.

976. None of the extradition requests made or received have related to ML or TF.

### 6.4.2 RECOMMENDATIONS AND COMMENTS

977. Indonesia's legal scheme for extradition broadly meets many of the criteria for this FATF Recommendation.

978. Indonesia could consider simplifying its extradition procedures by removing this requirement for the establishment of a dossier similar to prima facie case in extradition matters when the person consents to be extradited. Simplified extradition procedure such as those available in neighbouring countries should be considered for extradition and rendition within the region.

### 6.4.3 COMPLIANCE WITH RECOMMENDATIONS 37 & 39, AND SPECIAL RECOMMENDATION V

| | Rating | Summary of factors relevant to s.6.4 underlying overall rating |
|---|---|---|
| **R.32** | **PC** | • This Recommendation is rated in more than one section. |
| **R.37** | **LC** | • Dual criminality is required for extradition, however in general a flexible approach appears to be taken to the principle. |
| **R.39** | **LC** | • Implementation of extradition laws and procedures may be hampered by dual criminality, given the deficiencies identified in Recommendation 1. |
| **SR.V** | **PC** | • The deficiencies in Indonesia's TF offence impede effective extradition, due to dual criminality requirements<br>• This Recommendation is rated in more than one section. |

## 6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)

6.5.1 DESCRIPTION AND ANALYSIS

979. Indonesia generally provides assistance in a rapid, constructive and effective manner.

980. For international sharing of information, PPATK exercises its mandate under Article 25 of the AML Law. This Article provides that for the purpose of preventing and eradicating the crime of ML, the PPATK may engage in cooperation with relevant parties, national as well as international. The provision is broad and does not clearly indicate that the PPATK may share STRs and other reports received with foreign counterparts, but PPATK takes an inclusive approach to its international cooperation.

981. The PPATK has concluded MOUs for the sharing of financial intelligence with 22 FIUs including:

| | |
|---|---|
| Australia | Mexico |
| Belgium | Myanmar |
| Bermuda | New Zealand |
| Canada | Peru |
| People's Republic of China | Philippines |
| Cayman Islands | Poland |
| Italy | Romania |
| Japan | South Africa |
| Korea | Spain |
| Malaysia | Sri Lanka |
| Mauritius | Thailand |
| | Turkey |

982. The FIU is currently at various stages of negotiation with other FIUs.

983. In 2006 PPATK provided information assistance in over 100 foreign cases and over 200 domestic cases and over 160 cases by July 2007. On the strength of MOUs, exchange of information by PPATK with international counterparts is satisfactory.

984. Indonesia renders and makes requests for assistance directly through the existing bilateral and multilateral networks for cooperation between law enforcement agencies.

985. The assistance requested through informal law enforcement channels involves obtaining intelligence information, whether from the records of the law enforcement agencies or through the interview of witnesses and suspects located in Indonesia, obtaining of evidence for investigative or prosecutorial purposes and other types of assistance. For investigative purposes, assistance can be provided on a reciprocal basis and on the understanding that the information provided will only be used for investigative purposes.

986. Bilateral meetings between POLRI and its counterparts from Malaysia, Singapore and Thailand are held annually to share information on transnational crime. Indonesia also co-operates closely with other regional enforcement agencies from the United States, Australia, New Zealand, Netherlands and Germany on investigations of cross-border criminal activities

987. The Indonesian Corruption Eradication Commission (KPK) has a multilateral MOU with the Corruption Practices Investigation Bureau (CPIB) of Singapore, Corruption Eradication Commission of Malaysia and the Anti-Corruption Bureau (ACB) of Brunei Darussalam.

988. To date the BAPEPAM has signed 25 MOUs with various countries, which include coverage of information exchange and cooperation on investigations. In April 2007 the BAPEPM was accepted as a signatory to the IOSCO's multilateral MOU. The BAPEPAM regularly assists other market regulators (especially from emerging economies) in the area of education and training. Training assistance may be in the form of attachments and study tours to the BAPEPAM, where the operations and experience of the BAPEPAM and various sectors of the capital market are shared with its counterparts by MOUs with (e.g. the Philippines SEC, the China SCRC, Hong Kong SFC, Kenya, the Securities Exchange Board of India, The Australian ASIC, the New Zealand Securities Commission, and the Securities Commission of Malaysia.)

989. With regard to information sharing on NPOs with foreign counterparts, there are no formal mechanisms or explicit powers at present unless the information is publicly available. Public information on the company/organisation concerned is planned to be available with the future implementation of Law 40/2007 by implementing regulations & establishment to become effective, and the future implementation into law of a Draft Bill of Freedom of Access of Public Information, only recently drafted, which may include details of an individual's participation as a director of the company/organisation.

990. The DG Tax can disclose information on suspected NPO activities only if there is a Double Taxation Agreement between Indonesia and a foreign requesting country and there is a clause for exchange of information in the double taxation agreement. .

991. POLRI and the Australian Federal Police signed a statement of intent to combat transnational crimes by exchanging intelligence and provision of technical assistance.

992. Customs co-operates with its foreign counterparts through various organisations and arrangements such as the World Customs Organisation, Regional Intelligence Liaison Office, Customs Enforcement Network as well as various MOUs or bilateral agreements with other jurisdictions' customs departments/agencies.

993. Indonesia has also signed the following agreements with regard to international cooperation in combating terrorism:

- agreement on information exchange and communication procedures in 2002/2003 with Malaysia, the Philippines, Cambodia, Thailand and Brunei which provides for the framework for cooperation among participating countries in addressing issues relating to terrorism, ML and transnational crimes;
- ASEAN-US Joint Declaration on Co-operation to Combat International Terrorism signed in August 2002; and
- a Memorandum of Understanding on Cooperation to Combat International Terrorism signed on 2 August 2002 with Australia.

994. The MOUs executed between Indonesian authorities including PPATK, the BI, National Police, Customs, Anti Corruption Agency and their various counterparts enables information relating to ML and the underlying predicate offences to be exchanged spontaneously and upon request.

995. While there are some constraints on BI (as supervisor) and PPATK, the BAPEPM, National Police and Customs are able to conduct enquiries on behalf of foreign counterparts.

996. The PPATK is authorised to make enquiries on behalf of foreign counterparts, AML Law Chapter VI, Articles 30 to 38 and Chapter VIII Articles 44-44A and the MLAC Laws Chapter VI of the AML Law empowers the PPATK to receive and analyse information and reports from any person, including reports issued by reporting institutions.

997. Articles 44 and 44A of the AML Law and the MLAC Law provides for the communication of STR and other information to foreign counterparts.

998. The PPATK may also exchange information obtained from the National Registration Department database for particulars on identity of natural persons; registration of legal persons; Road Transport Department database; and other Indonesian Government databases determined by the PPATK in accordance with the ML Law or other written laws, and various MOUs.

999. Generally for the PPATK, enforcement and supervisory agencies, there is no disproportionate or unduly restrictive condition except for normal reciprocal requirements for preservation of secrecy and requirements for the control of the use of the information disclosed including that the information is not to be used in any other proceedings.

1000. Exchanges of intelligence between the PPATK and FIUs are not refused on the ground that such request is considered to involve fiscal matters. Hence, such information may be shared with the foreign corresponding FIU authorities.

1001. The Inland Revenue double taxation agreements with other tax authorities provide for the exchange of information. Any information received by the Contracting State shall be treated as secret and shall only be disclosed to persons or authorities (including courts or administrative bodies) concerned with the assessment and collection, the enforcement or prosecution, in respect of, or the determination of appeals, in relation to taxes covered by the double tax agreement. Tax information is not able to be shared outside of these double taxation agreements.

1002. Indonesia does not refuse requests for cooperation on the sole grounds that they involve fiscal matters.

1003. Article 10A of the AML Law provides for preservation of secrecy. Any information or matter which has been obtained by any person in the performance of his duties or the exercise of his functions under the AML Law shall not be disclosed except for the purpose of the performance of his duties or the exercise of his functions under the AML Law. Any person who contravenes this section shall be liable on conviction to imprisonment for a term not exceeding with intent five to 15 years or negligently one to three years.

1004. Articles 44 and 44A of the ML Law as well as the MOUs concerning the exchange of financial intelligence with foreign counterparts stipulates that information exchange is to be treated with the same confidentiality standard as it was received under the Indonesian national law.

1005. The PPATK may obtain from other competent authorities or other persons the relevant information requested by a foreign counterparts on case-to-case basis. Such information

sharing is permissible provided that the information required is available and not subjected to the secrecy provisions.

**Recommendation 32**

**Table: Number of disclosure to/from foreign counterparts to the FIU**

| Types of information exchange | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 (Jul) | Total |
|---|---|---|---|---|---|---|---|
| Information obtained from foreign FIU upon request by PPATK | - | 8 | 14 | 29 | 26 | 28 | 105 |
| Information received spontaneously from foreign FIUs | - | - | 17 | 22 | 15 | 8 | 62 |
| Information provided by PPATK upon request by foreign FIU | - | - | - | 4 | 2 | 1 | 7 |
| Information provided spontaneously by PPATK to foreign FIU | | | 2 | - | 1 | 1 | 4 |
| Total | - | 8 | 33 | 55 | 44 | 38 | 178 |

**Other AML/CFT regulators – BI / BAPEPAM-LK**

1006. Authorities report that neither BI nor BAPEPAM have made or received any requests for international cooperation that relate to AML/CFT. It is not clear if this statistic is limited to KYC/CDD implementation or includes licensing, fit and proper tests, record keeping or other related AML/CFT measures.

**Effectiveness**

1007. It is clear that Indonesia takes and open approach to all forms of international cooperation, including less formal channels of cooperation and information exchange. There is a need to further strengthen this international cooperation, particularly with regional partners.

1008. PPATK is strongly pursuing international cooperation for AML/CFT.

1009. While it is clear that they have a legal basis for international cooperation, other sector-specific AML/CFT supervisors are not, however, proactively pursuing international cooperation outside of formal MLA channels.

1010. Investigations agencies (POLRI, Customs etc) appear to be pursuing international cooperation in relation to ML investigations, but this could be strengthened, especially for TF investigations.

1011. Statistics from BI and BAPEPAM-LK demonstrate cooperation with other supervisors in relation to AML/CFT.

6.5.2 RECOMMENDATIONS AND COMMENTS

1012. Indonesia should:

- Ensure that all relevant competent authorities are able to provide the widest range of international cooperation.
- Regulate money remittance businesses and ensure that the regulator is able to provide the widest range of international cooperation in relation to the money remittance sector.
- Ensure that authorities responsible for NPO regulation are able to provide the widest range of international cooperation.
- Maintain and share comprehensive statistics for international cooperation between competent authorities outside of MLA.
- Ensure other sector-specific AML/CFT supervisors (BI and BAPEPAM-LK) proactively pursue international cooperation to improve AML/CFT regulation and supervision.
- Ensure investigations agencies proactively pursue international cooperation to improve TF investigations.

### 6.5.3 COMPLIANCE WITH RECOMMENDATION 40 AND SPECIAL RECOMMENDATION V

| | Rating | Summary of factors relevant to s.6.5 underlying overall rating |
|---|---|---|
| **R.32** | **PC** | • Comprehensive statistics were not available for international cooperation between competent authorities outside of MLA, except in the case of PPATK. |
| **R.40** | **~~PC~~ LC** | • Appropriate channels for international cooperation between competent authorities are not effectively in place for the money remittance sector or for the NPO sector. |
| **SR.V** | **PC** | • This Recommendation is rated in more than one section |

# 7 OTHER ISSUES

## 7.1 RESOURCES AND STATISTICS

***Remark:*** *the text that relates to Recommendations 30 and 32 is contained in all the relevant sections of the report. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report primarily contains the boxes showing the rating and the factors underlying the rating.*

| | Rating | Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating |
|---|---|---|
| **R.30** | **PC** | • Need for PPATK to have permanent staff<br>• Inadequate resources applied in POLRI to ensure that the offences are pr operly investigated<br>• LEAs other than police lack authority to investigate the ML/TF offences.<br>• POLRI lacks adequate technical resources and training<br>• Lack of human recourses trained to detect and target illicit movements of cash at the airports and other key border points.<br>• Cross-border detection capacity is very weak.<br>• There are significant resources gaps in supervision of money remitters an d money changers<br>• BAPEPAM- LK lack supervisory staff, given their wide responsibilities.<br>• BAPEPAM -LK examiners require additional training on assessing effectiv eness of internal controls and risk assessment.<br>• there is a lack of screening and re-screening for regulatory personnel |
| **R.32** | **PC** | • Clear statistics were not maintained and shared between agencies on the numbers of investigations, prosecutions and convictions for the ML offence.<br>• Statistics are poorly kept for TF investigations, prosecutions, convictions a nd sanctions<br>• Consolidated statistics were not available in relation to implementation of measures to freeze, seize and confiscate the proceeds of crime.<br>• Statistics on actions to freeze, seize or confiscate terrorist assets are not well kept<br>• Statistics in relation to predicate offence investigations, ML and TF investi gations, proceeds of crime investigations, referrals to the AGO, indictments, pr osecutions and convictions are not well kept.<br>• Customs does not maintain any meaningful statistics on the number of cro ss-border cash declarations made.<br>• It is not clear that detailed statistics on STRs received across different sec tors is shared with relevant regulators to support effective compliance<br>• Statistics for on-site examinations across sectors were not being maintained. |

# 8 TABLES

## TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations are made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or, in exceptional cases, Not Applicable (N/A).

These ratings are based only on the essential criteria, and defined as follows:

| | |
|---|---|
| **Compliant (C)** | The Recommendation is fully observed with respect to all essential criteria. |
| **Largely compliant (LC)** | There are only minor shortcomings, with a large majority of the essential criteria being fully met. |
| **Partially compliant (PC)** | The country has taken some substantive action and complies with some of the essential criteria. |
| **Non-compliant (NC)** | There are major shortcomings, with a large majority of the essential criteria not being met. |
| **Not applicable (NA)** | A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country. |

| **Forty Recommendations** | **Rating** | **Summary of factors underlying the rating** |
|---|---|---|
| **Legal systems** | | |
| 1. ML offence | PC | • There are minor gaps with coverage of predicate offences<br>• The scope of coverage of “assets” and “proceeds” is not in keeping with the Vienna Convention.<br>• The ML offence has not yet been used to pursue the proceeds of a wide range of predicate offences.<br>• The ML offence is not effectively implemented due to the narrow scope of the offence, continuing use of alternative indictments and capacity issues. |
| 2. ML offence – mental element and corporate liability | PC | • Apparent conflict between Indonesian laws establishing criminal liability for legal persons may hinder implementation.<br>• Statistics do not demonstrate that the offence is effectively implemented at this point. |
| 3. Confiscation and provisional measures | PC | • Comprehensive schemes for freezing, seizing and identification of the widest range of property that represents proceeds of crime are not yet in place.<br>• Statistics do not show effective implementation of the existing provisions for provisional measures and confiscation. |

| Preventive measures | | |
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| 4. Secrecy laws consistent with the Recommendations | LC | • The absence of controls on correspondent banking and introduced business (Recs 7 & 9) means that it is not clear that financial institutions are able to share information with other financial institutions |
| 5. Customer due diligence | PC | • There is no explicit requirement to perform CDD when there is doubt about the veracity of the CDD information previously obtained.<br>• There is no explicit requirement to perform CDD when ML or TF is suspected regardless of any other exemption.<br>• Requirements for confirming whether a person acting on behalf a legal person is so authorised and for ongoing due diligence are not set out in laws or regulations<br>• Only banks have an explicit requirement to obtain identification documents for principal shareholders, which is set out only in OEM. The other sectors have no requirement to establish an understanding of a legal person or to determine the natural person exercising ultimate control over the legal person.<br>• Non-bank financial institutions (NBFIs) are not required to conduct enhanced due diligence for high-risk customers.<br>• At the time of the onsite visit detailed guidelines had not been provided by competent authorities on which countries constitute a higher risk<br>• At the time of the on-site visit, securities companies were not required to conduct enhanced CDD for high-risk customers<br>• Statistics do not demonstrate effective implementation of measures across all sectors, in particular CDD to ensure there are no anonymous accounts and obligations to identify beneficial owners. |
| 6. Politically exposed persons | NC | • Only the banking sector has explicit requirements to perform enhanced CDD with respect to foreign PEPs, while other sectors are only required to pay attention to domestic PEPs.<br>• Banks are not required to obtain senior management approval to continue business relationships with a customer who becomes a PEP<br>• Financial institutions lack clear internal risk control measures to identify PEPs and implementation appears to be very weak overall. |
| 7. Correspondent banking | NC | • There is no explicit or specific Regulation or instructions from BI to banks requiring them to gather information from respondent's institutions to understand fully the nature of their business and reputation.<br>• No explicit instructions to financial institutions to assess the AML/CFT compliance by the respondent.<br>• No explicit instructions to obtain senior management approval before entering into new correspondent banking relationship.<br>• No specific controls on the maintenance of payable-through accounts. |
| 8. New technologies & non-face-to-face business | LC | • There is no requirement for the securities sector to have in place measures to mitigate risks associated with transactions utilizing technological advances. |

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| 9. Third parties and introducers | NC | • There is no explicit legal requirement for banks and NBFIs to have adequate procedures with respect to use of third parties for services that involve CDD.<br>• BAPEPAM Rule V.D.10, introduced in Aug 2007, contains provisions that are broadly in line with the FATF standards, however parties were given a 6 month transition period to establish specific internal controls. |
| 10. Record keeping | LC | • Although Corporate Law requires numerous documents to be maintained for 10 years, business correspondence is not clearly provided as a part of the records. |
| 11. Unusual transactions | PC | • There is no explicit legal requirement for providers of financial services to examine as far as possible the background and purpose of unusual transactions.<br>• There is no explicit requirement for NBFIs to keep records of the findings of account/transaction monitoring.<br>• There is no explicit requirement for financial institutions to keep records of the findings of monitoring for unusual transactions. |
| 12. DNFBP – R.5, 6, 8-11 | NC | • As DNFBPs are not yet included in the AML/CFT regime in Indonesia, CDD requirements do not extend to DNFBPs |
| 13. Suspicious transaction reporting | PC | • The scope of proceeds of crime subject to STR reporting falls short of the FATF standard.<br>• The obligation does not appear to cover legitimate funds provided for a terrorist organizations or an individual terrorist.<br>• Statistics to not show effective implementation of the STR reporting ob ligations across all sectors. |
| 14. Protection & no tipping-off | C | • Fully observed |
| 15. Internal controls, compliance & audit | PC | • No explicit provisions for appointment of compliance officers for securities companies<br>• Questions remain about effectiveness of the application of internal audit in the securities sector, given that the supervisor found many weaknesses across the board with the current low level CDD obligations<br>• While most sectors have made significant efforts with training on internal controls, there is an issue of consistency across and within covered sectors.<br>• The very recent instructions to financial institutions regarding the need to put in place screening procedures to ensure high standards when hir ing employees have not yet been effectively implemented. |
| 16. DNFBP – R.13-15 & 21 | NC | • As DNFBPs are not yet included in the AML/CFT regime in Indonesia, STR requirements do not extend to DNFBPs |
| 17. Sanctions | PC | • Available administrative penalties are inconsistent and there is a lack of persuasive monetary penalties available.<br>• PPATK lacks powers to apply direct administrative sanctions in relation to compliance with reporting obligations;<br>• The sanctions available to a number of Regulators are only administrative, |

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| | | • At present no powers are available to sanction Money Value service providers.<br>• Regulators lack powers to impose sanctions on directors or members of the senior management of insurance companies.<br>• Statistics do not demonstrate effective implementation of sanctions on f inancial institutions and no money value sanction has been imposed on any NBFI. |
| 18. Shell banks | LC | • Effective implementation of requirements on banks to ensure that their correspondent banks do not permit shell banks as customers was not demonstrated. |
| 19. Other forms of reporting | C | • Fully observed |
| 20. Other DNFBP & secure transaction techniques | C | • Fully observed |
| 21. Special attention for higher risk countries | NC | • There is no explicit or specific Regulation or instructions from BI to banks requiring them to apply AML/CFT norms to their subsidiaries outside Indonesia.<br>• While financial institutions are obliged to take steps to determine high risk countries, the level of effectiveness across all sectors is not clear.<br>• At the time of the onsite visit Indonesia had not provided guidance to fi nancial institutions regarding the identification of high risk countries |
| 22. Foreign branches & subsidiaries | NC | • There is no explicit or specific Regulation or instructions from BI to banks requiring them to apply AML/CFT norms to their subsidiaries outside Indonesia.<br>• There are no guidelines to NBFIs on application of AML/CFT guidelines to branches/ subsidiaries outside Indonesia.<br>• There are no guidelines to entities in Securities sector on application of AML/CFT guidelines to branches/ subsidiaries outside Indonesia |
| 23. Regulation, supervision and monitoring | PC | • Supervision of Mutual Funds is weak, although improving.<br>• Stock exchanges are not integrated into AML supervision<br>• Implementation of supervision of money exchange businesses appears to vary across the archipelago.<br>• Supervisory framework for money remitters is either non-existent or ineffective<br>• Necessary safeguard against criminals' entry in money changing and money remitting businesses is not available. |
| 24. DNFBP - regulation, supervision & monitoring | NC | • As DNFBPs are not yet included in Indonesia's AML/CFT regime, DNFBP sectors are not subject to AML/CFT supervision |
| 25. Guidelines & Feedback | PC | • While general feed back is provided by PPATK specific feedback is not provided<br>• CFT specific guidelines had not been issued at the time of the onsite visit to support implementation of CFT measures |

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| | | • As DNFBPs are not yet included in Indonesia's AML/CFT regime, competent authorities have not issued AML/CFT guidelines to DNFBP sectors. |
| **Institutional and other measures** | | |
| 26. The FIU | LC | • There are concerns with PPATK's ability to have access, directly or indirectly, on a timely basis to required financial, administrative and law enforcement information. |
| 27. Law enforcement authorities | PC | • Inadequate resources applied to ensure that the offences are properly investigated, in particular parallel investigation of ML offence and underlying predicate offences.<br>• No demonstration that the offences, in particular TF offences, are being pursued proactively and systematically<br>• Over-reliance on receiving case leads from STRs<br>• Lack of capacity to undertake |
| 28. Powers of competent authorities | C | • Recommendation is fully observed |
| 29. Supervisors | PC | • Money remitters are not currently regulated or supervised<br>• PPATK lacks powers to apply direct administrative sanctions in relation to compliance with reporting obligations;<br>• BAPEPAM is not permitted to inspect STR records in the course of con ducting supervision of a reporting party. |
| 30. Resources, integrity and training | PC | • Need for PPATK to have permanent staff<br>• Inadequate resources applied in POLRI to ensure that the offences are properly investigated<br>• Need to provide other LEAs the authority to investigate the ML/TF offences.<br>• Need for POLRI to have adequate technical resources and training<br>• Lack of human recourses trained to detect and target illicit movements of cash at the airports and other key border points.<br>• Cross-border detection Capacity is very weak.<br>• There are significant resources gaps in supervision of money remitters and money changers<br>• BAPEPAM and LK lack supervisory staff, given their wide range of responsibilities.<br>• BAPEPAM and LK examiners require additional training on assessing effectiveness of internal controls and risk assessment.<br>• there is a lack of screening and re-screening for regulatory personnel |
| 31. National cooperation | PC | • It is not clear that the ICIT is effectively coordinating various agencies to ensure effective implementation of CFT measures in Indonesia.<br>• Coordinated efforts to implement CFT measures have not addressed significant gaps with implementation of SR II, SR III, SR VI and SR VIII<br>• There are gaps in operational level coordination in relation to supervisory agencies<br>• Limited focus on cross-agency coordination of supervisory initiatives specific to AML/CFT. |

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| | | • A need for inter-agency coordination in relation to establishing and implementing effective cross-border currency reporting systems |
| 32. Statistics | PC | • Clear statistics were not maintained and shared between agencies on the numbers of investigations, prosecutions and convictions for the ML offence.<br>• Statistics are poorly kept for TF investigations, prosecutions, convictions and sanctions<br>• Consolidated statistics were not available in relation to implementation of measures to freeze, seize and confiscate the proceeds of crime.<br>• Statistics on actions to freeze, seize or confiscate terrorist assets are not well kept<br>• Statistics in relation to predicate offence investigations, ML and TF investigations, proceeds of crime investigations, referrals to the AGO, indictments, prosecutions and convictions are not well kept.<br>• Customs does not maintain any meaningful statistics on the number of cross-border cash declarations made.<br>• It is not clear that detailed statistics on STRs received across different sectors is shared with relevant regulators to support effective compliance<br>• Statistics for on-site examinations across sectors were not being maintained.<br>• Comprehensive statistics were not available for international cooperati on between competent authorities outside of MLA, except in the case of P PATK. |
| 33. Legal persons – beneficial owners | NC | • Legal persons are not required to maintain a record of beneficial owners or whether company shareholdings are held beneficially<br>• The Companies Registry has not yet established a publicly available central registry of current information about legal persons<br>• While there is a requirement in law to notify the company registry of changes to directors and shareholders, the competent authorities are yet to issue implementing regulations and provide a support structure to receive such reports.<br>• While law enforcement and regulatory agencies have some powers to obtain information on beneficial ownership, the timeliness and adequacy of such information is questionable.<br>• Bearer shares were a feature of the companies law in Indonesia until 2 007 and no transition arrangement has been established to ensure thei r use is not continuing in practice |
| 34. Legal arrangements – beneficial owners | NA | • Recommendation 34 is not applicable in the Indonesian context. |
| **International Co-operation** | | |
| 35. Conventions | PC | • Full implementation of the Vienna and Palermo Conventions has not been achieved.<br>• Indonesia has not yet acceded to the Palermo Convention, although some laws and measures have recently been put in place to cover part of its requirements |

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| | | • Indonesia has not fully implemented the UN TF Convention |
| 36. Mutual legal assistance (MLA) | PC | • Mandatory requirements as to dual criminality with time limits for all criminal prosecutions in Indonesia presenting, and time expiry immunity from prosecution being potential impediments and when many offences may not be crimes in Indonesia including fully compliant ML & TF offences.<br>• Statistics do not demonstrate effective implementation |
| 37. Dual criminality | LC | • The requirement for dual criminality in respect of most types of mutual l egal assistance may be restrictive, although Indonesia appears to take a flexible approach in practice. |
| 38. MLA on confiscation and freezing | NC | • Only "derived from" assets are included as proceeds; excluded is the thing “stolen” itself or the actual subject of the predicate offence. Non criminal assets of equivalent value to criminal proceeds cannot be confiscated.<br>• Corporeal, incorporeal and instrumentalities are not included in the definitions of property or assets.<br>• There are no provisions for confiscation of non-criminal proceeds to a value equivalent of criminal proceeds and there is only ad hoc sharing of confiscated assets.<br>• Statistics were not available to demonstrate effective implementation |
| 39. Extradition | LC | • Implementation of extradition laws and procedures may be hamper ed by dual criminality, given the deficiencies identified in Recomme ndation 1. |
| 40. Other forms of cooperation | PC | • Appropriate channels for international cooperation between competent authorities are not effectively in place for the money remittance sector or for the NPO sector.<br>• Beyond the strong statistics for PPATK, statistics were not available to demonstrate effective implementation by all other competent authorities |
| **Nine Special Recommendations** | | |
| SR.I Implement UN instruments | NC | • Indonesia has not fully implemented the UN TF Convention<br>• Indonesia has not implemented UNSCR1267 and its successor resoluti ons or UNSCR 1373 and its successor resolutions |
| SR.II Criminalise TF | PC | • The scope of property that is covered by the TF offence is not consistent with requirements in the TF Convention.<br>• Indirect collection and provision of funds is not covered<br>• Collecting for or providing funds to a terrorist organisation is not compr ehensively covered.<br>• Corporate criminal liability may be impeded in practice by a conflict wit h the Penal Code and Criminal Procedure Code.<br>• The knowledge element is not, in all cases, able to be proven by object ive factual circumstances.<br>• There offence has not been effectively pursued and statistics do not de monstrate effective implementation of the offence. |

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| SR.III Freeze and confiscate terrorist assets | NC | • No effective system to implement UNSCR 1267, despite very serious terrorist threats and entities listed on the 1267 Committee consolidated list living openly in Indonesia and organisations listed on the consolidated list having a presence in Indonesia.<br>• No effective system to implement UNSCR 1373<br>• No effective mechanism to confiscate property associated with TF offe nces in Indonesian.<br>• Statistics do not support effective implementation of SRIII |
| SR.IV Suspicious transaction reporting | PC | • The STR obligation is deficient in relation legitimate funds to be used by terrorist organizations or those who finance terrorism<br>• The obligation to report TF-related STRs is not sufficiently direct<br>• Implementation of the STR obligation in relation to TF is ineffective no ne of the terrorism-related STRs received have resulted from monitorin g for suspicion, rather they were in response to a request by the FIU. |
| SR.V International cooperation | PC | • As with other serious offences, mandatory requirements as to dual criminality, time limits for all criminal prosecutions in Indonesia and deficiencies in the scope of coverage of the Anti-Terrorism law present potential impediments.<br>• The potential impediment to legal assistance remains in the case of requests relating to conduct prior to the enactment of the Anti-Terrorism law even though a flexible approach is taken to the requirement for dual criminality.<br>• Statistics do not show effective implementation of MLA measures for C FT. |
| SR VI AML requirements for money/value transfer services | NC | • Large scale unregulated informal remittance channels continue to operate without inclusion in national AML/CFT measures.<br>• Currently there is no clear obligation on money remitters to register or obtain licence, although there is a transition process in operation.<br>• The AML/CFT regime for money remitters contemplated in the BI Regulation is not adequate and is not yet in force.<br>• No system in place to monitor and ensure that Money Value Transfer services are compliant with FATF Recommendations.<br>• No list of agents/sub-agents of money value transfer agents is available. |
| SR VII Wire transfer rules | NC | • Indonesia has not established comprehensive wire transfer obligations over its financial institutions and there is no competent authority responsible for regulation and oversight<br>• There is no requirement in Indonesia on wire transfers to be accompanied by full originator information.<br>• There is no requirement to regard a lack of originator information as high-risk.<br>• Banks are not required to terminate or limit business relationship with banks that do not provide full originator information. |
| SR.VIII Non-profit organisations | NC | • Indonesia has not yet undertaken a review of its domestic NPO sector;<br>• No ongoing strategy to identify and mitigate significant TF risks within Indonesia's NPO sector; |

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| | | • Limited outreach to the NPO sector or focus on CFT risks by NPO sector authorities to date;<br>• Weak transparency and good governance available on the NPO sector as a whole<br>• Very weak implementation of the existing legal regime to require reporting of constitutional, programmatic or financial information.<br>• Indonesia lacks capacity to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.<br>• Inadequate mechanisms for information exchange with foreign counterparts; |
| SR. IX Cash couriers | PC | • Bearer negotiable instruments are not covered<br>• Detection capacity is weak and limits effectiveness<br>• No clear authority to restrain money when a false or no declaration is made<br>• Proportionate and dissuasive administrative penalties are not available and criminal penalties are limited and are not being applied.<br>• Statistics do not demonstrate effective implementation of SRIX. |

**TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM**

| | Recommended Actions (listed in order of priority) |
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| **1. General** | |
| **2. Legal System and Related Institutional Measures** | |
| **Criminalisation of Money Laundering (R.1 & 2)** | • Indonesia should:<br>▪ Act quickly to amend the AML Law to address deficiencies with the scope of coverage of predicate offences; the scope of coverage of "assets" and "proceeds" in the offence;<br>▪ Improve capacities for implementing the ML offence in parallel with predicate offences; and<br>▪ Make implementation of the ML offence a priority to combat profit driven crime.<br>▪ Clarify the apparent conflict in relation to corporate criminal liability.<br>▪ Consider increasing the available maximum custodial sentences for offences under the AML Law to compare with maximum terms available for other serious economic crimes and serious narcotics crimes under Indonesian law.<br>▪ Consistently implement the Technical Guidelines to ensure simultaneous investigation of ML offences and predicate crimes and cumulative indictments for ML offences. |
| **Criminalisation of Terrorist Financing (SR.II)** | • Indonesia should revise the TF offences to ensure that they are in keeping with the UN TF Convention and the FATF standards. In particular the offence should clearly cover:<br>▪ all required terrorist acts as outlined in the TF convention;<br>▪ the widest range of assets;<br>▪ direct and indirect collection and provision of assets;<br>▪ funding to individual terrorists;<br>▪ provision of assets to terrorist organisations; and<br>▪ the ability for the knowledge element to be able to be proven by objective factual circumstances.<br>• The Anti-Terrorism Law should be amended to include effective, proportionate and dissuasive sanctions, including monetary sanctions for natural persons and effective administrative sanctions for corporations.<br>• The Anti-Terrorism Law should be amended to remove the obligation that funds for the TF offence must be linked to a specific terrorist act.<br>• Indonesia should ensure that the possible conflict regarding corporate criminal liability is resolved.<br>• The TF offence should be vigorously pursued, with authorities considering adopting an approach where all indictments of TF offences should be Cumulative Indictments which require a verdict on the TF offence.<br>• Authorities should implement the TF offences within the Anti-Terrorism Law to prosecute and sanction TF of identified terrorist groups and individuals with a presence in Indonesia. |
| **Confiscation, freezing and seizing of proceeds of crime (R.3)** | • Indonesia should ensure that:<br>• comprehensive measures are available to identify, freeze and confiscate proceeds and instruments of all serious offences;<br>▪ the available reverse onus of proof provisions are able to be implemented and are supported by appropriate procedural instructions for police, |

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| | prosecutors and the courts.<br>• Indonesia should consider:<br>▪ the enactment of a single and comprehensive 'Proceeds of Crimes Law' to deal with the identification, freezing and confiscation of proceeds and instruments of all serious offences and including the seizing and confiscation of legitimate assets of equivalent value to the proceeds.<br>▪ making the standard of proof for confiscation the reverse onus civil standard in all confiscation matters.<br>▪ Specifically providing for confiscation of indirect proceeds.<br>• Indonesia should maintain comprehensive statistics on freezing and seizing of proceeds of crime. |
| **Freezing of funds used for terrorist financing (SR.III)** | • Indonesia should establish clear legal mechanisms and administrative or judicial processes to trace and freeze without delay assets of entities included on the UNSCR 1267 Consolidated List.<br>• Indonesia should establish clear legal mechanisms and administrative or judicial processes to implement its obligations under UNSCR 1373.<br>• Indonesia should revisit its current communication and dissemination process related to UNSCR 1267 and implement effective laws and procedures to:<br>▪ give clear instructions and guidance to all relevant sectors, including the DNFBPs, on their obligations in this respect, defining in particular what assets the freezing orders target and their relation to the individuals and entities involved;<br>▪ ensure that there are efficient communication lines between law enforcement, supervisors, financial institutions and affected sectors in relation to SR III;<br>▪ ensure that there are sufficiently broad authorities to identify, designate and sanction elements covered under paragraphs 1(c) and 1(d) of UNSCR 1373.<br>▪ implement a screening procedure and authority responsible for evaluating foreign list-based requests;<br>▪ implement effective compliance monitoring by supervisory bodies for SR III within an adequate sanctioning framework;<br>▪ establish appropriate and publicly known procedures for de-listing, unfreezing or in any other way challenging the listing and freezing measure before a court or other designated authority; and<br>▪ enact regulations on (restricted) access to the frozen assets and protecting the rights of bona fide third parties.<br>• Indonesia should establish effective mechanism to trace, freeze, seize and confiscate property terrorist assets and other property associated with TF offences in Indonesia.<br>• Indonesia should maintain comprehensive statistics on freezing of funds used for TF. |
| **The Financial Intelligence Unit and its functions (R.26, 30 & 32)** | • Authorities should ensure that PPATK is able to have access, directly or indirectly to required financial, administrative and law enforcement information on a timely basis. |
| **Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)** | • POLRI should:<br>▪ establish a train-the-trainer program within the department to allow POLRI to regularly conduct basic and advance training as officers rotate in an out of the directorate.<br>▪ consider requiring officers to remain assigned to the AML or CFT unit for a period of two or three years.<br>▪ encourage the creation of investigative task forces across directorates to work |

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| | both terrorism and TF aspects of investigations simultaneously.<br>▪ conduct an information technology assessment for ECD to adequately budget and equip POLRI with needed computers, software and databases.<br>▪ develop and install an IT system for case management systems and link analysis and train investigators to use such systems.<br>▪ proactively target ML and TF cases, rather than relying on PPATK referrals<br>▪ proactively pursue proceeds of crime investigations to trace criminal assets.<br>• Indonesia should:<br>▪ consider allowing other enforcement agencies to investigate ML offences in addition to the lead role played by POLRI.<br>▪ support enhanced cooperation across relevant directorates within POLRI to ensure that ML and TF cases are systematically pursued.<br>▪ take steps to further develop a pool of expert financial investigators to be responsible for ML and TF investigations ensure that enough resources are available to ensure ML and TF offences are effectively investigated and prosecuted.<br>▪ take steps to further develop the capacity of the AGO to pursue complex ML and TF prosecutions.<br>▪ maintain comprehensive statistics in relation to predicate offence investigations, ML and TF investigations, proceeds of crime investigations, referrals to the AGO, indictments, prosecutions and convictions was not well kept. |
| **Cross-border declaration or disclosure (SR.IX)** | • The cash declaration should be updated to cover bearer negotiable instruments and to comprehensively implement SR IX.<br>• Customs should have a clear authority to restrain cash or bearer negotiable instruments when a false declaration is made or a person fails to declare.<br>• Indonesia should more effectively implement restraint and seizure provisions with respect to cash suspected to be associated with criminal activity.<br>• DGCE's should take greater efforts to identify and target illicit cash couriers with the goal of depriving them of illegitimate money. These efforts should include enhanced cooperation between Customs, POLRI and PPATK to target cash couriers associated with terrorist financing and money laundering.<br>• Effective, proportionate and dissuasive sanctions should be available to ensure effective compliance with obligations under SR IX.<br>• Comprehensive statistics should be maintained for the operation of the system to implement SR IX. |
| **3. Preventive Measures – Financial Institutions** | |
| **Customer due diligence, including enhanced or reduced measures (R.5 to 8)** | <u>CDD</u><br>• Indonesia should establish explicit enforceable provisions to:<br>▪ perform CDD when there is doubt about the veracity of the CDD information previously obtained.<br>▪ perform CDD when ML or TF is suspected regardless of any other exemption.<br>▪ submit an STR on a suspicious occasional wire transfer regardless of the amount.<br>• Requirements for confirming whether a person acting on behalf a legal person is so authorised and for ongoing due diligence should be included in laws or regulations<br>• Financial institutions should be clearly required to establish an understanding of a legal person or to determine the natural person exercising ultimate control over the legal person.<br>• Non-bank financial institutions (NBFIs) should be required to conduct enhanced |

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| | CDD for high-risk customers.<br>• Authorities should provide clear guidance on which countries constitute a higher risk.<br><br><u>PEPs</u><br>• All sectors should be explicitly required to perform enhanced CDD with respect to foreign PEPs.<br>• All sectors should be required to obtain senior management approval before establishing or to continue business relationships with a PEP<br>• Supervisors should ensure financial institutions establish effective risk control measures to identify PEPs and implement CDD measures related to PEPs.<br><br><u>Correspondent Banking</u><br>• Indonesia should issue binding requirements to regulate correspondent banking including:<br>▪ requiring banks to gather information from respondent's institutions to understand fully the nature of their business and reputation.<br>▪ requiring financial institutions to assess the AML/CFT compliance by the respondent.<br>▪ requiring financial institutions to obtain senior management approval before entering into new correspondent banking relationship.<br>▪ Requiring specific controls on the maintenance of payable-through accounts.<br>• Indonesia should require the securities sector to have in place measures to mitigate risks associated with transactions utilizing technological advances. |
| **Third parties and introduced business (R.9)** | • Indonesia should establish and implement explicit legal requirement for banks and NBFIs to have adequate procedures with respect to use of third parties for services that involve CDD.<br>• BAPEPAM should ensure that its Rule V.D.10 is effectively implemented as a matter of priority |
| **Financial institution secrecy or confidentiality (R.4)** | • Scope of Article 14 of AML Law should be extended to include information sharing beyond reporting obligations to avoid any legal challenges to PPATK.<br>• Exemption provided to investigators and prosecutors under Article 33 of AML Law should also cover TF. |
| **Record keeping and wire transfer rules (R.10 & SR.VII)** | • Indonesia should consider modifying Article 17 of AML Law to impose on financial services providers a direct requirement to maintain transaction records in their entirety for a period of at least five years. Alternatively, BI should revise its KYC Regulation which is currently restricted to documents concerning identity of customers only.<br>• Business correspondence should be included in law or Rules/ Regulations as a part of record retention requirements.<br>• PPATK should be authorised to obtain information from financial services providers independent of reporting requirements. This would also take care of PPATK's needs for any additional information required in connection with STRs.<br>• Indonesia should, as a matter of priority, establish comprehensive wire transfer obligations over its financial institutions and ensure that competent authorities are responsible for regulation and oversight of those provisions for all relevant sectors. These obligations should require that full originator information accompany wire transfers and to regard a lack of originator information as high-risk.<br>• Banks should be required to terminate or limit business relationships with banks that do not provide full originator information. |

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| **Monitoring of transactions and relationships (R.11 & 21)** | • Indonesia should take steps to remove confusion in the obligations to monitor unusual transactions and to report suspicious transactions by establishing clear, separate provisions for monitoring unusual transactions.<br>• Indonesia should establish explicit legal requirements for:<br>▪ providers of financial services to examine as far as possible the background and purpose of unusual transactions;<br>▪ NBFIs to keep records of the findings of account/transaction monitoring; and .<br>▪ financial institutions to keep records of the findings of monitoring for unusual transactions.<br>• Financial institutions should be required to give special attention to business relationships and transactions with individuals or companies in countries which do not or insufficiently apply the FATF Recommendations.<br>• Indonesia should ensure that financial institutions are effectively implementing requirements to take into account country risk across all sectors.<br>• Indonesia should provide guidance to financial institutions regarding the identification of high risk countries |
| **Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)** | • Indonesia should amend the AML Law to ensure that the scope of proceeds of crime subject to STR reporting meets the FATF standard.<br>• Indonesia should amend the STR obligation to clarify confusion between obligations to monitor unusual transactions and to report suspicious transactions.<br>• Indonesia should take steps to support effective implementation of the STR obligation across all sectors, including securities, money changers and remittance providers.<br>• Indonesia should ensure that there is a direct obligation to report suspicious transactions related to both legitimate and illegitimate funds linked to or to be used for terrorism, terrorist acts, terrorist organisations or those who finance terrorism.<br>• Authorities should ensure that the STR obligation in relation to TF is effectively implemented, including proactive monitoring for suspicion.<br>• PPATK should periodically provide case specific feedback to reporting entities.<br>• Competent authorities should issue comprehensive guidance to financial service providers to assist them to identify STRs related to TF |
| **Internal controls, compliance, audit and foreign branches (R.15 & 22)** | <u>Recommendation15</u><br>• Necessary screening procedures should be introduced as a regular part of hiring employees.<br>• Mutual Funds need special attention of authorities in regard to internal controls, compliance function and reporting obligations.<br>• Securities companies should follow a risk-based approach in their KYC/AML compliance.<br>• Audit requirements for money changers and mutual funds should be enforced.<br>• Non-bank money remitters should be properly supervised for their AML/ CFT obligations.<br><u>Recommendation 22</u><br>• BI should issue explicit instructions to banks requiring them to apply AML/CFT norms to their subsidiaries outside Indonesia.<br>• NBFIs, including securities companies should be provided with direction on the application of AML/CFT guidelines to branches/ subsidiaries outside Indonesia. |
| **Shell banks (R.18)** | • Indonesia should ensure that controls on correspondent bank relationships are effectively implemented to ensure that correspondent banks do not permit their accounts to be used by shell banks. |

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| **The supervisory and oversight system - competent authorities and SROs<br>Role, functions, duties and powers (including sanctions)<br>(R. 23, 30, 29, 17, 32, & 25).** | <u>Recommendation 23 & 30</u><br>• BAPEPAM should provide comprehensive KYC/ AML instructions in securities sectors. Its V.D 10 does not cover all the aspects of AML requirements.<br>• BAPEPAM should improve its AML/CFT examination process preferably by developing examination manuals or similar instruments to assess the potential AML/CFT risks and vulnerabilities of securities companies.<br>• BAPEPAM should regularly conduct thorough supervision of securities companies and should ensure that adequate resources are available to achieve this.<br>• Mutual funds should be directly supervised and not leave to custodian banks their KYC/ AML obligations.<br>• BAPEPAM should provide focused training to on-site examiners. The examiners should have technical skills and training to assess the effectiveness of internal controls in securities companies and mutual funds, identify the weaknesses and ensure corrective measures through management of these entities. If violations attract sanctions, monetary fines may be imposed.<br>• Safeguards to prevent criminals from controlling or holding positions in pension funds, financing companies, money remitting and money changing businesses should be put in place.<br>• For imposing sanctions, BI has mostly used written admonitions. Keeping in view the higher level of violations in rural banks, the need is to create an effective deterrent. Money penalties can be one way of doing that. The same is true in case of BAPEPAM and LK.<br>• BI needs to allocate resources for an effective mechanism of supervision of money changers<br>• Money remitters should be registered/ licensed and requirements of AML be imposed on them. These entities should then be monitored and supervised for AML compliance.<br>• All regulators should ensure that staff involved in supervision and monitoring of AML/CFT compliance are subject to screening and re-screening for integrity.<br><br><u>Recommendation 25</u><br>• Regulators should provide guidance to institutions on a more regular basis<br>• PPATK should consider providing case-specific feedback to reporting entities.<br>• BI or PPATK should provide updated UNSCR 1267 lists of designated entities to reporting entities and may also consider maintaining list of proscribed persons and entities for ease of reference while monitoring transactions.<br>• DNFBPs should be made subject to AML/ CFT requirements.<br><br><u>Recommendation 29</u><br>• PPATK should be given wider powers to ensure compliance with reporting obligations to include direct enforcement powers through sanctions.<br>• BAPEPAM should be given wider powers to ensure compliance with reporting, monitoring and oversight obligations.<br>• BAPEPAM and other relevant supervisors should be authorised to see STRs in the course of conducting supervision of a reporting party.<br><br><u>Recommendation 17</u><br>• Indonesia should ensure effective and dissuasive administrative penalties are available to all regulators for all sectors for their respective supervision of AML/CFT obligations.<br>• Effective and dissuasive monetary penalties should be extended to all sectors. |

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| | • PPATK should be empowered to apply direct administrative sanctions for violations of reporting obligations.<br>• Sanctions should be available for money value service providers.<br>• Powers should be available to impose sanctions on directors or members of the senior management of insurance companies.<br>• Indonesia should demonstrate effective implementation of available sanctions across all sectors, including NBFIs.<br><br><u>Recommendation 32</u><br>• The regulators/ supervisors should maintain proper statistics of on-site examinations/ compliance audits of all institutions under them and of all sanctions levied. |
| **Money value transfer services (SR.VI)** | • In view of the enormous scale of the unregulated informal remittance channels which operate in Indonesia and the new regulation for remittance agents from BI, it is critical that AML/CFT obligations should apply to remittance agents as a matter of priority.<br>• The AML/CFT regime contemplated in the BI Regulation on Remittance should be updated prior to its coming into effect in 2009 to reflect the full FATF obligations on AML/CFT controls of remittance dealers.<br>• Indonesia should consider shortening the transition process for implementation of the new remittance regulations.<br>• Indonesia should consider working with foreign counterparts to work to identify informal remittance dealers who have a presence in countries in the Asia/Pacific region. |
| **4. Preventive Measures – Non-Financial Businesses and Professions** | |
| **CDD and record-keeping (R.12)** | • Indonesia should take steps to extend CDD measures to the full range of DNFBPs as soon as possible. |
| **STR reporting (R.16)** | • Indonesia should take steps to extend STR measures to the full range of DNFBPs as soon as possible. |
| **Regulation, supervision and monitoring (R. 24-25)** | • Indonesia should take steps to regulate/supervise/monitor the full range of DNFBPs for AML/CFT purposes as soon as possible. |
| **5. Legal Persons and Arrangements & Non-Profit Organisations** | |
| **Legal Persons – Access to beneficial ownership and control information (R.33)** | • Indonesia should implement the provisions to establish a central Companies Registry to make publicly available current information about legal persons and their beneficial ownership.<br>• Indonesia should ensure that previously issued bearer shares do not continue to be a feature of the Indonesian system.<br>• Indonesia should develop and effectively implement transparency obligations on corporate entities, including publicly available beneficial ownership information. |
| **Non-profit organisations (SR.VIII)** | • Indonesia should institute a process to improve regulation and oversight of charities as a priority<br>• Indonesia should:<br>▪ Conduct a coordinated review of the domestic NPO sector;<br>▪ Support the implementation of a strategy to identify and mitigate significant TF risks within Indonesia's NPO sector;<br>▪ Include religious NPOs in effective controls to improve good governance and ensure AML/CFT measures are effective in the sector;<br>▪ Conduct further outreach to the NPO sector or focus on TF risks by NPO |

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| | sector authorities to date;<br>▪ Conduct outreach and implement measures to improve transparency and good governance within the NPO sector<br>▪ Implement measures, including existing laws relating to Foundations, to ensure that all relevant NPOs operate within the terms of their registration and make publicly available information on their activities, their office holders and financial activities.<br>▪ Support sector-driven regulation, including the formation and operation of self regulatory organizations in the NPO sector.<br>▪ Remove barriers to information sharing between the DG Tax and other NPO regulators, POLRI, PPATK and other relevant CFT agencies<br>▪ Support improved mechanisms for information exchange with foreign counterparts; |
| **6. National and International Co-operation** | |
| **National cooperation and coordination (R.31)** | • Indonesia should:<br>▪ enhance the operation of the ICIT to effectively coordinate various agencies to ensure effective implementation of CFT measures across Indonesia.<br>▪ Address gaps in operational level coordination in relation to supervisory agencies<br>▪ Support cross-agency coordination of supervisory initiatives specific to AML/CFT.<br>▪ Support inter-agency coordination in relation to establishing and implementing effective cross-border currency reporting systems |
| **The Conventions and UN Special Resolutions (R.35 & SR.I)** | • Indonesia should accede to and fully implement the UN Palermo Convention on the Suppression of Transnational Crime as soon as possible.<br>• Indonesia should amend and implement laws and other instruments to fully implement the Vienna Convention.<br>• Indonesia should amend and implement laws and other instruments to fully implement the UN Terrorist Financing Convention.<br>• Indonesia should amend and implement laws and other measures to fully implement UN Security Council Resolutions 1267 and 1373 and their successor resolutions. |
| **Mutual Legal Assistance (R.32, 36-38, SR.V)** | • The MLA law should be amended to make the absence of dual criminality a discretionary rather than a mandatory ground for refusal of mutual legal assistance;<br>• Indonesia should consider removing the requirement that assistance sought be not be detrimental sovereignty & national interests of Indonesia, and Indonesia should consider entering into international agreements for sharing of confiscated assets; and<br>• The AGO should take steps to fill its allocated staff positions in the International Affairs branch.<br>• Indonesia more actively pursue international cooperation related to ML, TF and proceeds of crime through mutual legal assistance. |
| **Extradition (R.32, 37 & 39, & SR.V)** | • Indonesia should consider simplifying its extradition procedures by removing this requirement for the establishment of a dossier similar to prima facie case in extradition matters. Simplified extradition procedure such as those available in neighbouring countries should be considered for extradition and rendition within the region.<br>• Indonesia should remove the requirement that a requesting jurisdiction establish a dossier similar to establishing a prima facie case in support of an extradition request.<br>• Indonesia should more actively pursue extradition related to ML and TF |

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| **Other Forms of Co-operation (R.32 & 40, & SR.V)** | Indonesia should<br>▪ ensure that all relevant competent authorities are able to provide the widest range of international cooperation.<br>▪ regulate money remittance businesses and ensure that the regulator is able to provide the widest range of international cooperation in relation to the money remittance sector.<br>▪ ensure that authorities responsible for NPO regulation are able to provide the widest range of international cooperation.<br>▪ maintain and share comprehensive statistics for international cooperation between competent authorities outside of MLA.<br>• Other sector-specific AML/CFT supervisors (BI and BAPEPAM-LK) should proactively pursue international cooperation to improve AML/CFT regulation and supervision.<br>• Investigations agencies should proactively pursue international cooperation to improve ML and especially TF investigations. |

# 9 ANNEXES

## Annex 1 - PROGRESS SINCE THE PREVIOUS MUTUAL EVALUATIONS OF INDONESIA

| | *Recommendation from the 2002 Mutual Evaluation* | Progress since the last Evaluation |
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| **I.** | **Legal** | |
| 1. | Remove the monetary threshold in the definition of proceeds of crime and extend the list of predicate offences. | Amendments to the AML Law in 2003 removed the previous threshold and extended predicate offences (24 predicate offences and other offences for which the prescribed penalty is 4 years imprisonment or more). See Recommendation 1. |
| 2. | Permit the freezing and confiscation of all property which is derived from the predicate offences, without a threshold. | The amended AML Law removed any threshold. See recommendation 1 and 3 for analysis of the scope of property subject to freezing and confiscation. |
| 3. | Extend the definition of suspicious transaction and reduce the permitted reporting period. | The AML Law extended the definition of suspicious transactions and reduced the reporting period from 14 days to 3 days. See recommendation 13 for analysis of the STR obligation. |
| 4. | Amend the AML law in relation to "tipping off" by financial institutions. | AML Law has included anti tipping-off provision (article 17A). See Recommendation 14 for analysis of the provision. |
| 5. | Clarify procedures to support coercive measures and confiscation to assist foreign countries. | The amended AML Law includes international co-operation and Mutual Legal Assistance provisions. See analysis at Recommendations 36 – 38, including procedures to support coercive measures. |
| 6. | Clarify that Extradition for money laundering is possible | Indonesia has not yet included ML in the scope of existing extradition treaties. The Extradition Law does not include ML in its list of extraditable offences. The Extradition Treaty between Indonesia and Singapore includes extradition for money laundering, but has not yet been ratified. |
| 7. | Indonesia should ensure that the 8 Special Recommendations of the FATF are encompassed in its new anti-terrorism legislation currently being developed. | Indonesia's Anti-terrorism law criminalises terrorist financing - see Recommendation II. Implementation of SRIII, SRVI, SRVII and SRVIII are covered elsewhere and are not yet encompassed in Indonesian law. |
| 8. | Cover issues such as: Protection of staff of PPATK from liability for actions taken in good faith; MLA and extradition in Criminal Matters; sharing of assets/property confiscated under civil or criminal proceedings where another country also has claim to part or all of the proceeds. | Indonesia has extended safe harbour for reporting institutions and protection for FIU staff.<br><br>See analysis of Mutual Legal Assistance in the AML Law and Law No.1 year 2006 concerning Mutual Legal Assistance (article 57). Recommendations 36-39 and SR V apply. |
| **II.** | **Financial Sector** | |
| | The KYC/STR framework should be applied to rural | Bank Indonesia Regulation No.5/23/PBI/2003 on KYC principles was issued for rural bank. |

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| 9. | banks.<br>Revise STR requirements to cover transactions which may involve money laundering or the proceeds of crime.<br>Ensure consistency of frameworks for KYC and STR reporting between non-bank financial institutions and banks. | Bank Indonesia, BAPEPAM and Ministry of Finance have all issued Regulations/Decrees/Circulars on KYC and STR reporting. PPATK issued general AML guidelines for all financial service providers and 5 (five) other guidelines concerning the STR and CTR reporting. |
| 10. | Place clear obligation on NBFIs to conduct KYC procedures and to impose some penalty on them for failure to conduct proper KYC procedures. | Bapepam and LK have issued a decrees/rules on KYC for securities/capital market sector. MoF has issued a Decree on KYC principles for non-bank financial institutions. The AML Law clearly stipulates that financial service providers (including non-bank financial services) are obliged to file STRs to PPATK by October 2003. |
| 11. | The authorities should work with commercial banks to implement a broad ranging 'socialisation' process for bank staff and their customers. | BI, PPATK, Bapepam and other regulators conducted a series of training/seminars and socialization programs since 2003.<br>Bank Indonesia and PPATK completed the production of public service advertisement (PSA) in the mid of July 2005. Since July 2005 the PSA has been published in 10 national TV Stations, 37 Radio Stations, and 31 newspaper and magazines, covering all Indonesian regions. |
| **III** | **Law Enforcement** | |
| 13. | • additional resources and further training of relevant personnel be provided to enable law enforcement agencies to effectively carry out their increased responsibilities; and<br>• an adequately resourced specialist unit to investigate money laundering offences be established within the police;<br>• consider granting the police powers for ML investigations, such as telecommunications interception and other coercive powers. | Regular training courses have been conducted for investigators, prosecutors, and judges across Indonesia. POLRI (with the assistance of PPATK) conducted the AML regime socialization for police officer in the headquarters and regional police around Indonesia.<br>AGO managed in-house training on anti-money laundering regime and MLA for prosecutors.<br>Both POLRI and AGO have set up a special unit or task force to handle money laundering cases.<br>In the second amendment to Indonesia's AML Law, which is being discussed in the parliament, it is proposed to include powers of telecommunications interception for ML investigations. KPK has authority for telecommunications interception for corruption crimes. |
| 14. | Consideration should be given to the introduction of CTR reports.<br>The necessary hardware and software for receipt and analysis of transaction reports, particularly software for STR analysis, should be in place at the time the law comes into force. | PPATK has established the reporting system by electronic means, so as to enable the FSPs to transmit report electronically and is consistently developing the system.<br>PPATK has also developed the analytical tools that allow analysts to use it in analysing filed reports. In the near future, PPATK will establish Disaster Recovery Center. |
| 15. | A manual on the topics of the ML investigation, prosecution and examination should be created and distributed to all relevant agencies. | Manual for investigators has been created (for prosecutor on going process). |

## ANNEX 2: LIST OF ABBREVIATIONS

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| AGO | Attorney General's Office |
| ASEAN | Association of Southeast Asian Nations |
| Bapepam | Capital Market Supervisory Agency |
| BAZIS an | (Islamic) board which oversees the collection of alms / zakat |
| BI | Bank Indonesia |
| BPK | Audit Board of the Republic of Indonesia |
| CDD | Customer due diligence |
| DGCE | Directorate General of Customs and Excise |
| DGFI | Directorate General of Financial Institution |
| DGT | Directorate General of Tax |
| DFA | Department of Foreign Affairs |
| DNFBP | Designated non-financial businesses and professions |
| DOLHR | Department of Law and Human Rights |
| DPR | House of Representatives |
| ICIT | Inter-agency Committee on International Terrorism |
| INTRAC | see PPATK |
| JI | Jemaah Islamiyah |
| JSX | Jakarta Stock Exchange |
| KPK | Corruption Eradication Commission |
| KUHAP | Criminal Code Procedures |
| KUHP | Criminal Code |
| KUHPer | Civil Law Code |
| KYC | Know your customer |
| LAZ | Lembaga Amil Zakat - zakat supervision organization |
| MPR | People's Consultative Assembly |
| NCC | The National Coordination Committee |
| NCCT | Non-Cooperative Countries and Territories (FATF) |
| PEP | Politically exposed person |
| PFS | Providers of Financial Services |
| POLRI | Indonesian National Police |
| PPATK | Indonesian Financial Transactions Reporting and Analysis Center / Pusat Pelaporan Dan Analisis Transaksi Keuangan |
| Rp. | Rupiah |
| StAR Initiative | Stolen Asset Recovery Initiative (UN / World Bank Group) |
| TNCC | Trans-national Crime Center (within POLRI) |
| UNODC | United Nations Office on Drugs and Crimes |
| UNSCR | United Nations Security Council Resolution |

## Annex 3: List of bodies met during Mutual Evaluation on-site visit

1. Coordinating Minister for Political, Legal and Security Affairs
2. Meeting with the National Coordination Committee (NCC) ("Komite TPPU")
3. Minister of Finance
4. Governor of Bank Indonesia
5. Members of Parliament (Commission III)

6. PPATK
7. Bank Indonesia (BI)
   - DPNP (Directorate of Banking Research and Regulation)
   - DPB (Directorate of Bank Supervision)
   - DPBPR (Directorate of Rural Bank Supervision)
   - DPBS (Directorate of Shariah/Islamic Bank Supervision)
   - DPM (Directorate of Monetary Control)
   - DASP (Directorate of Accounting and Payment System)
7. Indonesian National Police Headquarters
   - Criminal Investigation Division
   - Special Detachment 88/Anti Terror
   - NCB Interpol
8. Attorney General's Office
9. Anti-Corruption Commission
10. Directorate General of Tax, Department of Finance
11. Directorate General of Customs and Excise, Department of Finance
12. Capital Market Supervisory Agency – Financial Institution (Bapepam-LK), Department of Finance
13. Directorate General of Legal Administration Affairs, Department of Law and Human Rights
14. Directorate General of Legislation Affairs, Department of Law and Human Rights
15. Directorate General of Immigration, Department of Law and Human Rights
16. Directorate General of Multilateral Affairs, Department of Foreign Affairs
17. Directorate General of Legal Affairs and International Treaty, Department of Foreign Affairs
18. Ministry of Interior (Home Affairs)

19. Bank Syariah Mandiri (BSM)
20. Bank Central Asia (BCA)
21. Bank Mandiri
22. HSBC
23. Ayu Masagung (Money Changer)
24. Danareksa
25. Manulife
26. Dhana Wibawa
27. CIMB-GK
28. AXA Mandiri
29. Jakarta Stock Exchange

30. Indonesian Bar Association (IKADIN, Ikatan Advokat Indonesia)
31. Coordination Forum for Bank's Compliance Director (FKDKP)
32. APEI (Indonesian Securities Companies Association)
33. APRDI (Indonesian Mutual Fund Managers Association)
34. Indonesian Public Notaries Association (Ikatan Notaris Indonesia)
35. Organization of Real Estate Indonesia, Jakarta Branch

36. Baznas (Badan Amil dan Zakat Nasional) - NGO

## Annex 4

**Scope of Categories of Predicate Offences in the AML Law, Law 15/2002 & Law 25 /2003**

| Listed Criminal Acts | Cross reference of Indonesian predicate offences to categories of offences in the FATF Glossary |
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| Corruption | *Some deficiencies in the coverage of the FATF category of corruption and bribery, due to the threshold and the lack of coverage of private sector corruption.*<br>Law 30/2002 amending Law 31/1999, Articles 12 to 24: BUT Note: Only Public sector corruption is covered. Law 31/ 1999, Article 5, 1 to 5 years and Rp.50 M to 250 M fine; Article 6, 3 to 15 years & Rp.150 M to 750 M fine; Article 7, 2 to 7 years & Rp.100 M to 350 M; Article 8, 3 to 15 years and Rp. 150 M to 750 M fine; Article 9, 1 to 5 years & Rp. 50M to 250M; Article 10 2 to 7 years & fine Rp.100 M to 350 M; Article 12, 4 to 20 years & a fine Rp.200 M to 1,000 M. And 12A(2) less than Rp.5 M case, up to 3 years & Rp.5 M fine. Article 12B, 20 years to life & Rp.200 M to 1,000 M fine.<br>NB - **The minimum state loss is Rp.1,000 M for this law to apply**. |
| Bribery | Law 2/1945, Penal Code, Article 209, to 2 years 8 months & Rp.300. 210, to 7 years to 9 years. |
| Narcotics | *Broad coverage of the FATF category of Narcotics and psychotropic substances*<br>Law 22/1997, Articles 78 to 100. Articles 78, to 10 years & to Rp.500 M fine; & 2 to 12 years & Rp.25 M to 750 M fine, & (3) for organised crime 3 to 15 years & Rp.100 M to 2,500 M fine; Article 79, 7 years & Rp.250 M fine, Article 80, to 20 years & to Rp.1,000 M fine. (3) organised crime, 3 to 20 years & Rp. 500 M to 3,000 M fine. 81, 15 years & to Rp.750 M fine; (3) organised crime death, life or 20 years & Rp.500 M to 4,000 M fine. 82, death, life or 20 years & Rp.500 M to 3,000 M fine. 83, Attempts; 84, 15 years & Rp.250 M to 750 M fine. 85, 1 to 4 years. 85 & 88, 6 months to Rp.1 M. Article 87 procuring, 5 to 20 years & Rp.20 M to 600 M fine. 89, 7 years & to Rp.200 M fine. 92, impeding investigation, to 5 years & Rp.150 M fine. And further criminal provisions 93 to Article 100, including 97 extra territorial operation re 78 to 85 & 87, 98 foreigners convicted to be deported.<br>NOTE: Article 77(1)-(4) provide for confiscation of narcotics & its proceeds. |
| Psychotropic Substances | *Broad coverage of the FATF category of Narcotics and psychotropic substances*<br>Law 5/ 1997, Article 59, 4 to 15 years, and if an organised crime death, life imprisonment or 20 years. Corporation Rp. 5 Billion fine. Article 60 3 months to 15 years, Article 61, 10 years, Article 62, 5 years and Rp.60 M fine and lesser offences to 67, and attempts, etc from Article 69 to Article 72. |
| Smuggling of workers | *Broad coverage of the FATF category of trafficking in human beings and migrant smuggling*<br>Law 21/2007, Article 2, 3 to 15 years and Rp.120 M to 600 M fine. Articles 3, 4, 5 & 6, 3 to 15 years and Rp.120 M to 600 M fine. Article 7 if aggravated increased penalty from 5 years to death. Article 9, 1 to 9 years and fine Rp.40 M to 240 M. Attempt Article 9 and Assisting & planning Articles 10 & 11. Articles 13 to 15 re. corporations with fines 3 X and additional |

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| | administrative penalties. |
| Trade in People | *Broad coverage of the FATF category of trafficking in human beings and migrant smuggling*<br>See 15.5 above and Law 21/ 2007, Article 19 to 27; 19 to 21, 1 to 5 years & Rup.40 M to 280 M & Article 24, 3 to 7 years & Rup.120 M to 280 M. Articles 2 to 18. Articles 2, 3, 4, 5 & 6, 3 to 15 years and Rup120 M to 600 M. Article 15 corporate Criminal liability 3X fine and (2) administrative penalties. |
| In the Banking Field | *Broad coverage of the FATF category of fraud*<br>Law 7/1992 amended by 10/1998. Articles 46 to 53. |
| In the Capital Markets field | *Broad coverage of insider trading / market manipulation*<br>Law 8/1995, Articles 90 to 98 and 103, 104, 106 & 107. |
| In the Insurance field | *Broad coverage of the FATF category of fraud*<br>Law 2/1992, Articles 21 to 24. And Penal code offences also apply. |
| In the Excise Field | *Broad coverage of the FATF category of smuggling*<br>Law 10/1995 Articles 102, smuggling 8 years & Rup500 M,103(d) 5 years & Rup250M, 104(d) 2 years & Rup100 M, 105(b) 2years & Rup150 M, 106, 2 years & Rup125 M, 108(3) corporate liability Rup300 M, and Article 111 imposes a 10 year limitation period. |
| In the Customs Field | *Broad coverage of the FATF category of smuggling*<br>Law 11/1995 as amended by Law 39/2007, Articles 50 to 62, Articles 50 to 52, 4 years & 10 X customs value, 53, 6 years & Rup150 M, 55, 8 years and 20X customs value, 56, 4 years & 10 X customs value, 57, 2 years & Rup150 M, 58, 4 years 10X customs value. Article 60, 10 year limitation period. Article 61(4) corporate liability Rup300 M only. |
| Illegal Trade in arms | *Broad coverage of the FATF category of illicit arms trafficking*<br>Law No. 12/DRT/1951, Articles 1 & 2, death, life to 20 years. |
| Terrorism | *Inadequate coverage of the FATF category of terrorist financing in relation to funding individual terrorists and terrorist groups.* |
| Kidnapping | *Partial coverage of the FATF category of kidnapping, illegal restraint and hostage taking*<br>Law Penal Code Articles 333, 8 to 12 years & 334 by negligence, 3 months to 1 year. |
| Theft | *Coverage of the FATF category of robbery or theft.*<br>Law Penal Code Article 362, 5 years. |
| Fraud | *Broad coverage of the FATF category of fraud*<br>Law Penal Code Article 378, 4 years. |
| Currency Counterfeiting | *Broad coverage of the FATF category of counterfeiting currency*<br>Law Penal Code Article 244, 15 years. |