ЕВРАЗИЙСКАЯ ГРУППА
по противодействию легализации преступных доходов
и финансированию терроризма

EURASIAN GROUP
on combating money laundering
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KYRGYZ REPUBLIC:
SECOND ENHANCED FOLLOW-UP REPORT

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1. Introduction

1. The Mutual Evaluation Report (MER) of Kyrgyzstan under the new (second) round of the EAG mutual evaluations was adopted by the 28th EAG Plenary in May 2018 and was published on the EAG official website in September 2018. The first Follow-up Report was presented to the 30th EAG Plenary for information only in May 2019.

2. This (second) Follow-up Report analyzes the progress of Kyrgyzstan in addressing the technical compliance deficiencies identified in the MER. Re-ratings are given in respect to those Recommendations where the significant improvements of the national AML/CFT system have been demonstrated. This Report also analyzes the relevant changes in the national AML/CFT system triggered by the introduction of the new requirements into the FATF Recommendations[1] that were adopted after the completion of the on-site visit to Kyrgyzstan[2].

2. Findings of the Mutual Evaluation Report

3. The MER rated[3] Kyrgyzstan as follows:

Effectiveness Ratings

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
LE	ME	ME	ME	ME	ME	ME	LE	ME	ME	ME

Technical Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
PC	PC	C	LC	LC	LC	PC	NC	LC	LC
R.11	**R.12**	**R.13**	**R.14**	**R.15**	**R.16**	**R.17**	**R.18**	**R.19**	**R.20**
LC	NC	LC	LC	LC	PC	NC	LC	LC	LC
R.21	**R.22**	**R.23**	**R.24**	**R.25**	**R.26**	**R.27**	**R.28**	**R.29**	**R.30**
LC	PC	PC	PC	LC	LC	LC	NC	LC	C
R.31	**R.32**	**R.33**	**R.34**	**R.35**	**R.36**	**R.37**	**R.38**	**R.39**	**R.40**
LC	LC	LC	PC	LC	LC	LC	PC	LC	LC

Source: https://eurasiangroup.org/files/uploads/files/%D0%9E%D1%82%D1%87%D0%B5%D1%82%20%D0%92%D0%B7%D0%B0%D0%B8%D0%BC%D0%BD%D0%BE%D0%B9%20%D0%BE%D1%86%D0%B5%D0%BD%D0%BA%D0%B8%20%D0%9A%D1%8B%D1%80%D0%B3%D1%8B%D0%B7%D1%81%D0%BA%D0%BE%D0%B9%20%D0%A0%D0%B5%D1%81%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B8%20-%202018.pdf

[1] R.2, R.7, R.18 and R.21
[2] March – April 2017.
[3] There are the following possible levels of technical compliance with the FATF Recommendations: compliant (C), largely compliant (LC), partially compliant (PC), non-compliant (NC) and not applicable (NA). There are the following possible levels of effectiveness in achieving the Immediate Outcomes: high effectiveness (HE), substantial effectiveness (SE), moderate effectiveness (ME) and low effectiveness (LE).

4. In accordance with the Procedures for the EAG Second Round of Mutual Evaluations (WGEL_(2013)_7_rev.14) Kyrgyzstan was placed in the enhanced follow-up process, since the country was rated non-compliant/ partially compliant with thirteen (13) Recommendations and was assessed as having the low/ moderate level of effectiveness in achieving all Immediate Outcomes. The following experts assessed Kyrgyzstan's request for re-rating:

   - Mrs. Tatyana Artamonova, Economic Advisor of Financial Monitoring and Foreign Exchange Control Department, Central Bank of the Russian Federation;
   - Mr. Timur Kurmaniyazov, Deputy Director of Legal Department, National Bank of the Republic of Kazakhstan.

5. Section 3 of this report summarizes the modifications in the AML/CFT system made to improve technical compliance. Section 4 sets out the conclusion and the table showing which Recommendations have been re-rated.

3. Overview of Progress to Improve Technical Compliance

6. This section summarizes the changes and progress made by Kyrgyzstan to:
   a) Address the technical compliance deficiencies identified in the MER; and
   b) Ensure technical compliance with the new requirements of the FATF Recommendations that came into force after completion of the on-site visit (R.2, R.7, R.18 and R.21).

3.1. Progress to Address Technical Compliance Deficiencies Identified in the MER

7. Kyrgyzstan has demonstrated progress in addressing the deficiencies identified in the MER in relation to the following Recommendations:

   a) R.8, R.12, R.17 and R.28, which were originally rated NC;
   b) R.1, R.2, R.7, R.16, R.22, R.23, R.24, R.34 and R.38, which were originally rated PC;
   c) R.6, R.18 and R.21, which were originally rated LC.

8. Since the adoption of the MER in May 2018, Kyrgyzstan has adopted and enacted the following laws and regulations:

   - KR Law No.87 on Combating the Financing of Terrorist Activity and Legalization (Laundering) of Criminal Proceeds dated 06.08.2018 (hereinafter Law No.87);
   - KR Law No.88 on Amendment of Certain Legislative Acts Related to Combating the Financing of Terrorist Activity and Legalization (Laundering) of Criminal Proceeds dated 06.08.2018 (hereinafter Law No.88);
   - KR Government Resolution No.606 on Measures for Implementation of the KR Law on Combating the Financing of Terrorist Activity and Legalization (Laundering) of Criminal Proceeds dated 25.12.2018 (hereinafter Resolution No.606);
   - KR Government Resolution No.94 on Implementation of Pilot Project on Electronic State Registration of Legal Entities dated 26.12.2019;

- Decree of the Government of the Kyrgyz Republic "On Amending the Decree of the Government of the Kyrgyz Republic" On Approving Criteria for Assessing the Risk Level in Performing Entrepreneurial Activities "dated February 18, 2012 No. 108" dated July 19, 2019 No. 361;
- Decree of the Government of the Kyrgyz Republic "On Amending Certain Decisions of the Government of the Kyrgyz Republic on Countering the Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Income" dated September 16, 2019 No. 477;
- Resolution of the Board of the National Bank of the Kyrgyz Republic "On approval of the Regulation" On minimum requirements for the organization of internal control in commercial banks in order to counter the financing of terrorist activities and the legalization (laundering) of criminal proceeds ", the Regulation "On the procedure for conducting exchange operations with cash foreign currency in Kyrgyz Republic "and introducing amendments and additions to some regulatory legal acts of the National Bank of the Kyrgyz Republic on issues of assistance to financing terrorist activities and legalization (laundering) of criminal proceeds "dated August 14, 2019 No. 2019-П-12 \ 42-1- (NPA);
- Resolution of the Board of the National Bank of the Kyrgyz Republic "On Approval of the Regulation on Minimum Requirements for the Organization of Internal Control in Microfinance Organizations, Credit Unions and Specialized Financial Institutions of the Kyrgyz Republic in order to Combat Financing of Terrorist Activities and the Legalization (Laundering) of Criminal Income" dated August 21, 2019 No. 2019-P-33 / 43-6- (NBFI);
- Resolution of the Board of the National Bank of the Kyrgyz Republic "On approval of the Regulation on minimum requirements for the organization of internal control in exchange offices in the Kyrgyz Republic in order to counter the financing of terrorist activities and the legalization (laundering) of criminal proceeds" dated August 21, 2019 No. 2019-П-33 / 43-7- (NBFI);
- Resolution of the Board of the National Bank of the Kyrgyz Republic "On Approval of the Regulation" On Measures of Impact Applicable to Payment System Operators / Payment Organizations "dated September 30, 2019 No. 2019-П-14 / 50-3- (ПС);
- Resolution of the Board of the National Bank of the Kyrgyz Republic "On approval of the Regulation" On the regulation of the activities of payment organizations and payment system operators "dated September 30, 2019 No. 2019-П-14 / 50-2- (ПС);
- Resolution of the Board of the National Bank of the Kyrgyz Republic "On Amendments and Additions to the Resolution of the Board of the National Bank of the Kyrgyz Republic" On Approval of the Regulation "On Electronic Money in the Kyrgyz Republic" dated March 30, 2016 No. 15/6 of September 30, 2019 No. 2019-P-14 / 50-4- (PS).

Recommendation 1 (originally rated PC in the MER)

9. Factors underlying the PC rating in the MER included the following shortcomings: there were no mechanisms in place for notifying the private sector about the outcomes of the risk assessment; the exemptions related to the licensing/registration of certain types of financial institutions were not based on the ML/TF risk assessment; no specific measures for managing or mitigating risks identified in the NRA have been developed or implemented; the decision whether to apply simplified identification measures for individuals transferring money without opening a bank account, carrying out currency exchange transactions or cashing

cheques was taken based on the assumption that the risk was low, rather than on the ML/TF risk assessment; no mechanisms for the provision by reporting entities of risk assessment data to competent authorities and SRBs have been developed; financial institutions and DNFBPs were not required to have policies, controls and procedures approved by senior management to enable them to manage and mitigate the identified risks; financial institutions and DNFBPs were not required to take into account information on existing risks when undertaking self-assessment of risks.

10. Law No.87 (Article 11, par.2) obliges the national government to develop risk mitigation action plans and requires the obliged entities to apply the risk-based approach (RBA). However, Law No. 87 does not explicitly stipulate the requirement to apply a risk-based approach to allocate resources and mitigate ML/FT risks. Some elements of this requirement are contained in Appendix 3 (para 15) and Appendix 14 (para 3, para 43).

11. Law No.87 (Article 20, par.1, subpar.1) eliminates the shortcomings related to application of the RBA by financial institutions and DNFBPs. In particular, it allows for implementing enhanced or simplified CCD measures with the application of the risk-based approach.

12. Kyrgyzstan established the obligations for the private sector to identify, assess and understand their ML/TF risks in Law No.87 (Article 20, par.1, subpar.1 and 2) and in Annex 11 to Government Resolution No.606. However, Kyrgyzstan should present the general requirements for assessment, categorization, management and mitigation of risks. Confirmation is also required that FIs and DNFBPs are required to assess their ML/TF risks for customers, countries, products / services / transactions / delivery channels. The SFIS Order on Approval of the Standard High and Low Risk Criteria presented by Kyrgyzstan implements the provisions of Article 20, par.1, subpar.5 of Law No.87, which stipulates that financial institutions and DNFBPs shall "categorize their customers with due consideration for the risk criteria". In other words, this Order applies to the CCD procedures, but is not related to the obligation of financial institution and DNFBPs "to assess, identify, document and update on ongoing basis their risks taking into account the NRA outcomes and the standard high and low risk criteria", as stated in Article 20, par.1, subpar.1 of Law No.87.

13. Article 20, par/1, subpar.3 of Law No.87 requires financial institutions and DNFPBs to develop and implement enhanced or simplified risk management/ mitigation policies.

14. Kyrgyzstan has made a significant progress in improving its compliance with Recommendation 1 and addressed the major deficiencies. It is necessary to explicitly stipulate the requirement to apply a risk-based approach to allocate resources and mitigate ML/FT risks. Kyrgyzstan should also provide general requirements for the assessment, classification, management and mitigation of risks. **Kyrgyzstan is re-rated as LC with R.1.**

Recommendation 6 (originally rated LC in the MER)

15. Factors underlying the LC rating in the MER included the following shortcomings: financial sanctions enforcement measures did not apply to affiliated persons; the mechanism for publishing changes to the list of designated persons did not allow prompt notification about listing or de-listing decisions; protection of the rights of all types of bona fide third parties was not ensured.

16. Law No.87 (Article 12, par.2) extends the financial sanctions/ freezing enforcement measures, *inter alia*, to funds of persons affiliated with persons included in the Sanctions List. The provisions of Annex 6 to Resolution No.606 ensure timely notification of the private sector of changes in the Kyrgyz Sanctions List, which is composed of two parts. In particular, the overall time for communicating changes in (both parts of) the Sanctions List shall not exceed 3 hours. Besides that, the provisions of Annexes 6 and 7 to Resolution No.606 provide for the mechanism that ensures protection of the rights of bona fide persons acting in good faith.

17. Kyrgyzstan has eliminated all deficiencies indicated in the MER. **Kyrgyzstan is re-rated as C with R.6.**

Recommendation 8 (originally rated NC in the MER)

18. Factors underlying the NC rating in the MER included the following shortcomings:
    - Kyrgyzstan has not used all relevant sources of information to determine the characteristics and types of NPOs that, due to their activities or characteristics, are likely to be at risk of abuse for terrorist financing **(criterion 8.1a)**;
    - Kyrgyzstan has not defined the types of threats posed to vulnerable NPOs by terrorist organizations, or ways in which terrorists abuse these NPOs **(criterion 8.1b)**;
    - Kyrgyzstan has not assessed the sufficiency of measures, including laws and regulations, affecting the NPOs vulnerable to abuse for terrorist financing **(criterion 8.1c)**;
    - Kyrgyzstan has not conducted a repeat analysis of the NPO sector **(criterion 8.1d)**;
    - Kyrgyzstan has not drafted regulations for the NPO sector to prevent their abuse for terrorist financing **(criterion 8.2a)**;
    - Kyrgyzstan has not conducted awareness training for NPOs and the donor community about NPOs' potential vulnerability to terrorist financing abuse **(criterion 8.2b)**;
    - Kyrgyzstan has not engaged NPOs in developing and improving best practices for addressing terrorist financing risks and vulnerabilities **(criterion 8.2c)**;
    - Kyrgyzstan has not engaged NPOs in developing mechanisms to encourage NPOs to carry out transactions through regulated financial channels, where possible **(criterion 8.2d)**;
    - Kyrgyzstan has not exercised risk-based supervision or control over the activities of NPOs **(criterion 8.3)**;
    - The lack of supervision means that an appropriate system of sanctions for violations by NPOs or persons acting on their behalf was missing **(criterion 8.4)**;
    - The Kyrgyz law enforcement authorities were limited in gaining full access to financial information (access was only available within the framework of an open criminal case) **(criterion 8.5b)**;
    - Kyrgyzstan has not established appropriate mechanisms to ensure, when there is suspicion or reasonable grounds, a prompt sharing of information with competent authorities, in order to take preventive and investigative action **(criterion 8.2d)**.

19. It should be noted that with the adoption of Law No.87 (Article 16), Kyrgyzstan established the legal framework for addressing the identified deficiencies related to criterion 8.1.

However, none of the deficiencies identified in the MER has been eliminated and, therefore, further work is needed.

20. The requirements set out in criterion 8.2 can be deemed met to a certain extent only with regard to sub-criterion 8.2a (availability of clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs), since there are the relevant provisions in Article 16 of Law No.87 and in some sections of Annex 14 to Resolution No.606. However, this sub-criterion cannot be considered fully met without implementation of the requirements set forth in criterion 8.1.

21. The requirements set out in criteria 8.3 and 8.4 are not met. It is necessary to provide a resolution of the Kyrgyz Government that defines the designated authority (authorities) responsible for overseeing the activities of NPOs, and also regulations that impose sanctions against NPOs for failure to comply with the requirements of Article 16 of Law No.87 and define the powers of the oversight authorities to enforce these sanctions.

22. The requirements set out in sub-criteria 8.5b-d are not fully met either. It is necessary to provide a resolution of the Kyrgyz Government that defines the designated authorities responsible for investigation of abuse of NPOs for TF purposes with indication of their powers, necessary qualification and the mechanisms for prompt sharing of information with competent authorities, in order to take preventive and investigative actions.

23. Kyrgyzstan has begun work on risk assessment in the NPO sector. The information is collected according to the existing Methodology. Law No. 87 establishes the legal framework for this process. However, most of the shortcomings are not resolved. **Kyrgyzstan remains NC with R.8.**

Recommendation 12 (originally rated NC in the MER)

24. Factors underlying the NC rating in the MER included the following shortcomings: Kyrgyzstan has partially complied with Recommendation 12 as regards foreign PEPs, and not complied as regards domestic PEPs and persons entrusted with important functions by international organizations and members of their families and close associates.
25. Law No.87 (Article 21, par.3) establishes the requirements for financial institutions in respect of PEPs. According to the definition contained in Law No.87 politically exposed persons include foreign PEPs, domestic PEPs and PEPs of international organizations.
26. Law No.87 (Article 21, par.3) requires financial institutions and DNFBPs to apply additional CDD measures in respect of close relatives and close associates of PEPs (close family relatives, business partners and official representatives).
27. The obligation to determine whether or not a recipient of insurance payout is the PEP established in Chapter 6, par.44-46 of the CDD Regulation extends to beneficiaries and beneficial owners. At the same time, it's necessary to ensure that the issue of reporting STR should be considered if there is a high risk but not only if there is no any possibility to apply enhance due diligence.

28. Kyrgyzstan has demonstrated significant progress in improving its compliance with R.12. However, it is necessary to consider expanding the narrowing of the concept of "close

relatives" for all categories of PEPs and to clarify the procedure for applying enhanced CDD measures when paying insurance compensation. **Kyrgyzstan is re-rated as LC with R.12.**

Recommendation 16 (originally rated PC in the MER)

29. Factors underlying the PC rating in the MER included the following shortcomings: the requirement for cross-border wire transfers to be accompanied by required originator and beneficiary information did not apply to cross-border money transfers made with the use of a bank account; the requirement for the ordering financial institution not to execute a wire transfer in the absence of the required information was formulated as a right, not as the obligation; there was no requirement for the beneficiary financial institution to have risk-based policies and procedures for executing, rejecting or suspending wire transfers lacking all required information; there was no requirement for the intermediary financial institution to retain all originator and beneficiary information that accompanies a wire transfer.

30. The requirement for cross-border wire transfers to be accompanied by required originator and beneficiary information is fully implemented in par.68 of Annex 12 to Resolution No.606. The requirement for ordering financial institutions not to execute a wire transfer in the absence of the required information is implemented in par.71 of Annex 12 to Resolution No.606. The obligation of beneficiary financial institutions to have risk-based policies and procedures for executing/ rejecting/ suspending wire transfers is fully implemented in par.73 of Annex 12 to Resolution No.606. The obligation of intermediary financial institutions to retain all originator and beneficiary information that accompanies a wire transfer is fully implemented in par.74 of Annex 12 to Resolution No.606.

31. Kyrgyzstan has eliminated most of underlying deficiencies indicated in the MER. However, the experts identified remaining shortcomings related to domestic wire transfers: contradictions between Appendix 12 (clause 70) and acts of the National Bank regarding information accompanying domestic transfers; the time period for the ordering financial institution to submit information on the domestic transfer (10 days) does not meet the FATF requirements (3 business days).

32. Kyrgyzstan has demonstrated significant progress in improving its compliance with R.16. **Kyrgyzstan is re-rated as LC with R.16.**

Recommendation 17 (originally rated NC in the MER)

33. Factors underlying the NC rating in the MER included the following shortcomings: there was the practice of reliance on third parties to perform CDD measures without any regulatory support for such reliance.

34. The CDD Regulation (Annex 12 to Resolution No.606) permits financial institutions and DNFBPs to rely on cooperating financial institutions (third parties) registered in Kyrgyzstan. Annex 12 to Resolution No.606, par.48, subpar.2 establishes the obligation to obtain information on customer and beneficial owner from the third party. The requirements on collecting information on the property structure are set forth in Annex 12 to Resolution №606 (para 36, 48).

35. The Regulation on General Requirements for Internal Control Rules (Annex 11 to Resolution No.606 – hereinafter the ICR Regulation) defines a "financial group" as a group composed of several legal entities of different types, which combined their financial resources for pursuing common goals and interests, that exercises the oversight (supervision) and coordination functions in respect of the group members. Paragraphs 52 and 53 of the ICR Regulation establishes the requirements for development and implementation of corporate group-wide internal control and risk management programs; independent audit function; and exchange of information by branches and representative offices of financial institutions and DNFBPs. This applies to branches and representative offices operating both domestically and abroad. In other words, it refers to structural sub-divisions of a legal entity, and not to individual legal entities.

36. The provisions of par.54 of the ICR Regulation, that oblige financial groups to develop and implement corporate internal control programs, including information sharing, at all levels of internal control, apply only to those financial institutions that are categorized as financial groups and have branches and representative offices.

37. The provisions of par.48 of the CDD Regulation (Annex 12 of Resolution No.606), that permit to rely on cooperating financial institutions (third parties) registered in Kyrgyzstan to perform CDD under the signed agreements, extend also to financial institutions that are part of the same financial group. According to the Kyrgyz authorities, in other circumstances (e.g. when there is no signed agreement), reliance on cooperating financial institutions (third parties) that are part of the same financial group is not permitted.

38. Information on application of CDD and record-keeping requirements at a group level; supervision by a competent authority of implementation of these requirements; and availability of mechanisms for mitigating a higher country risk, as required by criterion 17.3, was not provided by Kyrgyzstan. Besides that, no information was provided on specificities of CDD, record-keeping and risk management procedures, and on supervision of financial institutions that rely on third parties that are part of the same financial group.

39. Kyrgyzstan has demonstrated significant progress. Some deficiencies remain: where financial institutions are permitted to rely on third party that is part of the same financial group to perform CDD, additional information is needed with regard to special CDD measures, record keeping and risks mitigating. **Kyrgyzstan is re-rated as LC with R.17.**

Recommendation 22 (originally rated PC in the MER)

40. Factors underlying the PC rating in the MER included the following shortcomings: notaries and independent legal professionals involved in the preparation of real estate transactions were not required to conduct CDD on customers participating in these transactions and retain information about them; the requirement for real estate agents to perform CDD was only partially implemented, given that there were no legal provisions requiring real estate agents to conduct CDD both on sellers and buyers of real estate property; there was no requirement for DNFBPs to refrain from establishing business relationships, terminate business relationships or refrain from carrying out transactions if they could not perform CDD measures.

41. The list of DNFBPs mentioned in Article 5, par.2 of Law No.87 is limited. The list of financial institutions and DNFBPs, in form of the electronic database, shall be compiled and published by the state authority designated by the Government.

42. Law No.87 (Article 21) establishes the required CDD measures that shall be applied, *inter alia*, by all DNFBPs listed in Article 5 of Law No.87.

43. Law No.87 (Article 21, par.5) provides that, where it is impossible to perform customer due diligence, DNFBPs may refrain from establishing business relationships, terminate business relationships or refuse to carry out transactions.

44. It should be noted that Kyrgyzstan has made a significant progress by eliminating most of the deficiencies. The remaining shortcomings are related to PEPs (criterion 22.3) and new technologies (22.4). **Kyrgyzstan is re-rated as LC with R.22.**

Recommendation 23 (originally rated PC in the MER)

45. Factors underlying the PC rating in the MER included the following shortcomings: the requirement of Recommendation 23 for notaries and independent legal professionals involved in the preparation of real estate transactions to report suspicious transactions was only partially implemented; these persons were not obliged to implement internal controls and conduct enhanced CDD on transactions with persons from higher-risk countries.

46. The suspicious transaction reporting obligation established in Article 23 of Law No.87 extends to DNFBPs. This obligation applies in all situations where there is a suspicion or reasonable grounds to suspect that funds are proceeds obtained through crime, *inter alia*, through committing predicate offences, or are related to laundering of criminal proceeds.

47. The obligation to implement internal control programs, including corporate (group-wide) internal control programs, that enable to effectively comply with the AML/CFT legislation, established in Article 19 of Law No.87, applies to DNFBPs. The requirements for internal control programs are set out in the Regulation on General Requirement for Internal Control Program (Annex 11 to Resolution No.606). The provisions of Article 19 of Law No.87 and Annex 11 to Resolution No.606 cover both financial institutions and DNFBPs. The comments related to deficiencies in technical compliance with R.16 apply to R.23.

48. The obligation to apply enhanced CDD and other measures (sanctions) commensurate with risks when establishing business relationships and (or) carrying out transactions with any natural and legal persons from high-risk countries, set forth in Article 18 of Law No.87, applies to DNFBPs. The procedure of application of such measures is set out in the Regulation on Procedure of Application of Measures (Sanctions) in Respect of High-Risk Countries (Annex 10 to Resolution No.606).

49. Pursuant to SFIS Order No.40/p of August 5, 2019 the list of high-risk countries was approved and published. At the same time, paragraph 13 of Annex 10 to Resolution No.606 provides that the measures set out in paragraph 12 of this Annex shall be applied in respect of countries included in the special (based of the FATF public statements) list of high-risk countries approved by the AML/CFT Commission under the Kyrgyz Government. However, no information on such list was provided by Kyrgyzstan.

50. Kyrgyzstan has demonstrated a significant progress in improving its compliance with R.23. However, few shortcomings related to R.18 and R.21 still remain. **Kyrgyzstan is re-rated as LC with R.23.**

Recommendation 24 (originally rated PC in the MER)

51. Factors underlying the PC rating in the MER included the following shortcomings:

- Discrepancies between the Law on State Registration of Legal Entities, Branches (Representative Offices) and Government Decree No.85 dated February 10, 2012 regarding the basis (paid or free) for obtaining an extract from the State Register of Legal Entities;
- The State Register of Legal Entities did not contain information on beneficial owners;
- Kyrgyzstan did not assess the ML/TF risks associated with different types of legal persons;
- Kyrgyzstan lacked clear provisions ensuring the accuracy of information and its timely updating;
- There was no requirement for legal persons, the MoJ and independent registrars to obtain and retain information required to identify beneficial owners;
- There was no requirement for legal persons to take reasonable measures to obtain and retain up-to-date information on beneficial owners of companies;
- There were no mechanisms in place to ensure that companies cooperate with competent authorities to the fullest extent possible in identifying beneficial owners;
- The supervisors' powers to obtain information (from insurance companies, pension savings funds, pawnshops and leasing companies) were limited;
- There was no designated authority responsible for monitoring compliance by real estate agents, lawyers, notaries and other independent legal professionals with AML/CFT requirements;
- Discrepancies between the Civil Code, the Law on the Securities Market and the Law on Joint Stock Companies regarding the issuance of bearer shares;
- There were no mechanisms in place to prevent the illegal use of bearer shares for ML or TF;
- Proportionate and dissuasive sanctions for any legal or natural person that fails to properly comply with the Recommendation were absent;
- Not all financial sector supervisors were authorized to deal with administrative offences;
- There were no mechanisms in place for controlling the quality of assistance provided by other countries in response to requests for basic and beneficial ownership information, or requests for assistance in locating beneficial owners residing abroad.

52. The requirement related to ensuring accuracy of information and its timely updating (criterion 24.5) is largely implemented in Articles 11, 12 and 18 of Law No.57 on State Registration of Legal Entities, Branches (Representative Offices). Establishment of the electronic database containing information on beneficial owners is provided for in Annex 8 to Resolution No.606.

53. The requirement related to the use of one or more of the mechanisms indicated in criterion 24.6 to ensure that information on the beneficial ownership of a company is obtained by that

company and is available at a specified location in their country; or can be otherwise determined in a timely manner by a competent authority is fully implemented in Article 15 of Law No.87 and in Annex 8 to Resolution No.606. The requirement of criterion 24.7 to ensure that beneficial ownership information is accurate and as up-to-date as possible is also largely implemented in paragraphs 1 and 2 of Article 15 of Law No.87 and in Annex 8 to Resolution No.606. At the same time, the financial intelligence unit is obliged to ensure that the information contained in the database is kept up-to-date. However, no timelines of such updates are specified.

54. The requirement for companies to cooperate with competent authorities to the fullest extent possible in identifying beneficial owners is fully implemented in Article 15 of Law No.87 and in Annex 8 to Resolution No.606.

55. The requirement to maintain the information and records on a company for at least five years after the date on which the company is dissolved or otherwise ceases to exist, or five years after the date on which the company ceases to be a customer of the professional intermediary or the financial institution is largely implemented in paragraphs 1 and 2 of Article 15 of Law No.87 and in paragraph 23 of Annex 8 to Resolution No.606. At the same time, Law No.87 obliges legal entities and shareholder registrars to maintain the relevant information (on beneficial owner of a legal entity, register of shareholders) for at least five years after such information is recorded. However, the timelines of retention of this information by the aforementioned persons after a company is dissolved/ ceases to exist are not specified.

56. The requirement related to ensuring that competent authorities, and in particular law enforcement authorities, have all the powers necessary to obtain access to the basic and beneficial ownership information is largely implemented in Article 9 of Law No.87 and in Chapter 5 of Annex 8 to Resolution No.606. At the same time, according to paragraph 19 of Annex 8 to Resolution No.606 the procedure of accessing and using the database is established in the agreement between the financial intelligence unit and the database user. However, no sample agreements with the law enforcement agencies were provided. In addition, the 10-day period during which the FIs and DNFBPs provide information to the competent authorities (Part 2, Article 9 of Law No. 87 and clauses 11-12 of Appendix 8 to Resolution No. 606) about their beneficiaries does not fully comply with the requirement of the cr. 24.10 on timely access to this information.

57. The requirement related to rapid provision of international co-operation in relation to basic and beneficial ownership information, on the basis set out in Recommendations 37 and 40, is largely implemented through the provisions of Article 15 of Law No.87 and Annexes 8 and 13 to Resolution No.606. However, no sample agreements between the FIU and the law enforcement and other authorities for accessing the beneficial ownership database were provided by Kyrgyzstan.

58. The requirement for monitoring the quality of assistance provided by other countries in response to requests for basic and beneficial ownership information, or requests for assistance in locating beneficial owners residing abroad is fully implemented in Article 29 of Law No.87 and in Annex 13 to Resolution No.606.

59. There are few remaining shortcomings related to some criteria. In particular, Kyrgyzstan did not provide the results of assessment of risk of misuse of different categories of legal entities

for ML/TF purposes. There are no any timeframe on updating the beneficial ownership information database so as the data would be up-to-date. Timely access of competent authorities to information on beneficiaries is not ensured. Some discrepancies between the Civil Code and the Law on the Securities Market, on one hand, and the Law on Joint Stock Companies, on the other hand, still exist.

60. Kyrgyzstan has demonstrated a significant progress in addressing most of the identified deficiencies. **Kyrgyzstan is re-rated as LC with R.24.**

Recommendation 28 (originally rated NC in the MER)

61. Factors underlying the NC rating in the MER included the following shortcomings: AML/CFT supervision over the activities of real estate agents, notaries and independent legal professionals was absent; the Finance Ministry's Precious Metals Department, which is tasked with monitoring compliance by persons carrying transactions with precious metals and precious stones, was under no obligation to prevent criminals and their accomplices from being professionally accredited, or holding (or being the beneficial owner of) a controlling interest, or holding a management function in the said accountable entities; there were no mechanisms allowing it to apply sanctions against these entities for non-compliance with AML/CFT requirements.

62. The Regulation on Procedure of Inspecting Compliance with the KR AML/CFT Legislation (Annex 3 to Resolution No.606) defines the bodies responsible for AML/CFT inspection of each category of DNFBPs - these are either the government authorities or the self-regulatory bodies (SRBs).

63. Pursuant to Annex 3 (Chapter 10, par.2) to Resolution No.606 the list of SRBs shall be compiled by the financial intelligence unit. However, no information on existence of this list and on implications of non-inclusion therein was provided by the Kyrgyz authorities. Therefore, it is unclear whether those SRBs that not included in the said list can conduct AML/CFT supervision.

64. Furthermore, according to paragraph 11 of Annex 3 to Resolution No.606 the list of financial institutions and DNFBPs, in form of the electronic database, shall be compiled and published by the financial intelligence unit. However, no information on existence of this list and on legal implications of its absence and non-inclusion therein (as applied to DNFBPs, in particular) was provided by the Kyrgyzstan. In this context, it is unclear whether those designated financial businesses and professions that are not included in the said list are obliged to perform financial monitoring in course of conducting their statutory activities (providing services).

65. The powers of the inspection authorities, including SRBs, are set out in the Inspection Regulation (Annex 3 to Resolution No.606).

- The inspection authorities are responsible for conducting off-site monitoring (remote oversight) and (or) on-site inspections (Annex 3 to Resolution No.606, Chapter 5, par.19). In case of the government authorities, the monitoring and inspection procedures are defined in the legislation, while the SRBs themselves define such procedures. However, no

information was provided on whether or not the AML/CFT regulation and supervision standards are in place for the SRBs, and how the SRBs are monitored in this respect;

- Annex 3 to Resolution No.606 obliges the inspection authorities to verify whether or not the owners (persons exercising control/ beneficial owners) and the directors (senior managers) of the supervised entities have criminal record, and also to screen these individuals against the (domestic and international) lists of wanted persons and the Sanctions List. However, it is necessary to consider the possibility of establishing a binding obligation for inspection authorities to inform the FIU on any criminal record of the leadership of supervised entities. Besides that, according to the Kyrgyz authorities, the SRBs may keep registers of their members, but are not authorized to issue licenses, since independent legal professionals and real estate agents are not subject to licensing. In absence of such powers, the requirements related to DNFBPs supervised by the SRBs are not met;
- Annex 3 to Resolution No.606 (par.14, subpar.6) contains the general provision that obliges the inspection authorities to apply enforcement measures (sanctions) against their supervised entities for failure to comply with the Kyrgyz AML/CFT legislation in line with the Kyrgyz laws and regulations governing activities of the inspection authorities. However, no detailed information broken down by sanction types, sanctioning powers, and enforcement measures application and challenging procedures was provided.

66. Annex 3 to Resolution No.606 requires the inspection authorities to apply the risk-based approach (RBA) in course of inspections of the supervised entities, and establishes the procedure of application of the RBA to supervision. The inspection authorities are prescribed to apply the BRA based on understanding of risks, develop and use the risk assessment criteria, and reallocate their resources for inspecting, in the first turn, those entities that are exposed to high risk.

67. Kyrgyzstan has demonstrated a significant progress in establishing the DNFBPs regulation and supervision regime. However, there are still some deficiencies that Kyrgyzstan should address, which are related to: negative effect of the shortcoming identified in R.21; prevention of criminals (their associates) and persons with criminal record from entering the market; and application of sanctions. **Kyrgyzstan is re-rates as LC with R.28.**

Recommendation 34 (originally rated PC in the MER)

68. Factors underlying the PC rating in the MER included the following shortcomings: there was not enough information to draw conclusions on the level and quality of feedback from competent authorities, supervisors and SRBs to financial institutions and DNFBPs; there were no guidelines for the private sector on the application of AML/CFT measures and detection of suspicious transactions.

69. With respect to financial institutions (banks and payment organizations), which (according to the MER) occupy more than 91% of the country's financial sector, Kyrgyzstan has demonstrated the use of various tools and forms for issuing guidance and feedback: circular letters to banks on suspicious transactions criteria, on sending STRs, on CDD measures, individual clarifications (including upon request), as well as targeted interaction via secure electronic communication channels, including risk analysis of the supervised organization and recommendations to risks mitigation.

70. In case of detection of non-disclosure of STRs the National Bank, in the course of verification, instructs supervised entities that it is necessary to send STRs to the FIU and makes representations to prevent failure to send STRs.

71. In order to provide methodological assistance to the FIs and DNFBPs, the FIU approved and published the main suspicious transactions criteria. The FIU checks the received STRs and, if they are misconceived, sends instructions to the sender.

72. At the same time, the information provided is insufficient to confirm that Kyrgyzstan has ensured systematic work of the supervisory authorities in developing guidelines and feedback for all categories of financial institutions of the non-banking sector and DNFBPs (with the exception of precious metal dealers). There is also no data on the activities of SROs in developing and communicating guidelines to supervised organizations and feedback on AML / CFT issues.

73. Kyrgyzstan achieved substantial progress in providing guidance and feedback to banks. The country should organize permanent work with non-banking FIs and DNFBPs. **Kyrgyzstan is re-rated to LC with R.34.**

Recommendation 38 (originally rated PC in the MER)

74. Factors underlying the PC rating in the MER included the following shortcomings: there was no authority or mechanism for providing assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings; Kyrgyzstan has not submitted formal agreements entered into with other countries on the coordination of seizure and confiscation actions; no evidence of the country's sharing of confiscated property with other countries, where confiscation is directly or indirectly a result of co-ordinated law enforcement actions, has been provided.

75. Paragraphs 18 and 24 of Annex 13 to Resolution No.606 state that international cooperation is conducted by the law enforcement and national security authorities, including on any issues related to confiscation. International cooperation is carried out by the competent authorities at all stages of criminal proceedings (Clause 20 of Annex 13 to Resolution No. 606) on the basis of the international conventions that Kyrgyzstan is part of. Kyrgyzstan has provided a case of this cooperation. In case of perpetrator’s death, property is subject to confiscation based on the decision of the investigating authority in accordance with the Criminal Procedure Code of Kyrgyzstan (Article 88, Part 4, Clause 4). Competent authorities apply provisional measures to the property of a wanted person such as seizure of property in accordance with the Criminal Procedure Code of Kyrgyzstan (Art. 123, Art. 516).

76. According to par.29 of Annex 13 to Resolution No.606 the designated government authorities may share (confiscated) property with other countries.

77. Kyrgyzstan has demonstrated a significant progress. The remaining deficiency is related to absence of mechanism to manage/dispose seized or confiscated property. **Kyrgyzstan is re-rated as LC with R.38.**

3.2. Progress on Recommendations which have changed since completion of the on-site visit

78. Since the adoption of Kyrgyzstan's MER, the FATF has amended Recommendations 2, 7, 18 and 21. This section considers compliance of the national AML/CFT system of the Kyrgyz Republic with the revised Recommendations and progress in addressing the technical compliance deficiencies identified in the MER in relation to these Recommendations.

Recommendation 2 (originally rated PC in the MER)

79. In October 2018, Recommendation 2 was amended to include a new requirement for countries to have cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with data protection and privacy rules. The revised Recommendation 2 also requires countries to have a mechanism for exchanging information domestically.

80. Factors underlying the PC rating in the MER included the following shortcomings: there were no national AML/CFT policies informed by the risks identified.

81. The Action Plan approved by the AML/CFT Commission (minutes No.9 of January 22, 2018) is focused primarily on eliminating the deficiencies identified in the course of the EAG mutual evaluation and does not allow for determining that activities of the designated authorities are informed by ML/TF risk assessment.

New requirements set out in R.2

82. According to paragraph 4, subpar.3 of Annex 2 to Resolution No.606 the established AML/CFT Commission is tasked with ensuring cooperation and coordination among the Kyrgyz government stakeholders (at political and operational levels) in developing and implementing the required measures and in sharing information among the government stakeholders.

83. In addition, within the framework of the electronic system of interagency cooperation, the FIU of Kyrgyzstan has concluded agreements with government bodies that have personal data arrays. The requirements for the protection of personal data are set forth in Law No. 87 (parts 4 and 7 of Art. 9) and Annex 5 to Resolution No. 606 (para 97).

84. Kyrgyzstan has demonstrated significant progress in improving compliance with R.2. The remaining deficiency is that activities of the designated authorities are not sufficiently informed by risk assessment. **R.2 is re-rated to LC.**

Recommendation 7 (originally rated PC in the MER)

85. In November 2017, Recommendation 7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions since the FATF standards were issued.

86. Factors underlying the PC rating in the MER included the following shortcomings: financial sanctions enforcement measures did not apply to affiliated persons; the mechanism for publishing changes to the list of designated persons did not allow prompt notification about

listing or de-listing decisions; protection of the rights of all types of bona fide third parties was not ensured; there were no adequate mechanisms for accruals of funds to frozen accounts.

87. Law No.87 (Article 12, par. 2) extends application of financial sanctions/ freezing enforcement measures, *inter alia*, to funds of persons affiliated with persons included in the Sanctions List.

88. Law No.87 (Article 3) and Annex 6 to Resolution No.606 (paragraphs 25 – 27) require that targeted financial sanctions shall be applied without delay.

89. The mechanisms for accruals of funds to frozen accounts are defined in paragraph 29 of Annex 7 to Resolution No.606. Accrued interest, other earnings and payments are also subject to freezing.

New requirements set out in R.7

90. The concepts of the "Sanctions List", "funds", "financing of proliferation of weapons of mass destruction" and "targeted financial sanctions" used in Law No.87 are consistent with the definitions in the FATF Glossary. Furthermore, the provisions contained in Article 13 of Law No.87 and in Annexes 6 and 7 to Resolution No.606 enable to apply proliferation financing-related targeted financial sanctions without delay. Besides that, paragraph 5(b) of Annex 6 to Resolution No.606 covers all new proliferation financing-related UNSCRs.

91. Kyrgyzstan has eliminated all deficiencies identified in the MER. **Kyrgyzstan is re-rated as C with R.7.**

Recommendation 18 (originally rated LC in the MER)

92. In February 2018, Recommendation 18 was amended to clarify the requirements on sharing of information related to unusual or suspicious transactions within financial groups and on information confidentiality arrangements.

93. Factors underlying the LC rating in the MER included the following shortcomings: The requirement to have regard to ML/TF risks and the size of a business in implementing AML/CFT programs was absent; the requirement for non-bank financial institutions to apply AML/CFT policies and procedures at the group level, including to foreign branches and subsidiaries, was absent.

94. The requirements for contents of internal control programs, which have regard to ML/TF risks and the size of the business, and which include internal control arrangements, appointment of a compliance officer, screening procedures for hiring new employees, personnel training programs and independent audit function to test AML/CFT systems are fully implemented in Annex 11 to Resolution No.606.

95. The requirements of criterion 18.3 are largely implemented through the provisions of Article 19 of Law No.87 (par.3) and paragraph 52 of Annex 11 to Resolution No.606. However, these provisions apply only to branches and representative offices of financial institutions, but not to subsidiaries.

New requirements set out in R.18

96. The requirements of criterion 18.2 *(as amended)* are largely implemented in Article 19 (par.1 and 3) of Law No.87 and in Chapter 7 of Annex 11 to Resolution No.606. However, there are some gaps in the current version of the aforementioned legal and regulatory provisions, which do not allow for drawing a conclusion that this criterion is fully met, in particular:

    - The provisions apply only to branches and representative offices of financial institutions, but not to subsidiaries;
    - The provisions are related to information exchange among branches and representative offices, but not to information sharing with parent company.

97. Kyrgyzstan has demonstrated progress in addressing the identified deficiencies and has largely implemented new requirements of R.18. However, the progress made in not sufficient enough for upgrading the rating, and further work in needed. **Kyrgyzstan remains LC with R.18.**

Recommendation 21 (originally rated LC in the MER)

98. In February 2018, Recommendation 21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18.

99. Factors underlying the LC rating in the MER included the following shortcomings: the wording of the tipping-off and confidentiality provisions of the AML/CFT Law was not fully consistent with Recommendation 21.

100. Law No.87 (Article 32, par.5 and 6) releases directors, managers and employees of financial institutions and DNFBPs from liability when they duly comply with the AML/CFT legislation, which means that they are also exempt from liability for disclosure of information when they file STRs. However, this exemption covers not all types of liability, but applies only to liability for losses inflicted on natural and legal persons as a result of compliance with the AML/CFT obligations in good faith. Thus, there is no exemption form liability for disclosure of information when STRs are filed in good faith.

101. Law No.87 (Article 10, par.2) prohibits directors, managers and employees of financial institutions and DNFBPs from disclosing to or tipping off customers or third parties about the fact that a suspicious transaction report or other information requested by the FIU will or is being filed with the financial intelligence unit. Therefore, the shortcomings identified in the MER are eliminated. However, while the Law obliges directors, managers and employees of financial institutions and DNFBPs not to disclose the fact that STR is being filed with the FIU, this obligation does not apply to FIs and DNFBPs themselves.

New requirements set out in R.21

102. Law No.87 provides no exemption from the established requirement, which prohibits disclosure of the fact that STR is being filed, in situations when such information is shared within financial groups.

103. Kyrgyzstan has demonstrated progress in addressing the deficiencies. However, the experts identified the following shortcomings that have to be eliminated: exemption from liability for disclosing information as a result of submission of STR does not cover all types of liability; the established obligation not to disclose the fact that STR is being filed with the FIU, does not apply to FIs and DNFBPs themselves. **Kyrgyzstan remains LC with R.21.**

IV. Conclusion

104. The Kyrgyz Republic has made significant progress in addressing the technical compliance deficiencies identified in the MER. Hence, the Recommendations below are re-rated as follows:

- The ratings for R.12,R.17 and R.28 are upgraded from NC to LC;
- The ratings for R.1, R.2, R.16, R.22, R.23, R.24, R.34 and R.38 are upgraded from PC to LC;
- The rating for R.7 is upgraded from PC to C;
- The rating for R.6 is upgraded from LC to C.

105. Kyrgyzstan has demonstrated progress in improving its compliance with R.8, R.18 and R.21 but the provided information is insufficient for upgrading the technical compliance ratings.

106. As for the Recommendations that were amended since the on-site visit, Kyrgyzstan fully implemented new requirements of R.7 and largely implemented new requirements of R.2, R.18 and R.21.

107. In the light of the progress made by Kyrgyzstan in improving the national AML/CFT system since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows (the upgraded ratings are **marked in bold**):

R.1	**R.2**	**R.3**	**R.4**	**R.5**	***R.6***	***R.7***	**R.8**	**R.9**	**R.10**
LC	**LC**	C	LC	LC	**C**	**C**	NC	LC	LC
R.11	***R.12***	**R.13**	**R.14**	**R.15**	**R.16**	***R.17***	**R.18**	**R.19**	**R.20**
LC	**LC**	LC	LC	LC	**LC**	**LC**	LC	LC	LC
R.21	**R.22**	***R.23***	***R.24***	**R.25**	**R.26**	**R.27**	***R.28***	**R.29**	**R.30**
LC	**LC**	**LC**	**LC**	LC	LC	LC	**LC**	LC	C
R.31	**R.32**	**R.33**	**R.34**	**R.35**	**R.36**	**R.37**	**R.38**	**R.39**	**R.40**
LC	LC	LC	**LC**	LC	LC	LC	**LC**	LC	LC

108. Kyrgyzstan will remain in the enhanced follow-up process and will continue to report to the EAG on progress to strengthen its national AML/CFT system.